An inquiry into the present state of that department of the profession of physic which constitutes the province of the physician, as it exists in England; of the laws that have been enacted for its government, and of the manner in which these laws have been adminstered.

AN

INQUIRY

INTO THE

PRESENT STATE OF THAT DEPARTMENT

OF THE

PROFESSION OF PHYSIC

WHICH CONSTITUTES

THE PROVINCE OF THE PHYSICIAN,

AS IT EXISTS IN ENGLAND;

OF

THE LAWS THAT HAVE BEEN ENACTED FOR ITS GOVERNMENT,
AND OF THE MANNER IN WHICH THESE LAWS
HAVE BEEN ADMINISTERED.

(From the Edinburgh Medical and Surgical Journal, No. 65.)

EDINBURGH:
PRINTED BY GEORGE RAMSAY AND COMPANY,
FOR ARCHIBALD CONSTABLE AND COMPANY.

1820.

TO THE

LICENTIATES

OF THE

LONDON COLLEGE OF PHYSICIANS,

RESIDENT IN LONDON,

THIS TRACT IS INSCRIBED,

WITH SENTIMENTS OF RESPECT;

AND,

In the hope that they will avail themselves of the opportunities of free discussion and united exertion which their locality confers, to rescue a valuable branch of an useful and honourable Profession from the usurpation, misgovernment, arbitrary rule, and unseemly arrogance, by which it has been for centuries so signally oppressed and degraded.

PREFATORY NOTICE.

THE following Tract is to be considered as supplementary to a brief Essay on the Medical Profession, published in the Edinburgh Medical and Surgical Journal for January 1818, and republished from the Journal types in a separate pamphlet, entitled, "An Inquiry," &c.

From both Tracts, connectively taken, may be obtained a tolerably full and correct View of the general Profession of Physic, its nature, extent, rights, interests, legitimate objects, and natural tendencies;—and also of that department of it which belongs more appropriately to the Physician, as this exists at the present day throughout England.

Exposition of the Present State of the Profession of Physic in England, and of the Laws enacted for its Government.

IMPRESSED with a deep conviction of the important advantages which result from free discussion, I am induced to trespass once more on your indulgence, while I lay before my professional brethren some further views of the medical profession which appear to me to claim their serious attention. In your Number for January 1818, I endeavoured (and I trust not wholly without success) to deduce from the history and progress of the profession, some of those principles which should guide the legislature in regulating it as a political department. In that essay, I endeavoured to shew the natural connection that subsists

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* To prevent the interruption of frequent references, a general one is here given to the following authorities, viz. "The Royal College of Physicians of London, founded and established by law, &c. &c. by Charles Goodale, Doctor in Physic, and Fellow of the said College of Physicians. London, 1684." "The Statutes of the Colledge of Physicians, London, worthy to be perused of all men, but more especially Physicians, Lawyers, Apothecaries, and Surgeons, &c. 1693." "A General View of the Establishment of Physic as a science in England, by the Incorporation of the College of Physicians, London, &c., by Samuel Ferris, M. D. &c. 1795." "A Letter to the Right Honourable Lloyd Lord Kenyon, &c. by Will. Ch. Wells, M. D. London, 1799." "The Law of Physicians, Surgeons, and Apothecaries, &c. London, 1767."

between the several branches of the profession,—to trace their artificial separation to the causes by which a disunion was effected,—and to suggest such arrangements of the general profession as would best adapt its several powers to the wants of society, and direct its combined energies for the public good. These views, however just and incontrovertible, are yet too comprehensive I fear, and too likely to jar with the various discordant interests which this ill-fated profession unhappily comprises, to afford any hope of their being speedily acted on, or indeed of their finding many minds sufficiently free from prejudice, even to admit their truth. In order, then, to open any prospect of amendment, it becomes necessary to pursue the subject more in detail, and, by an exposure of specific grievances, to prepare the way for those temperate reformations which the legislature, when convinced of their necessity, may have no reluctance to apply. In the present tract, I mean to review more closely and circumstantially the department of physic as it exists in England,—to trace the successive enactments by which its legal condition has been regulated,—to shew how these several laws have been administered,—to display the effects of their mal-administration,—to manifest their utter unsuitableness (even if faithfully and conscientiously administered) to those revolutions in the state of medical science and practice, and of society, which the lapse of three centuries has effected,—and, finally, to suggest to those who are most aggrieved by the existing evils, those rational and constitutional courses by which they can bring their peculiar hardships under the cognizance of the legislature, and thus obtain that redress which a British senate will never withhold from well-founded complaints, when temperately urged, and respectfully laid before them.

The first legislative enactment for regulating the profession of physic in England was the 3d Hen. VIII. c. 11, (1511.) This ordains that no person shall practise as a physician or surgeon in London, unless examined and licensed by the Bishop of London, or Dean of St Paul's, " calling to him or them four Doctors of Physic, and for surgery, other expert persons in that faculty," on penalty of five pounds a month; or in the provinces, unless examined and licensed by the Bishop of the diocese, or his vicar-general, either of them " calling to them such expert persons in the said faculties as their discretion shall think convenient," on similar penalties. Considering the period when this law was enacted, and the circumstances to which its provisions were intended to apply, it is difficult to conceive any measure better calculated for accomplishing the objects in view; and it is much to be doubted whether its operation

would not have been, eventually, more salutary and effectual than that of the royal charter, and its confirmatory statutes, by which this law was virtually superseded. At this time there existed no medical school in Britain, and physicians were consequently compelled to resort to the medical schools of the Continent for their professional education. This course of education being necessarily expensive, the supply of well educated physicians was consequently limited, and thus deficiencies of medical aid were felt which could only be supplied by practitioners of inferior quality. The multiplication of these latter, and their notorious incapacity, called forth, with great propriety, the interference of the legislature, whose provision for remedying the evil is marked by discriminating judgment and sound policy. By it the ability of candidates for medical or surgical practice was required to be proved by the examination of regular physicians, or experienced surgeons, under the personal superintendence of a high ecclesiastical dignitary. By this expedient, the competency of the candidate was tried by the best test which the nature of the case admitted, while the integrity of the examiners was ensured by their subordination to an unprofessional, enlightened, and disinterested president, who had full power to shield the candidate from any harshness or unfairness to which professional jealousy, acting on the weakness of humanity, might give rise. In the tenth year of Henry VIII., (1518,) the London College of Physicians was incorporated by royal charter, which received a legislative confirmation by the 14th and 15th Henry VIII. c. 5, (1522.) And again by the 1st Mary, sess. 2, c. 9, (1533.) Charters were subsequently obtained by this college both from James I. and Charles II.; but, as these were never confirmed by statute, they could not supersede the law as established by the statutes of Henry and of Mary.

The charter of Henry VIII., then, with its confirmatory statutes, being the only legal ground by which the authority and privileges of the London College of Physicians are supported, it becomes necessary to scrutinize their provisions somewhat closely, in order to ascertain how far they sanction the several proceedings to which this college has resorted under them. If it shall appear that the college has greatly exceeded the powers confided to it by the legislature,—that it has substituted, for the clear and express provisions of the charter, its own arbitrary decrees, promulgated under the denomination of bye-laws,—that by so doing it has infringed the chartered rights of individuals, and inflicted signal injury on the profession, for whose protection and advancement it was itself created;—if these things shall be proved, (and I trust, ere the present essay closes, to establish

them beyond a doubt,) sufficient ground will surely be shewn for calling on the legislature to inquire into abuses so deeply laid, and so extensively injurious, and to correct them either by reforming the illegal practices of the college, or by placing the profession under some more salutary guidance and control. The charter of Henry VIII. is a simple charter of incorporation, uniting in one community or college (unum corpus et communitas perpetua, *sive* collegium perpetuum) certain individuals named in the charter, together with all others of the same faculty then resident in London. It empowers the college to elect an annual president, to have perpetual succession, and a common seal, to possess lands, &c. granting all such rights and privileges as are usually given to corporate bodies. It decrees that no one shall practise physic in London thenceforward, unless authorized by the college, under penalty of L. 5 for every month during which such unlicensed practice shall be continued. The chief provisions of the 14th and 15th Henry VIII., by which this charter is confirmed and enlarged, consist in extending the elects, or board of examiners, from four to eight, and in ordaining that no one shall practise physic throughout England, unless examined and licensed by the president and elects of the London college; thus virtually revoking the 3d Henry VIII.

It is curious and interesting to remark how tardy was the compliance with this statute in the provinces, for we find that the bishops continued to grant licences in the provinces for above 150 years after, a circular letter having been addressed by the college to the several bishops in their respective dioceses, so late as 1686-7, admonishing them of this power having been exclusively vested in the college by the 14th and 15th Henry VIII.

The obvious interest and meaning of the charter and statute of Henry were, that all men examined and admitted under them should become members of the body corporate. No distinction whatever is specified, or even alluded to, either in the charter or statute, and, consequently, there is no legal ground for confining the privileges of the college to any particular class of physicians, nor for establishing any gradation of its members. On the contrary, it was the bounden duty of the college to examine all men who sought admission; and when proved as to their qualifications and competency, to admit them to a full participation of the rights and privileges conferred by the charter. Far different, however, has been the conduct of the college, for, by means of distinctions and gradations of rank, which have no place in the charter, and for which it gives no sanction whatever, they have effectually narrowed the college so as to exclude

from its pale a large portion of those physicians who ought to partake fully of all its rights and privileges.

Without tracing their progress through the lapse of centuries during which they have exercised powers usurped and illegal, it will suffice to specify the gradation of members, as announced in the printed lists of the present day, in order to shew how unsupported such complicated arrangements are by the simple provisions of the incorporating charter.

The list, as at present published, comprises "Fellows," "Candidates," "Inceptor Candidates," "Licentiates," and "Extra Licentiates,"—of which several classes it is necessary to specify the distinctions. The "Fellows" are in fact the body corporate, engrossing to themselves, by a palpable usurpation, the whole power and authority of the college. To this rank none are now elected save medical graduates of Oxford or Cambridge; a limitation which rests on no authority but that of the bye-laws of the college, and which directly contravenes the express provisions of the charter. "Candidates" are those who are subjected to a certain probation previously to being elected Fellows. "Inceptor Candidates" are, as the denomination implies, in an earlier stage of their noviciate. "Licentiates" are merely permitted to practise, being deemed unworthy of becoming members of the corporation from not having graduated at Oxford or Cambridge, from which circumstance alone their ineligibility is inferred, for they are not even suffered to evince their learning and competency by any tests, all examination for the fellowship being absolutely refused, even though the college have the power of conducting it in any manner, and with any degree of severity they think proper. The "Extra Licentiates" receive permission to practise in the provinces, but are prohibited from coming within seven miles of London.

In addition to these several ranks, that of "Honorary Fellows" was once created; but it was soon suppressed, in consequence, as the college records themselves declare, of the disputes within the college, to which this attempt to enlarge its boundaries gave rise.

A more particular description of these several ranks may here be desirable, as more clearly explaining their nature, and thereby elucidating better the policy by which the college has been actuated in ordaining them. The following are taken from "A Short Account of the Institution and Nature of the Colledge of Physicians of London," which appears to have been published by the college in their own vindication, against some alleged charges so early as 1688, and which is quoted in another book published in 1693, entitled, The Statutes of the Colledge

of Physicians, &c. The quotation is as follows: "The Colledge of Physicians in London, being constituted of men of generous and liberal education, and instituted for public benefit, *out of which no person of sufficient capacity and learning can be excluded*, consists of a President, Fellows, Candidates, Honorary Fellows, and Licentiates. 1. Fellows are Doctors of Physic chosen out of the candidates, who have been always limited to a certain number, (formerly forty,) and are now confined to the number of fourscore, by his present Majesty's gracious charter. 2. Candidates must be Doctors in Physic, admitted to that degree in one of our Universities, must not be foreigners, and ought to have practised four years before they are admitted into that order. 3. Honorary Fellows are such Doctors of Physic as, by reason of their being foreigners, or having taken their degree in some university beyond seas, are not incorporated in either of ours; or, for some reason, (having not been candidates,) are not of the number of those who have votes in the affairs of the college. 4. Licentiates are such other *persons* skilled in physic who, by reason of their being foreigners, or their not being admitted doctors in one of our universities, or for their not being eminently learned, or by reason of their too great youth, or such like causes, are not capable to be elected into the number of candidates, yet may, notwithstanding, be serviceable to the public in taking care of the health of the king's subjects, *at least in some diseases.*" * Will it be credited that this last degraded class only is open to the great body of physicians, who, however highly educated, or abounding in medical knowledge, obtained by assiduous study, in the most eminent schools of physic, are yet pronounced unworthy of admission into the college, nor from any incompetency being proved, but from their not being medical graduates of universities in which no competent schools of physic are to be found! A sense of the indecency of such exclusion seems for a moment to have influenced the college in creating a class of Honorary Fellows; but the bye-law ordaining it seems to have speedily sunk into disuse, for in 1720 we find, that, at a meeting of the college, "it was proposed to consider

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* The bye-law of the college conveys the indignity offered to the Licentiates still more strongly. "De permissis, sive Licentiatis ad praxin. Quoniam complures in hac civitate medicinam faciunt, quos *inidoneos omnino* censemus ut in numerum sociorum aut candidatorum adoptentur, vel quod natione non sint Britanni, vel doctoratus gradum non adepti fuerint, *vel non satis docti*, aut ætate et gravitate provecti sint, vel alias consimiles ob causas, et tamen rei publicæ inservire et salute hominum prodesse possint, *saltem in nonnullis curationibus*; de his ordinamus et statuimus, ut post examinationes debitas, et approbationem præsidis et censorum permittantur ad praxin, *quamdiu se bene gesserint.*"

the statute relating to Honorary Fellows, in order to admit such as have had a regular education in foreign universities into the order, and distinguish them from the Licentiates who had no degrees;" which subject was referred to the president and censors for their report. In June 1721, a statute, or bye-law, to this effect, was read a first time, and agreed to *nem. con.* In September 1721, it was read a second time, approved, and had the seal of the college affixed it. How such a statute could give rise to contentions it is not easy to conceive. Wanton arrogance alone could object to this trivial distinction being conferred on men regularly educated, and already possessed of university honours; for it is to be remarked, that it was purely honorary, no vote nor any power of government being attached. Yet, in December 1725, on the very 25th, (if my authority be correct,) a day one should think calculated to inspire kindlier feelings, we find the bye-law repealed on the following proposition of the president: "The president, *having taken notice of the disputes that had been occasioned by the statute relating to Honorary Fellows*, did, *for preventing further disputes*, propose, in the following manner, That the statute relating to Honorary Fellows should be now repealed a first time, which was unanimously agreed to." The proposal for repeal was made a second time in January 1726, and again in the April following, when the repeal was rendered complete. These statements may serve to shew the principles on which the administration of this college has been conducted from the earliest periods. My object in entering into such details now is, not to criminate the college, who may have been influenced by erroneous judgments rather than corrupt principles, and who might possibly have considered themselves as really benefiting the community by the assumed exercise of authorities which their charter did not confer; but for the purpose of substantiating the fact of such exercise of power being in direct contravention of the plan and obvious provisions of the charter.

For the variety of distinctions that have been specified, the college can shew no authority whatever save that of their own bye-laws. Now, it is indisputable that the general power of framing bye-laws under any charter, is given always in subserviency to the provisions of the charter itself, and that such bye-laws can in nowise contravene the charter without a violation of law.

Yet, that the bye-laws by which the present organization of the London college has been accomplished do directly contravene the charter of Henry VIII., by denying admission, or even the opportunity of examination, to those to whom the charter

explicitly gives the right, is too clear, from the few facts already stated, to need the support of any elaborate argumentation. Lest it should be supposed that this charge of illegality in their proceeding is generated by spleen, or the grounds of it raked out among musty records and obsolete usages, I shall here briefly state some opinions respecting their bye-laws, which have been pronounced from time to time by high legal authorities, and even by numbers of their own fellows. And, first, as an illustration of the policy of the college, and of the expedients by which they substituted their own arbitrary dictation for the law of the land, I shall report an extraordinary case which was published near 150 years ago.

It is entitled "The Base, Dishonourable, and Illegal Dealing of the College of Physicians, London, with a Doctor of Physic admitted to that degree in one of our own universities, who in July, August, and September 1683, presented himself to the President and Censors to be examined,"—"and was by them examined three several times in Latine, according to the form of the statutes in that case provided; and was approved, and had leave given by the President and Censors after examination to visit the Fellows,—and did accordingly visit all the Fellows, in order to be admitted Licentiate; and at the same time was requested and desired by them in behalf of the whole college, and withal complemented, how extremely he should oblidge and highly honour that society, if he would be pleased to suspend his admission as Licentiate, (and which they confest they could not deny,) till such time as he had quitted his employment in pharmacy, and compleated his degree (being then batchelor of physic) of Doctor in the university; and that then without any farther trouble of visiting the Fellows, or other examinations, and for the very same fees, by vertue of these examinations standing registered in their books, he might be admitted a *candidate*, the more honourable station in their society," &c. "On these considerations he submitted to and granted their request. Four years now elapsed, and by their advice, having regularly completed his degree of Doctor in Physic, performing all exercises required by the University of Cambridge, as his deploma to them shows, and the register in the university will sufficiently testify; he applied himself to the then president of the college in the year 1687, for his admission, (as formerly directed and promised by the president and censors, in behalf of the whole college, in the year 1683,) from whom he had a courteous reception and acknowledgement, that it was all the reason and justice in the world that he should have his admission; besides, saith he, we cannot deny it him, and then advised him to wait till next college-day,

and there give his attendance; which he accordingly did, and was then deferred to another opportunity, by reason the college was then engaged in private business, and no public business would at that time be entered on; he attended again and again, and was still deferred. During these delays the private business is effected, and the new statutes of exclusion are made and promulgated in the theatre, September 28, 1687. After these new statutes were made, he was advised to wait on the President and Censors on a private college-day, to demand his admission, and did accordingly; and had for answer from them their new statutes, which Mr Register would needs read: To this he answered, these statutes cannot relate to my case, being made above four years since the desires, requests, and directions of this Board, in behalf of the whole college, were made to me, to suspend my admission till I had completed my degree of doctor; besides, I have lately attended several times on the college for my admission in July, August, and September 1687, since I was Doctor in Physic, and before these statutes were made and promulgated. However, so it was, that unless he would abjure the company of apothecaries, (as well as he had by their advice and directions quitted his employment in pharmacy in the year 1684,) and bring it attested under the hand, or by the person of a public notary, that he had relinquished and abjured that society, he should not be admitted."

I have been tempted to give this statement at full length, as no abridgment could do justice to it. The conduct pursued by the college I shall not attempt to characterize,—observing that I seek in vain to recognise that "sanctuary of honour and good faith," which this college was pronounced to be by the late Lord Kenyon, when, on the ground of this reputed honour and good faith, his Lordship thought fit to refuse Dr Stanger's application to the Court of King's Bench for a mandamus, to admit him to examination for the fellowship. To this refusal I shall have occasion to advert by and by; in the mean time, I shall only remark on the case just detailed,—that however opinions may differ on the abstract propriety of the exclusions pronounced by the college bye-law, no doubt can be entertained of their being contrary to law.

These proceedings of the college were probably not carried without much internal contention; for, at this time we find the sentiments of the fellows so divided, that, in 1702, thirteen fellows of the college, among whom were Sir Richard Blackmore, Dr Tancred Robinson, Dr Tyson, &c. remonstrated with the college upon the rigour and illiberality of their bye-laws. They accused them "by narrowing their bottom, of

keeping many worthy practitioners of physic in the city from entering into their society, whereby *their debts increased without prospect of remedy*, and their body diminished without hope of repair." How determined must have been the spirit of exclusion, which could thus sacrifice even the prosperity of the corporation, and submit to pecuniary embarrassments and increasing debts, rather than consent to open the college doors, which usurpation alone had closed! There is some reason to believe that these embarrassments were felt, and that they gave rise to the expedient of creating "honorary fellows," as a financial resource, the fee of admission as an honorary fellow being fixed at "one hundred pounds of lawful money of Great Britain, besides the usual payments to the president, censors, treasurer, register, and beadle, due according to the statutes, and the necessary expence for a diploma." And here I may cursorily remark, on the extreme hazard of leaving the admission fees of any corporate body unlimited, for the power of extending these indefinitely, enables the corporation virtually to abrogate all the rights of the public to admission, by rendering this unattainable to moderate means, and subjects their cupidity to a temptation which human virtue is not always able to resist.

I proceed now to those legal opinions by which the proceedings of this college have been censured, and their bye-laws pronounced illegal. In 1688 the college was admonished by Lord Chancellor Jeffries. A little prior to the year 1700, a petition was preferred to the Lord Chancellor Somers, and to the judges by several fellows of the college, complaining, "that a prevailing party of the college had combined together in *a fraudulent and surreptitious* manner, and made illegal statutes and bye-laws, and annexed rigorous penalties," &c. In 1768 they were cautioned by Lord Mansfield "against narrowing their grounds of admission so much, that if even a Boerhaave should be resident here, he could not be admitted into their fellowship."

And his lordship said upon the same occasion, "I would recommend it to the college, to take the best advice in reviewing their statutes, and to attend to the design and intention of the Crown and Parliament in their institution. I see a source of great dispute and litigation in them as they now stand; there has not, as it should seem, been due consideration had of the charter, or legal advice taken in forming them;" a hint which he repeated in 1771. The opinions of Lord Mansfield on the illegality of the several gradations and distinctions introduced by the college, are unequivocally expressed in the following declaration: "If it be true," said his lordship, "that there are

some among the licentiates unfit to be received into any society, it is a breach of trust in the college to license persons altogether unfit. It has been said that there are many among the licentiates who would do honour to the college, or any society of which they should be members, by their skill and learning, as well as other valuable and amiable qualities, and that the college themselves, as well as every other body else, are sensible that this is in fact true and undeniable. If this be so, how can any bye-laws which exclude the possibility of admitting such persons into the college, stand with the trust reposed in them, of admitting *all* who are fit? If their bye-laws interfere with their exercising their own judgment, or prevent them from receiving into their body persons known or thought by them to be really fit and qualified, such bye-laws require alteration." And here it may not be unsuitable to notice the danger of leaving corporate bodies the sole judges of the legality of their own bye-laws. The consistency of a bye-law with the paramount authority of a charter or statute, is a question which can oftentimes be decided only by men practised in the subtleties of legal disquisition. Hence, corporations may oftentimes act illegally in the enactment of their bye-laws, from misconception or inadvertence alone, without any corrupt or sinister design. And so liable are men's minds to be warped by their feelings or interests unconsciously to themselves, that I have little doubt of all such abuses originating in an error of judgment. But, again, the tendency of all corporate authorities to assume excess of power is notorious, and requires to be watched with jealous vigilance. It is important, too, to prevent abuses of this kind, which, when they once take place, give rise to extensive injury, the redress of individuals being nearly hopeless, in consequence of that cautious, and no doubt prudent reserve, with which our courts of law receive the complaints of individuals against corporate encroachments.

For these several reasons, I have no doubt that it would prove a salutary and necessary protection to the public, if every bye-law of a corporation which was intended to have continued operation, or which could, in any way, affect the general policy, were, previously to its taking effect, submitted to some high law officer of the Crown, in order to judge of its subserviency to the charter, and sanctioned by his express approval."

In 1768, Lord Mansfield said, "I think that every person of proper education, requisite learning and skill, and possessed of all other due qualifications, is entitled to have a licence; and I think that he ought, if he desires it, to be admitted into the college."

"The power of examining, and of admitting after examination, was not an arbitrary power, but a power coupled with a trust. They are bound to admit every person, whom, upon examination, they think fit to be admitted within the description of the charter, and the act of parliament which confirms it. The person who comes within that description has a right to be admitted into the fellowship. He has a claim to several exemptions, privileges, and advantages attendant upon admission into the fellowship; and not only the candidate himself, if found fit, has a personal right, but the public has also a right to his services, and that not only as a physician, but as a censor, an elect, as an officer in the offices to which he will, upon admission, become eligible."

It has been further remarked by Lord Mansfield, "That licences probably took their rise from that *illegal* bye-law now at an end, which restrained the number of fellows to twenty. This was arbitrary and unjustifiable; they were obliged to admit all such as came within the terms of the charter."

And again, "There can be little doubt that the college are obliged, in conformity to the trust and confidence reposed in them by the Crown and the public, to admit all that are fit, and reject all that are unfit. But their conduct in the exercise of the trust thus committed to them ought to be fair, candid, and unprejudiced, not arbitrary, capricious, or biassed, much less warped by prejudice or personal dislike."

These various opinions, so unequivocally given by the highest legal authority that can be adduced, are surely more than enough to determine the illegality of the college proceedings. The opinions of Judge Aston, however, are too forcible and too directly in point to be omitted. His words are, "With all the inspection I have used, from the first charter to Queen Mary, I cannot find any distinction made between the members of this corporation. How it crept in afterwards might be difficult to account for, but the granting temporary and partial licences will not in my opinion impugn the ancient usage; for we see in different periods a most manifest alteration, and the words quite different in the manner of admission, until about a hundred years ago, they arbitrarily reduced it to a certainty which has since obtained, which, questionless, *owes its foundation to an illegal act of the college itself*, by arrogating a power to admit or refuse, at their own free will. Whereas, they are obliged to admit persons who have proved their abilities, it being for the good of the community." The right of prescription, founded on the antiquity of their own bye-laws, has been much insisted on by the college. This is effectually nullified by Judge

Yates, who observes, " That usage only applies where the construction is doubtful; here the construction is *not* doubtful; if it were, then, indeed, usage for two hundred years might have weight."

These authorities will shew, at least, that the charge of illegality brought against the college procedures is not without foundation. Yet, notwithstanding the reprehension so forcibly expressed, the college still persist in their system of exclusion, confining admission to their fellowship to the medical graduates of Oxford and Cambridge, and arranging all others according to their own arbitrary classification, but excluding them wholly from the pale of the college. It is a matter of notoriety that those universities whose graduates are so peculiarly and exclusively favoured by the London College have never been celebrated as schools of physic, and that their graduates are indebted, for all their essential acquirements, to the medical schools of other universities. In former times, such schools were only to be found in foreign countries, and to them British physicians were accustomed to resort for medical knowledge and degrees. In latter times, several schools of high excellence have been founded in Britain, and in them the great body of British physicians, pursuing naturally and justifiably those courses of education which were most instructive and complete, have long been accustomed to seek those genuine qualifications which were to fit them for a faithful discharge of their professional duties. Yet, by an incongruity which has no parallel, such physicians are punished for pursuing their education in those schools where alone adequate instruction is afforded, by actual exclusion from that corporate body, which was formed for their express protection and support. And to the credit of this numerous and truly respectable body is it, that they have so pursued their studies, and thereby sacrificed personal aggrandisement and private interest to the conscientious attainment of professional competency; for what but a conscientious regard to the real duties of professional life, could lead men to prefer Edinburgh and Glasgow degrees in physic, which require years of resident study, and a scrutinizing examination in medical science, ere degrees are granted, to that of Oxford or Cambridge, in which the courses of medical instruction and examination are little more than nominal, while, by pursuing the former, they lose all hope of attaining those honours, rights, and privileges of the London College, which they who follow the latter exclusively enjoy, and are, moreover, subjected to the insulting arrogance of the college bye-law, which proclaims the inferiority of licentiates to fellows. That such exclusive preference of Oxford and

Cambridge graduates on the part of the college is illegal, and contrary both to the spirit and letter of their charter, admits of no dispute; and it can as little be doubted that it is greatly injurious to all the best interests of medical science. How a system of procedure so illegal and so subversive of the very purposes for which the college was created, could have been suffered to continue for a period of three hundred years, may well excite surprise. It has not been unopposed, however, though unhappily the opposition has been so injudiciously conducted, or so weakly supported, as oftentimes to have yielded a triumph to the college, where defeat, if not reproach, was merited. And here it may not be unmeet to represent the general unfitness of the medical character for engaging in or sustaining contests of this kind. The very nature of his studies makes the student of medicine more fitted for the privacy of his own chamber than for contending in courts of law. His funds, too, are seldom so ample as to allow of his appropriating any part to costly and expensive litigation. The disadvantages under which an individual must ever lie, in contending with a chartered company, are sufficiently formidable; but to the individual physician they are appalling, as he can only pursue his rights at the inevitable sacrifice of time, money, and professional establishment. This latter I hesitate not to include, for it is only in early life that buoyancy of mind is possessed, sufficient to incite men to engage in so arduous a struggle, and what young man, entering on his professional career, and unsupported by established reputation, could hope to bear up under the accumulated obloquy with which so powerful a host of opponents would be sure to overwhelm him? So great, indeed, are the discouragements to entering into this kind of contest, and so unfitted the parties aggrieved for combating in it, that, far from wondering at the general supineness with which the usurpations of the college have been acquiesced in, I am disposed rather to admire that any have been found bold enough to question their authority or impugn their alleged powers.

Can we imagine otherwise, than that the college have reckoned on this supineness and passive endurance, else could they have pertinaciously continued their system of usurpation after the repeated admonitions which they had received from the very bench? Yet, hopeless as contention has been on the part of those opposed to the college, so sensibly have grievances been felt, that the history of the college presents an almost uninterrupted series of litigation. A recapitulation of all the suits in which they have been engaged would be tedious, and greatly exceed my present limits. It would, moreover, serve rather to

perplex than elucidate the subject at issue, as a large proportion of these suits, though arising from sensible grievances, have yet been confined to minor points, on which the legal powers of the college were indisputable, and which it is not a little strange that the parties were not prevented by their legal advisers from contesting. I shall confine myself then to those few instances in which the power of the college to refuse admission to their fellowship, or to deny examination to candidates, has been disputed in courts of law.

In 1771, Dr Archer and Dr Fothergill claimed admission as fellows. But they were misguided in demanding it on a wrong ground, namely, that of their licence, which ground being deemed untenable, they were consequently defeated.

The decision in this case, however, gives no support to the legality of the college proceedings, for the judges waved all consideration of a question which did not come formally before them, declaring that, "be the bye-law good or bad, the right of admission was claimed under it," and that "it would be a most unreasonable thing to accept this licence under the bye-law, and to treat those bye-laws as null and void; to turn the licence so accepted against the persons from whom it was accepted, and to set it up as the foundation of a right to be admitted under the charter."

The main question was at length brought to issue by Dr Stanger, who, about the year 1796, having applied to the college to be examined for admission into the order of candidates, and having been by them refused, on the ground of some prohibitory bye-law, moved the Court of King's Bench for a mandamus to compel the college to admit him to examination. The court granted a rule, in course, for the college to shew cause why a mandamus should not issue; on which affidavits were made by the president of the college, and by their attorney, justifying the refusal. The grounds of justification were, that, by one of their bye-laws, no person could be admitted into the order of candidates except a doctor in medicine of Oxford or Cambridge, and that Dr Stanger was not a graduate of either university; and that there were two bye-laws of the college by which licentiates of certain descriptions might be received into the fellowship, without their previously entering into the order of candidates. The bye-law which restricted admission into the order of candidates to the graduates of Oxford and Cambridge, had been decided by Lord Mansfield to be bad; and, according to the confession of the counsel of the college, the two bye-laws which allowed licentiates to enter the fellowship, had been framed in consequence of the censure passed by that judge up-

on the former system of admission, and of his recommendation that a more liberal one should be adopted. One of these bye-laws provides, that the president of the college may, once in two years, propose a licentiate of ten years standing, to be admitted into the college without examination; the other declares, that licentiates of seven years standing, and who completed the 36th year of their age, might be admitted into the college, should they be found fit upon examination. This latter requires that the licentiate should be proposed by a fellow; and on this ground the question was argued by Mr Erskine, who represented that any licentiate of a particular description, if proposed by a fellow, would be admitted to examination; and that, if a licentiate could not find one fellow willing to propose him, he must be personally so objectionable as to be utterly unfit for admission into the college, and such an one as the court ought not to force upon them by a mandamus. This, at least, is the tenor of Mr Erskine's pleadings. Some informality having been detected in the mode of Dr Stanger's application to the college, the pleadings ceased, and the rule was discharged. After renewing his application to the college, and again moving the court for a mandamus, a new rule was granted, and the question brought to trial again in May 1797; when, on a repetition of the pleadings formerly urged by Mr Erskine, the mandamus was refused on the ground of the interference of the court being unnecessary, inasmuch as the way was sufficiently open for admission under the college bye-law. Lord Kenyon clearly admitted that the college were bound to examine, but, deeming the college "the sanctuary of honour and good faith," as his Lordship was pleased to term them, he thought the application would be as effectual, if made to them under the provisions of their own bye-law, as if a mandamus were to issue. The sincerity of the college in respect of this bye-law having been doubted, and it having been believed by many licentiates, previously to the decision in Dr Stanger's case, that the college never meant to admit any licentiate to examination; Dr William Charles Wells, a licentiate of the college, resolved to put their sincerity to the test, by applying for examination under the bye-law. Accordingly, in September 1797, a motion was made at the college by Dr David Pitcairn, and seconded by Dr Mathew Baillie, that Dr Wells should be admitted to examination for the fellowship. Although Mr Erskine had declared, in the case of Dr Stanger, his firm conviction that if Dr Stanger had applied to the college for examination under the bye-law, he would have been admitted, and though the alleged certainty of such admission to examination, on proper application, was the ground on which

Lord Kenyon and the other Judges refused the mandamus, yet, on Dr Wells's application, the college declined acting on the byelaw, considering it *a dormant bye-law*, and *that the propriety of reviving it required much serious consideration.* Yet this bye-law, according to the declaration of their counsel in the Court of King's Bench, had been framed in 1778, with the best legal advice this country could afford, for the express purpose of removing the blame which had been thrown upon them by Lord Mansfield; it had been brought to their recollection in 1809, by an application under it from Dr Sims, and had been twice sworn to before the Court of King's Bench, in the case of Dr Stanger, in 1796 and 1797. On such grounds was Dr Wells's application opposed, and Dr Pitcairn's motion was got rid of by the previous question, which was carried by a majority of three, thirteeen voting for, and ten against it:

As the motion of Dr Pitcairn was not directly negatived, Dr Wells resolved on having it renewed, lest the college should, on any future occasion, attempt to evade the just interpretation of their conduct, by alleging that this motion was only suspended, and not actually rejected. Dr Pitcairn, accordingly, undertook to repeat his former motion in the following September, before which time it could not be made, for the bye-law enacts, that such proposals shall only be made on one particular day of the year. During the interval, the college proceeded to enact another bye-law, by which, whoever meant to propose a Licentiate for examination, was required to give notice of his intention at a preceding quarterly meeting of the college.

In compliance with this bye-law, Dr Pitcairn attended the college meeting in June, and gave notice of his intention to propose Dr Wells for examination in September. Being unable to attend the September meeting from severe illness, he deputed Dr Baillie to make the proposition. This, however, was resisted by the college, or rather by the prevailing party, on the plea, that the new bye-law required the proposal to be made by the very person who gave the notice; and a question being put, whether the delegation of Dr Baillie should be allowed, it was negatived by a majority of three, twelve voting against, and nine in favour of it. On this, another attempt was made to bring the question forward, by reverting to Dr Pitcairn's former motion, which had only been indirectly got rid of; but on the minutes of the former meeting of September 1797 being read, it was declared that Dr Pitcairn's motion had then been finally disposed of and rejected.

Thus the evidences of the policy pursued by the college are rendered complete, and the views with which they have framed

their bye-laws are so manifest, that no one can fail to penetrate their real designs, or hesitate to pronounce on the "honour and good faith" with which their bye-laws are administered.

From the preceding statements, then, it is quite clear that the college have no disposition to relinquish their usurped power, which they have so long despotically exercised,—and also, that the aggrieved parties can expect no redress by appealing to courts of law. It only remains for them, then, to submit their hardships respectively to the consideration of the Legislature, and solicit whatever relief the wisdom of Parliament may deem them entitled to. On viewing the power and influence of the corporate body whose conduct is arraigned,—the extent of the abuses which prevail in the corporation,—the length of time during which they have obtained,—and the pertinacity with which they are continued, it must be clear to every sound and reflecting mind, that no alternative remains but an appeal to the Legislature.

But another view remains to be taken of this subject, of no less importance than that which has just been discussed; for though a just and liberal exercise of the powers entrusted to the college, and a due regard to the principle on which their charter was granted, would have obviated much of the injury which their usurpation has inflicted, yet so vast have been the changes which a lapse of three centuries has effected, not only in the state of the science and profession of physic, but also in that of society in general, that there can be little difficulty in demonstrating the utter unsuitableness of the existing laws, even if faithfully administered, to the present state of things, or their inadequacy to accomplish those purposes for which they were designed. When the existing laws were framed there was no medical school in Britain. Physicians were invariably educated at the continental schools. Many were engaged in the practice of physic who were not physicians; and many, no doubt, assumed the denomination who were not entitled to it. The ignorance against which it became necessary for the Legislature to provide cannot be better displayed than by referring to the preamble of the 3d Henry VIII., which states, that, "Forasmuch as the science and cunning of physic and surgery (to the perfect knowledge whereof be requisite both great learning and ripe experience) is daily, within this realm, exercised by a great multitude of ignorant persons, of whom the greater part have no manner of insight in the same, nor in any other kind of learning; some also can no letters on the book, so far forth, that common artificers, as smiths, weavers, and women, boldly and accustomably take upon them great cures and things of great difficulty, in

which they partly use sorcery and witchcraft, partly apply such medicines to the disease as be noious and nothing meet, therefore, to the high displeasure of God, great infamy to the faculty, and the grievous hurt, damage, and destruction of many of the king's liege people, most especially them that cannot discern the uncunning from the cunning, be it therefore," &c. For such evils the remedy provided by this statute was direct and appropriate. Examination was the only test by which the competency of practitioners could be tried, and this was consigned to the only men who were at the time qualified for conducting it. Even when the power of examination was transferred by the 14th and 15th Henry VIII. to the London College, the obvious objection to entrusting men engaged in a lucrative employment, with the power of trying those who were to become their own competitors, and thus subjecting them to temptations calculated to warp their integrity, might, perhaps, be considered as overruled by necessity, and the want of any other suitable test. But since that period, medical education has been brought to such perfection in Britain, and the competency of medical graduates is so fully attested by the universities at which they obtain their degrees, that the additional scrutiny of the London College is as needless in reality, as it is vexatious and insulting in that exercise of it to which the college resort. The great object of legislation in regulating this or any other department of the profession, is to ensure to the public the due qualification of those who profess the practice of the art, and to protect the latter in the free exercise of their profession.

The education required, then, should be such as the improved state of medical science demands, regard being had to the necessity of providing the public with a certain supply of medical aid, and of not abridging this too much by enjoining qualifications too high or too costly, the effect of which must ever be the same as that of all monopolies, namely, that of diminishing the competition, which ought to exist in all lawful trade, and increasing to an indefinite extent the contraband; nor can there be any doubt that the restrictive policy adopted by the London College has been the means of spreading widely the evils of quackery, and that the perverted exercise of their powers has thus tended to extend and perpetuate what these powers were given to correct and prevent. That the medical education of Edinburgh and Glasgow Universities accomplish every thing that elementary instruction can supply, is a truth too obvious, too well established, and too universally allowed, to be disputed.

The degrees granted, then, by these universities, which are only obtained by a definite course of resident study, and the

test of actual examination, openly conducted in the halls of the universities, afford as complete tests of competency as any examination which the London College can institute. To superadd their examination to those by which the medical degrees of Edinburgh and Glasgow are obtained, is to harass individuals for no good end, and to subject them to trials which, while utterly superfluous, may chance too to be decided on far different grounds than the real merits of the candidate. That some central association should exist for enrolling and legalizing, as practitioners, the several physicians supplied by the universities seems highly expedient; but the functions of such an association should be confined to examining and verifying the original degree, the proof of which should entitle the person possessing it to enrolment, to the right of freely exercising his profession in any part of the British dominions, aud to a full participation in the rights and privileges conferred by the charter of association. It would, perhaps, be right, so long as certain universities think proper, to confer degrees in physic, without subjecting the candidates to the test of examination, founding their testimonials on private certificates only, to limit the right of admission into the medical college or association to those graduates whose degrees had been obtained by full trials, requiring those whose degrees were obtained by special grace, or on private testimonials of ability, to undergo before the college an examination corresponding to what the universities require. This would be a just and suitable expedient for equalizing those different graduates, and would tend directly to bring the summary modes of obtaining degrees into disuse, by providing, that such graduates could not wholly evade examination, while it would leave such degrees still within the reach of those to whom it may be desirable, in advanced life, to become possessed of such titular distinction. At present, the Edinburgh graduate, who has been tried by ample tests, and the St Andrews graduate, who may not have been subjected to any, are equally examined by the London College, on applying for a licence. This surely is a direct inducement to individuals to prefer the cheap, convenient, and summary process by which a St Andrews degree is obtained, to the arduous studies and strict examinations of Edinburgh. Were such a distinction as I have proposed adopted, the abuses of Aberdeen and St Andrews degrees in physic, which have been so long a subject of complaint, would be rendered harmless, while any advantage that can be considered to arise from them would still be preserved. It may illustrate this part of the subject to shew what those tests are by which an Edinburgh degree in physic is

obtained, and what are the examinations enjoined by the London College.

The University of Edinburgh requires, that every candidate applying for medical honours shall have been a student of medicine in some university for three years, and shall have regularly attended a course of lectures by each of the six medical professors, as also clinical lectures and hospital practice; that he shall, on proof of this, be examined five several times as to his attainments in medical science; shall publish an inaugural dissertation on some subject connected with medicine, and produce such other written exercises as are enjoined by the Senatus Academicus, previously to obtaining his medical degree. His first examination is a general one by the whole facultas medica, (which consists of the six medical professors,) and is the principal and most important of the whole. The second is of a similar nature, but is by two professors only, and for a shorter time. In the third, the candidate defends two commentaries written by him on two given subjects, the one an aphorism of Hippocrates, the other a medical question. In the fourth, he defends similar commentaries on two histories of diseases, the one an acute disease, the other chronic; and in the fifth and last, which is a public one in the hall of the university, he defends the opinions advanced in his published thesis. All his examinations and exercises are in the Latin language. The sufficiency of these tests, as proofs of competency, cannot be disputed; as far as I am aware, they greatly exceed in strictness the trials to which the members of other professions are subjected. Yet an Edinburgh graduate, on applying for the licence of the London College, is subjected by them to the same trials, as if he had never previously passed a medical examination. Can this be necessary,—is it just,—or is it calculated to answer any one good purpose? But the hardship ends not here; for if a licentiate thus qualified should aspire to the fellowship of the college, and by signal favour, be admitted to examination, he must submit to trials still more tedious, harassing, and vexatious. The course of procedure in this last trial is worthy of attention. In the first place, the college requires that a licentiate shall be of seven years standing, and upwards of thirty-six years of age, ere he can be proposed for examination; the proposal must then be made on one particular day of the year, and the fellow proposing must have personally attended at a previous quarterly meeting, and notified his intention to make such proposal. The proposal is then subjected to a secret ballot, by which it is decided, whether an examination shall be granted. Should the decision be favourable, his first examination is fixed to take place in three months after; and the second and

third follow at similar intervals, a decision being made after each by the majority, as to whether any other shall be allowed, or the candidate then rejected. In this way is he "tortured for nine months with doubt and anxiety," respecting an event in which all his interests, and probably those of his family, are involved; for though it be optional for a licentiate to subject himself to this trial, yet having done so, its result, if unfavourable, must produce the most baneful consequences to his future career. Surely it is time for the Legislature to interpose its authority, and rescue a much aggrieved and highly meritorious branch of the profession from the despotism by which it has been too long oppressed, and to give to it a constitution more suited to its wants,—more consonant to its dignity,—more just to its merits,—and more adapted for calling forth its energies in the service of the public. That the Legislature have every disposition to perform this duty when duly required, I faithfully believe. But they cannot be expected to legislate gratuitously, or without grievances being alleged, or redress called for. If what has been represented in the foregoing pages be founded in truth, there are grievances of considerable extent, and affecting large numbers. But if none of these come forward to declare the evils by which they are oppressed, the Legislature cannot surely be blamed, if they regard all occasional complaints as visionary and unfounded. If a competent portion of the licentiates of the college, and of the unlicensed physicians practising in the provinces, will only unite in petitioning Parliament for an inquiry into the present state of the profession, I am firmly persuaded that such inquiry would not be withheld. So vast and so deeply rooted are the existing evils, that no power but that of Parliament can be adequate to extirpate or correct them. To pronounce what reformation should take place, would be to prejudge the question, and to anticipate the results of a parliamentary investigation. And, indeed, I cannot help thinking, that former attempts at reforming the profession have failed of success, principally from error being committed in this respect, and in bringing forward specific plans, founded on partial inquiries, rather than submitting their grievances respectfully to the Legislature, and soliciting that general inquiry into the circumstances of the whole profession, which can alone lead to just conclusions. If a parliamentary inquiry were once obtained, (and no investigation of less authority would be equal to the task,) such full information would be elicited on every part of the subject, as could not fail to open clear and correct views of the amendments required.

That some amendment is necessary, is too glaring to be denied. In my former essay, I attempted to establish some of

the principles which should guide the Legislature in regulating the general profession. In the present tract, I have endeavoured to trace to their source the evils to which the department of physic has been so long subjected.

It remains, as an essential part of my present inquiry, to correct an error that seems to prevail very extensively among the unlicensed physicians of England, respecting the legality of their practice; and as this error has at present the support of legal opinion formally taken and deliberately pronounced, it becomes necessary to scrutinize with some minuteness the grounds of this opinion, in order to confute it.

By the charter of the London College, and the statute 14th and 15th Henry VIII., no physicians whatever are suffered to practise in London, unless licensed by the college, penalties being specifically annexed to a violation of the prohibitory clause. By the 3d Henry VIII., c. 11, § 2, it is ordained, that no person shall practise physic in the provinces, unless licensed by the Bishop of the Diocese, &c. on certain specified penalties. The 14th and 15th Henry VIII., c. 5, § 3, repeats the prohibition, but changes the examiners, and transfers the licensing power from the Bishop of the Diocese to the London College. These statutes are unrepealed, and consequently in full force whenever they are called into operation. It has been shewn how the disuse into which they have fallen, as far as regards their operation in the provinces, has misled physicians very generally into overlooking their existence. But a direct persuasion of their nullity has been diffused among the profession, by a legal opinion of high authority expressly taken on the subject. It will be recollected, that certain attempts, originating with Dr Harrison of Horncastle, in Lincolnshire, were made some years back, to effect a reformation of the profession. At this time it became desirable to ascertain the real state of the law on the subject, and the extent of power legally possessed by the London College. A case was accordingly prepared with considerable care, and submitted to the late Sergeant Williams for his opinion. The queries which relate to the control of the college over the general practice of the kingdom are as follows:— "Have the London College of Physicians any real or effective power under the 14th and 15th Henry VIII. of controlling generally the practice of physic in England, at a greater distance than seven miles from London?" "If they have such power, does it extend to Doctors of Physic, not graduates of Oxford or Cambridge, or merely to persons practising without a diploma?"

In reply to these queries the learned sergeant gives it as his

opinion, " that the London College of Physicians have not any power whatever, either under their charter confirmed by the 14th and 15th Henry VIII., c. 5, or by the 3d section of that act, to control the practice of physic in England at a greater distance than seven miles from London." And he expressly grounds this opinion on there being no penalty inflicted by the prohibitory clause, in consequence of which omission he distinctly pronounces the act in this respect to be a " dead letter, and wholly inoperative." He further asserts, that any person, with a degree or without one, or with a licence or without, may practise in England at a greater distance than seven miles from London, without being under the control of the College of Physicians, or of any other, or liable to any penalty for so doing, notwithstanding the statute 14th and 15th Henry VIII. Such an opinion could not fail to make considerable impression on the profession, and to disincline them still more from seeking any connection with a college that could yield them no protection, and which had no legal control over them. Every inducement for obtaining the college licence must thus have been considered at an end; nor could any provincial physician, after this authoritative interpretation of the law, be expected to subject himself gratuitously to the inconvenience, vexation, and expence, attendant on the forms by which the College licence is obtained.

And yet there is but too strong reason for believing that this opinion is invalid, and that no physician can legally practise his art in any part of England unless licensed by the London College, excepting the medical graduates of Oxford and Cambridge. The opinion infers the nullity of the statute in respect of provincial practice, on the ground of no penalty being prescribed. Now, a twofold error seems here to be committed; for it is by no means clear that a penalty is not prescribed, and, even if there were none, such an omission would in nowise nullify the prohibition of the statute. Each of these points requires to be illustrated. It is true that the 14th and 15th Henry VIII., c. 5, § 3, expresses a naked prohibition unsupported by penalty. But this clause has a direct reference to the 3d Henry VIII., c. 11, § 2, which has never been repealed, and varies from it only in altering the examiners, and transferring the licensing power, leaving the " like pains" attached by the earlier statute unaltered. There is little doubt, then, that, if a question of law were to arise on this point, these statutes would be considered in conjunction, and the penalties of the earlier adjudged to a violation of the later. But, supposing it otherwise, and that the later statute should be considered as

standing alone, still it would not be inoperative for want of a penalty, for "a remedy is a consequent, or thing implied in every prohibition by any statute." The penalty incurred, where none is specified, is fine and imprisonment; and where no form of action is prescribed, an action upon the statute lies. (See 2d Inst. 54, 74, 131, 163. Case of Marshalsea, 10 Rep. 75. Crowther's case, Cro. Eliz. 655. 1 Hawk. 92.) Indeed, no rule of law seems better known, or more frequently recognised, than this, "that for any thing generally prohibited by statutes, if it be done, an indictment lies for it, notwithstanding punishment be not expressly given." (See Comyns, Digest. art. Indictment, 371. 2 Hale, 171. Str. 1146. 4 T. R. 202. 3 Chitty's Criminal Law, 588.) No doubt, therefore, can be entertained of the illegality of all provincial practice by physicians who are not licensed by the London College, all such being liable, on information, to conviction and penalties. It is no doubt true, that the college has no express authority under the statute to prosecute for such offence, and if Sergeant Williams's opinion were to be considered only with reference to the powers of the college, it might seem to admit of some justification, for the college have rather a trust to execute, a duty to perform in examining those who apply to them, than any direct power of controlling those who omit to obtain their licence. Any one, however, may prosecute; and if a *qui tam* informer should arraign a physician's legal qualifications, and succeed in establishing a negative, the courts would, in such case, have no discretion, but must administer the law as they find it, and, after verdict had, the infliction of penalties to a certain amount must ensue. Thus a large and respectable body of practitioners, possessing every essential qualification, and chargeable with no wilful fault, are placed in the humiliating situation of being liable to prosecution for a legal misdemeanour at the suit of any common informer, and have no security against such prosecution, but the insufficiency of the penalties to tempt the informer's cupidity. So far they seem safe from prosecutions instituted by mere love of gain, though not from those to which malice might incite. But there is another consequence of their practice being illegal, which affects them more nearly, as being more liable to occur; this is the incapability of recovering under an action of defamation of professional character, however grossly or wantonly assailed. The case of Smith against Taylor is directly in point. (See 1 Bos. and Pul. New Rep. 196.) This was first tried at the assizes of Suffolk, and the plaintiff recovered a verdict for L. 100 for disparagement of his professional character. A new trial was moved on the ground that the plaintiff had not

produced any evidence of his being a regular physician; to this it was answered, that the allegations in the declaration were not such as made it necessary for the plaintiff to prove his diploma. On this new point of pleading the court were equally divided; but with regard to the privileges conferred by a Scotch diploma as to practice in this country, they all appeared agreed, that, "if it was necessary to prove that the plaintiff had lawfully practised, the objection to his recovery of damages was well founded; for the practice being the ground of action, no action can be maintained for lessening that which ought not to exist at all." The court also said, "that a person practising physic, without any authority, is liable to prosecution at the suit of any person; for, as the prohibition is general, and no mode of punishment is pointed out, it follows, that he who offends against the provision is liable to an indictment." These multiplied authorities place the question of law beyond a doubt, and shew in what light Scottish graduates in physic are regarded in the eye of the English law. When it is considered how large a portion of British physicians are qualified exclusively at the medical schools of Edinburgh and of Glasgow, and how few of these deem it requisite, or even know it to be necessary, for them to legalize their practice by obtaining the licence of the London College, it will hardly be denied that some change is required in the law of the land which shall bring these meritorious individuals within the pale of legal protection.

It may not be amiss to conclude this essay by briefly specifying some of the hardships under which physicians actually labour, in consequence of the imperfections of the existing laws.

It is a hardship that the legal qualification of the physician is so inconsistent with those causes by which the essential acquirements of his profession are obtained, that, in pursuing the latter, he almost of necessity abandons those professional distinctions which by law he is justly entitled to claim.

It is a hardship that the law of the land has fallen into such disuse, that physicians, whose courses of education are necessarily influenced more by prevailing practice than by any intimate acquaintance with the statute-book, learn the real state of the law on the subject only when too far advanced in their professional career either to modify or abandon it.

It is a hardship that the original testimonials of the physician's professional competency, though emanating from highly dignified universities, and obtained only on proofs of regular study and the test of strict examination, are yet of no avail in giving him a legal qualification to practise, but that he is after-

wards subjected to repeated ordeals, founded on no conceivable ground of public benefit, and conducted by men directly interested in narrowing their profession.

It is a hardship that, even after submitting to additional and superfluous trials, such as are wholly unknown in other professions, he is not free to practise his art where convenience or necessity may incline him, but that in each capital of the united kingdom, (at least in London and Dublin,) he is met by corporate restrictions, which render it necessary for him to undergo still further trials, that are tedious, harassing, expensive, and every way vexatious.

It is a hardship that, in consequence of omissions into which he is unwittingly betrayed, the unlicensed physician is placed out of the pale even of legal protection, and that, however assailed by wanton or malignant calumny, he can have no legal redress, because he can only seek this on the ground of injury done to his professional character, in which character the law cannot recognise him.

These grievances will hardly be deemed speculative or visionary. As an illustration of the hardships actually felt, I shall briefly notice an instance of recent occurrence, which must demonstrate how much individuals are obstructed in professional career by corporate restrictions, and by the want of that mutual accommodation that should subsist among the several medical corporations.

A medical man had successively become a Member of the Royal College of Surgeons of Ireland, a Doctor of Physic of the University of Glasgow, and a Licentiate of the London College of Physicians. He afterwards served as Physician to the Forces with the British army for many years, and in almost every quarter of the world. On the reduction of the army, he was naturally led to seek for occupation in private practice, and was influenced by a concurrence of circumstances in wishing to fix his residence in Dublin. Here, however, he found that he could only hold an inferior rank in his profession, unless he became a licentiate of the Dublin College of Physicians, whose licence was only to be obtained by fresh examinations and fresh fees. These latter, though not inconsiderable, he might have disregarded; but finding that the college were not likely to respect the multiplied qualifications which he already possessed, or to wave in any degree their right of censorship in examining him, and being too haughty in spirit to brook the indignity of submitting at his age, and under his circumstances, to a school-boy examination in elements, he abandoned his views of Dublin practice, and determined on relinquishing medical speculation of

every kind. Thus the public has been deprived of the matured experience of a highly qualified physician, and of the valuable services which he could so eminently have rendered, while he is prevented seeking those advantages to which his talents and acquirements entitle him, and is consigned to listless inactivity, or to cheerless and unprofitable peregrination, at a period of life, which a judicious writer has well pronounced to be that of "sober thought and steady exertion." How the public is recompensed for such loss, or what advantages result from the present system, to compensate so much public and private injury, I am unable to discover. A parliamentary investigation may possibly bring them to light, and thus either disprove the complaints so generally made, or shew them to be irremediable. In either case good must result from inquiry; and as individuals cannot be expected to persevere in a hopeless advocacy of reformation, or to waste exertion in the discussion of grievances, to which the parties affected seem by their supineness to be insensible, they who concur with the author of this Essay in believing the grievances to be real and oppressive, and in deeming some reformation called for, are earnestly requested to avail themselves of any impulse which the foregoing representations may excite; and to arrange some plan of co-operation by which the prevailing sentiments of the profession on this highly important question may be respectfully submitted to the Legislature. On the Licentiates of London, the duty of making the necessary arrangements would appear to devolve; and if such arrangements be founded in the spirit of truth, disinterestedness, and regard for the welfare of the public, the results cannot fail to be satisfactory, whether they establish the reality of evils, and promote their correction, or evince that none exist, save what arises from that imperfection which belongs to all sublunary things.

P. S.—I was unwilling to extend the present tract, or to distract attention by multiplying the objects demanding it, else I should have noticed a clause in the last apothecaries's act, which is calculated to effect a very considerable revolution in the line of "general practice" in England.

In my former tract, I think I succeeded in demonstrating the importance of the "general practitioner," and shewed, pretty clearly, the advantages which resulted to the community, from that silent operation by which the members of the London College of Surgeons supplied this species of practitioner. With these convictions, I could not, without surprise and concern, read the following clauses of the 55th Geo. III. c. 194, which, if

enforced, must effectually preclude all future surgeons from the practice of pharmacy, and thus unfit them for acting as general practitioners, unless they also become members of the apothecaries's company.

The clauses are as follows: "XIV. And to prevent any person or persons from practising as an apothecary without being properly qualified to practise as such, be it further enacted, that from and after the 1st day of August 1815, it shall not be lawful for any person or persons (except persons already in practice as such) to practise as an apothecary in any part of England or Wales, unless he or they shall have been examined by the said Court of Examiners, or the major part of them, and have received a certificate of his or their being duly qualified," &c.

"XV. No person to be admitted to examination, unless he shall have served an apprenticeship to pharmacy of not less than five years," &c.

"XX. Penalty for practising without a certificate L. 20, for an assistant L. 5."

Does not this act give to the apothecaries an effectual monopoly of the line of general practice, and can future surgeons practise pharmacy consistently with these legal prohibitions?

The result may, no doubt, be eventually the same, whether the surgeons or apothecaries furnish the general practitioner; nor does it much concern the public from what source he emanates, provided he be duly qualified.

But I own myself at a loss to understand why the mode of superadding physic and surgery to pharmacy is preferred to that by which this country has been so long supplied.

It is somewhat extraordinary how the London College of Surgeons could have suffered this bill to pass unopposed; for it strikes at the very root of their charter, the great demand of society being not for mere surgeons, but for surgeon apothecaries.

The circumstance affords an additional proof, I think, of the danger of legislating partially for the profession, and of the necessity of determining, by a full and comprehensive survey of the profession, the relationship which its several departments bear to each other.

April 19, 1820.

Printed by George Ramsay & Co.