

A vindication of the Royal College of Physicians: in reply to the speech of the Solicitor General (i. e. W. Murray) on opening the petition and appeal of Doctor Isaac Schomberg, alias Schamberg ... / [William Browne].

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A
VINDICATION
 OF THE
ROYAL COLLEGE OF PHYSICIANS:
 IN REPLY TO THE
 SPEECH OF THE SOLICITOR GENERAL,
 ON OPENING THE PETITION AND APPEAL
 OF DOCTOR ISAAC SCHOMBERG, *alias* * SCHAMBERG,
 TO THE RIGHT HONORABLE
 THE LORD HIGH CHANCELLOR,
 THE LORDS CHIEF JUSTICES,
 THE LORD CHIEF BARON;
 AS VISITORS OF THE COLLEGE.

Intended to have been Addressed
 To their LORDSHIPS, in Lincolns-inn-hall:
 After the COUNSEL should have Concluded
 Their Arguments against the JURISDICTION.

By SIR WILLIAM BROWNE, Fellow, Elect, Cenfor, Treasurer.



*Non eget MAURI jaculis, neque arcu,
 Nec venenatis gravida sagittis,
 FUSCE, pharetra.*

* His father subscribed by this name, as *licentiate*: and the college print it thus, in their *catalogue*.

L O N D O N, MDCCLIII:
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THE college of physicians having been not onely exposed, to a troublesome and expensive litigation, by the judgement and advice of Mr. S. upon a *praetension* of their being subject, by *charter of K. C. II**, to a *visitatorial jurisdiction*, for which, it now appears, there was no foundation in law or equity; but also, which ingenuous minds esteem much harder, by his wit and eloquence, to much ridicule and reflection, for which there was as little foundation in truth or reason: consciousness of the merits and integrity of this body, and justice of their *cause*, prevailed on a member, who had the honor, and at the same time pain, of attending as their pro-*praesident*, to exert himself even *invita Minerva*, and prepare a physic-antidote against these rhetorical arrows, since the law-specific could not be administered. But their Lordships being pleased, to pass sentence against such *visitatorial jurisdiction*, without waiting for the counsel, to conclude their arguments in support of their exceptions: this *preparation*, which was to follow those arguments, and consequently calculated onely for Lincoln's-inn-hall, became necessarily referred to a yet more public, although less solemn application. Its original form and substance are still preserved: but there being now no fear of trespassing on their Lordships time, gives room for farther explanations. That the college may be benefited by the strength of this *defence*, without being answerable for its weakness: the onely method is, to submit it rather as an instance of particular zele, than to solicit a praevius approbation of the society, which must make it their public act. Its aim is, to silence that triumphant boast of our adversaries, so positively, so popularly propagated:

—*Haec opprobria nobis*

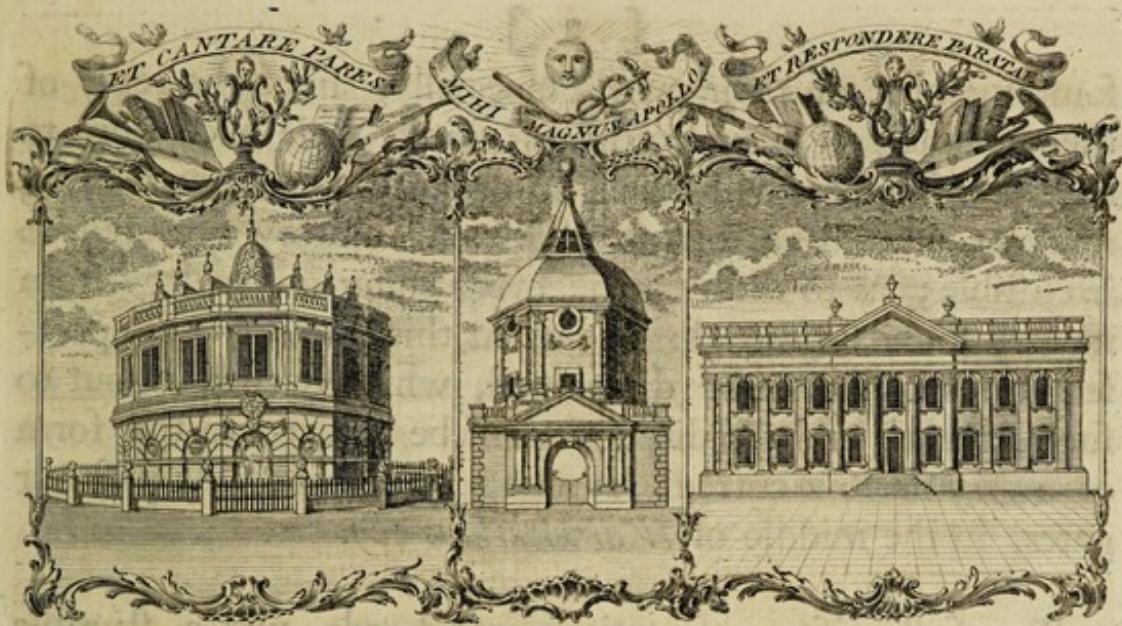
Et dici potuisse, et non potuisse refelli.

THE author promises the public, in order to make some atonement for the praesent, to give no future trouble, by vindicating this *vindication*; howsoever it may happen to be attacked: being resolved, according to the law-phrase, to *rest it here*, and leave it to stand on its own bottom, for their judgement. The illustrations are added, to entertain the learned reader: with what propriety, he will best judge.

* See the copy of this *charter*, printed in Dr. Goodall's *History of the college*, p. 62.

REPLY.





R E P L Y .

Si natura negat, facit indignatio. — JUV.

Δια τουτο γαρ οιμαι ημας παιδας οντας τας των ποιητων
γνωμας εκμανθανειν, εν ανδρες αυταις χρωμεθα. AESCH.



OT being at liberty, my Lords,
to reply in form, by their coun-
fel, to the many misrepraesenta-
tions of Mr. S. on opening this
petition and appeal (a), until the
visitatorial jurisdiction appealed to
is first established, the college of
physicians ought in the mean
time, with your Lordship's per-
mission, to be vindicated before

your Lordships, although not as *visitors*, by the *reply* of
B some

(a) Της δε των ερητων ακοσμιας ουκ ετι κρατειν δυναται ουθ' οι νομοι, ουθ' οι Πρωεδροι. Aesch.
Ο φυσικη παση ανθρωποις υπαρχει, των μεν λαιδωριων και κατηγοριων ακουειν ηδεως. Dem.

some member of their own: especially, since the reply of their counsel, if your Lordships admitt their exceptions to such *jurisdiction*, will have no opportunity of ever being made at all. The torrent of Mr. S.'s oratory appeared so irresistible; as to threaten the overturning our college from its very foundations (a): but when this flood of misrepraesentations shall once be discharged, which swelled it out to such strength and rapidity; it will be reduced to the form of a very narrow current, running quite peaceably past our gates, in the middle of *Warwick-lane* (b).

THE first misrepraesentation, my Lords, was a stumble at the threshold in setting out; which without superstition may be judged an ill omen; a mistaken attempt to ridicule our profession. Mr. S. opened out of the *Stat. 3 K. H. VIII. ch. 11*, with what he called *the state of physic*: but what was in reality onely *the state of quackery*. He said: *the physicians at that time were so ignorant, as to can no letters on the book; but to use sorcery and witchcraft in their cures. They were conjurers!* Here was the jest to catch the laugh (c)! but how soon will it rebound! what sort of a *conjurer* is *he!* who *cans the letters on the book!* and yet *cannot find!* that this was onely a description of the quacks, who were to be suppressed by that
very

- (a) ——— *Fluminis*
Ritu, ——— nunc lapides adesos,
Stirpesque raptas, et pecus *, et domos
Volvantis una. ——— Hor.
- (b) ——— *Nunc medio alveo*
Cum pace delabentis. ——— Hor.
- (c) ——— *Solutos*
Qui captat risus hominum, famamque dicacis,
—— hunc tu Romane carveto. Hor.

* The *materia medica* is derived from the three kingdoms: the mineral, the vegetable, the animal.

very *statute!* It names expressly *common artificers*, and other ignorant impostors, *boldly taking upon them great cures, and things of great difficulty.* This is a true picture of the quacks, in all ages. But the regular *physicians*, were described, distinguished, and appointed examiners of medical qualifications, in this same *statute*, as having the *requisites* there-mentioned, *great learning and ripe experience:* and have been a learned body, in every age (*d*); when there was any such thing as learning to be had *. In particular, the institution

(*d*) *Quaestiam meritis.* — *Sume superbiam*
Hor.

* That our two universities were sources of learning and medical science, even in the dark age of monkery, the fourteenth and fifteenth centuries; appears from the *Stat. 9. K. H. V.* which, although not printed in the *Statute-book*, was enacted according to the following transcript, taken from the *parliament-rolls*, and laid up among our *archives*.

Ex bundello petitionum de a^o. 9^o. H. 5. in parlamento.

Hey and most mighty prince noble and worthy lords spirituall and temporell and worshipfull comones for so moche as a man hath thre things to governe that is to say soule body and worldly goods the which ought and shulde ben principaly reweled by thre sciences that ben divinitie fysyk and lawe the soule by divinitie the body by fysyk worldly goods by lawe, and those conynges should be used and practised principally by the most conyng men in the same sciences and most approved in cases necessaries to encrease of vertue long life and gouds of fortune to the worship of God and comyn profit.

But worthi soweraines hit is known to your hey discretion meny uncunning and unaproved in the afore-saide science practiseth and specially in fysyk so that in this realme is every man be he never so lewed taking upon him practyse y suffred to use it to grete harme and slaughtre of many men where if no man practised therein but al only conyng men and approved sufficiently y learned in art filosofye and fysyk as it is kept in othur londes and roialmes ther shuld many man that dyeth for defaute of helpe lyve and no man perissh by uncunning.

Wherefore pleseth to your excellents wysdomes that ought after your soule have mo entendance to youre body for the causes abovesaid to ordaine and make in statute perpetually to be straitly y used and kept That no man of no manner estate degre or condition practise in fysyk fro this time forward bot he have long time y used the scoles of fysyk within some universitee and be graduated in the same that is to say but he be bachelor or doctour of fysyk having lettres testimonialx sufficeantz of on of those degrees in the universite in the which he took his degree in undur payne of long emprisonement and paying xllb to the king, and that no woman use the practise of fysyk under the same payne, and that the sherreffs of every shire make inquisition in their tournes if there be any that forsaiteth ayens this statut under a payne reasonable and thenne that they put this statute in execution without ony favoure undur the same payne also lest that thay the which ben able to practise in fysyk ben excluded fro practise the which be not graduated. Pleseth to your hey prudency to send writtes to all the sherreffs of Englonde that every practysour in fysyk not graduated in the same science that wole practise forth be wythin on of the universities of this lond by a certain day, that thay that ben able mowe astre true and streyt examination be received to their degree and that thay that be not able to cese fro the practise into the time they ben able and approved or for to never more entermete thereof and that herto also be y set a payne convenient.

institution of our college, soon after that *statute* passed, which was the work of our most learned Linacre, the greatest scholar and *physician* of his time; under the patronage of a prince, whose name stands immortalised, by his public and munificent encouragement of learning; has been so happy, as to produce a succession of learned *physicians*: who have made so many, so great discoveries, for the improvement and honor of their profession, as are too notorious to need farther mentioning (*e*). It is true indeed, the learned professor of *physic*, and the illiterate pretender to it, although two characters as opposite as light and darkness, yet have always been mistaken and blended together by the ignorant vulgar, for want of judgement to distinguish at all. But how this should come to be the case with one, at the head of another learned profession, so remarkable for his judgement, so remarkable for his eloquence, can onely be accounted

(*e*) *Invidia careat: bona nec sua quisque recuset.*

Ov.

dorso.

Responsio hujus petitionis patet in rotulo parlamenti dat. 2. die Maij anno regni regis Henr. 5ti. post conquestum nono.

Rot. Parl. 9. H. 5. p. 1. n°. 11.

Ordinance encontre les entremetteurs de fysik et de chirurgie.

Item pur ouster meschieves et perils qe longement ont continuez dedains le roialme entre les gentz per my ceux quont usez larts et le practik de fysik et chirurgie pretendantz soi' bien et sufficeamment appris de mesmes les arts ou de verite non pas estes a grand deceite a le people. Si est ordeinez et assentuz en ceste parlement qe les seigneurs du conseil du roy pur le temps esteantz aient poair per auētoritie de mesme le parlement de faire et mettre tiele ordinaunce et punissement envers ceux persones qe desore en avant vorront entremetter et user le practik des dits arts et ne sont my hables ne approuves en ycelles come app'ent as mesmes les arts cestassavoir ceux de fysik en les universities et les surgeons entre les mestres de cell arte, et ceo come semblera as ditz seigneurs les plus convenable et necessarie en le cas selonc leur bon advis et discretions pur le surete de le people.

In plane English.

An ordinance against intermeddlers in physik, and surgery.

Also, to take away the mischiefs and dangers, that have long continued within this realm among the people, arising from those, who have used the arts and practice of physik, and surgery, pretending themselves to have been well and sufficiently instructed in the same arts, when in truth they have not, to the great deceit of the people. Now it is ordained and assented in this parliament, that the lords of the king's counsel, for the time being, shall have power, by authority of the same parliament, to appoint such order and punishment for those persons, who shall hereafter intermeddle and use the practice of the said arts, not being skilful nor approved in them as to the same arts appertaineth, that is to say, those in physik by the universities, and the surgeons by masters of that art: and this, as it shall seem to the said lords most convenient and necessary in the case, according to their good judgement and discretion, for the safety of the people.

ed for; from his engaging against our college, in a *cause*, which seems indeed sufficient to confound both (*f*). But, —this gentle hint will remind him, to distinguish, for the future, between *physicians* and empirics: more especially, since it is the end and excellence of his own profession, to make just and accurate distinctions (*g*).

THE next misrepresenta-tion, my Lords, was an attack upon our *magna charta*; that original *charter* given us by our royal founder *K. H. VIII*, and confirmed by *parliament* *: the great, and we make no doubt, the immovable foundation on which we stand (*b*). This however, Mr. S. expected to overthrow, by charging it with *two absurdities*: *absurdities*, that will be found, not in the text, but in the interpretation. The *first* of these was: *that by the clause, Concessimus — collegio — quod nemo exerceat dictam facultatem nisi ad hoc — admissus sit per ejusdem — collegii literas — sigillatas; this very corporate body of legal practisers, were yet restrained from practising, untill they should first license themselves under their own seal.* But certainly, the incorporating a perpetual college of *physicians*, must give them a perpetual power of *practising as physicians*, by their general *charter*. Even if there were no express words for that purpose, as there are in this case: *Collegium perpetuum doctorum et gravium virorum qui medicinam — publice exerceant institui volumus atque imperamus.* And that particular *clause*, was both planely intended, and clearly expressed, to *restrain from practising*, not the college, but all out of it, unless li-
censed

(*f*) *Si perget — quae volt dicere, ea quae non volt audiet.* Ter.

(*g*) — *Vero distinguere falsum.* Hor.

(*b*) — *Velut rupes, vastum quae prodit in aequor,
Obvia ventorum furis, expositaque ponto,
Vim cunctam atque minas perfert coelique marisque,
Ipsa immota manens.* — Virg.

* See Stat. 14. 15 *K. H. VIII. ch. 5.*

ensed in the form preascribed. For as general a negative as the word *nemo* is: to understand it, when used in a grant of exclusive privileges to any *body*, as intended to exclude even that *body* itself, is a construction *absurd* indeed. The other *absurdity* was: *that this charter created a perpetual body, without appointing any form for continuing it.* So that Mr. S. declared himself *to be in the dark, and quite puzzled, to find out its successors.* But surely, a *body* appointed expressly *to have perpetual succession*, under the government of its own *statutes* or by-laws, where no *form* is limited, must have an unlimited, discretionary *power*, to perpetuate that *succession*. And all who are successively admitted *members* of that *body*, must be its evident and undoubted *successors*. Nor is it less evident, that the *not appointing any particular form for continuing this body*, was so far from being an *absurdity*, that it was even a singular policy in its constitution. Its wise author intending thereby, to establish his *college* in full liberty: that it might model itself, by its own authority, into such ranks and orders, and after such *forms*; as would most effectually answer the great end of its *creation*, the advancement of the profession of *physic*, for the health of mankind, by all possible degrees of improvement. This has been the aim of our *college*, from its foundation: and how well it has succeeded, every age can witness. Nor is it less evident, that this success is due to the making so prudent, so judicious a disposition of its powers and privileges, as to vest its *government* in a *voluntary* number of *fellows*, whom its *statutes* require qualified, to discharge that trust, with dignity, with ability, with harmony. So that, to talk of *being in the dark* as to its *succession*, could onely be, to praetend darkness to abuse and outface the
light:

light: to hold up a lanthorn and candle to look for the meridian sun. The onely *absurdity*, therefore, of this *charter*, appears to be its standing in Mr. S.'s way: for which reason, he proposed to run it down, with the force of his objections, to come at the *charter of K. C. II*, which he magnified as praegnant with every thing for his purpose. *Parturiunt montes!* But unfortunately, this *charter* happens to be onely the outer case of a *charter* (i); and even that deficient and inconsistent: the inner works and movements, which required the finishing hand of the legislature, were indeed expected to have been, but never were put in by parliament. So that the *powers* therein expressed and intended, of *inflicting pains penalties and punishments by imprisonment and otherwise*; of *fining levying and committing by our own officers*; of *prosecuting under double forfeitures illegal practisers, not onely in London, and within seven miles, but all over England*; of *summoning persons before us under penalties fines or amerciaments*; of *binding by recognisance*; and of doing many other acts, *necessary for suppressing all medical impostors*; of which *powers*, when duely authoris'd, that they might be duely executed, *all those in your Lordships high offices for the time being* were to have been appointed *visitors* by parliament; not meeting with that desired sanction, never did, never could take place at all. And therefore, this *charter* having thus proved abortive: it appears from our *annals*; which, according to *agreement of counsel*, have been inspected by our adversary's solicitor; that *none of the persons* named in it were ever *sworn in*, as it directed: that *none of its new regulations*, for the government of the college, which were many, and very different from the *old*, were ever *regarded*: that *not one member*

(i) *Personam tragicam forte ut vulpes viderat;*
O quanta species, inquit, cerebrum non habes! Phaedr.

member was ever elected, or admitted under it: that not so much as its new name, of *The president, fellowes and commonaltie of the kings colledge of physicians in the cittie of London*, was ever assumed. So far from it: that the very petition from the college to the king, in 1678, concerning *Huybert the quack*; which was read, before your Lordships, as evidence of accepting his charter, from its mentioning *the grants and patents not only of his majesty but of his royal ancestors*; appears by its title, *The petition of the president and commonalty of the college of physicians*, to have been presented in the old name. So that the loyal acknowledgement in the body of it, for his majesty's goodness in granting that charter; being in fact onely a plan for enlarging our privileges, and a promise to crown the work in parliament with the royal assent; was introduced by so absolute a disavowal of accepting it for any thing farther, as even the disowning its very name to his majesty's face, since the parliament had denied it existence. For it is remarkable; that there was not one single privilege in it, but what was to receive its being from parliament: the onely two regal grants, of exemption from bearing arms, and of *freefarm of fines and forfeitures*, being before made to the college, by the charter of *K. J. I**. And we have, among our archives, antient acquittances for this rent from the exchequer: by one of which dated, above a year after *K. C. II*, granted his charter, it appears, that this rent was even then, as it has been ever since, paid under the former charter, and not under the latter**. And by another antient acquittance in

* See the copy of this charter, printed in Dr. Goodall's *History of the college*, p. 51. 58. 60.

** In magno rot'lo de anno decimoquarto regis
nunc Caroli in adbuc item London.

London. *Presidens collegii & co'itas medicor' london & succ' sui deb' vjls per ann' de firm' omniu' fin' & am'c' penalitat' forisfactur' summe & summar' pecunie nunc debit' vel imposter' de tempore in tempus*

in 1672, the *crown-moiety* of a penalty or forfeiture recovered against *Bugge*, for eleven months illegal practice, was allowed expressly under the *charter of K. J. I*: which consequently contradicts *that of K. C. II*, as a non-existent *charter**. And to demonstrate, that the *king* agreed with the *college* in continuing its *old name*: his writ of *mandamus*, as it stands copied in our books, granted to *Dr. Merret* in Michaelmas-term 1682, to be restored to his fellowship, from which he had been expelled, was directed in the same *old name*; *Carolus secundus &c. presidenti collegii seu communitatis facultatis medicine London sal'tem*. But, as the case is reported in our books, it was unanimously resolved *per curiam*, that he could not be restored by *mandamus*: agreeably to a prior resolution in the case of *Dr. Goddard's mandamus*, which is entred in our books, and as your Lordships know, is reported at large by *Keble*. So that it also appears, by this case of *Dr. Merret*: that neither the *charter of K. C. II*, nor its

C

visitors,

tempus debet regi her' & succ' suis virtut' Prar' paten' dni nuper rs Henr' viij^{ti}. dat' apud Westm' xxiiij^{to}. die Septembr' a^o. regni dci rs nuper Henr' viij^{ti}. decimo Quam firm' dns nuper rex Jacob' per l'ras suas paten' dat' viij^{to}. die Octobr' a^o. regni sui xv^o. concess' presat' president' collegio & co'itat' viz^o. de eadem firm' a fest' s'ci mich'is arch'i a^o. regni dni nunc Caroli dei gra' Anglie Scotie Francie & Hib'nie rs fidei defens' &c. decimoquarto usq' idem fest' s'ci mich'is arch'i extunc prox' sequen' a^o. regni ejusdem dni rs nunc xv^o. scil't per unu' ann' integ' In tbo' lib'aver' xv^o. die Junij a^o. xvj^o. rs nunc Caroli predict' firmar' de eadem firm' debet pro un' a^o. integro finit' ad festu' s'ci mich'is arch'i anno xv^o. rs nunc Caroli de sol'.

Et quieti sunt

Ex^r per He. Croke Cler. Pipe.

In magno rot'lo de anno xxiiij^{to} regis Caroli in item
Adhuc item item res London.

London. Presidens colleg' & co'tas medicor' Lond' deb' xxviij^{to}. x^o. de med' l^a. vers' Job'nem Bugge de paroch' eccl'ie chr' london recuperat' per judiciu' cur' quia exercuit facultatem medicin' ib' m per spaciu' xj mens' integ' non existen' admisi' ad exercend' & occupand' dict' facultat' medicin' per president' collegiu' seu co'itat' facultat' medicin' London l'ris sigillo suo co'i sigillat' contra formam statut' inh'mo'i casu edit' & provis' super ip'os on'at' virtute ordinis hujus scac' ij dat' t'io Julij anno xv^o. regis Caroli. But the said somme of xxviij^{to}. x^o. is allowed to the president and colledge of the faculty of phisicke within the cittie of London by letters patents under the greate seale of England baring date the viijth. day of October in the xvth. yeare of the late King James of England and of Scotland the lth. and by judgment of the barrons of this court of publique exchequer entred amongst the records of Easter term in the seaventh yeare of the reign of the late King Charles in the coustodie of the first remembrancer there rolle the iiiij^{xx} j^o.

And they are quitt.

Ex. by He. Croke Clerke of the Pipe.

visitors, were then thought in being. All this notwithstanding; Mr. S. affirmed on the contrary: *that this is the charter under which we now exist; and that all our elections and transactions are built on this foundation.* The society of apothecaries having occasioned the miscarriage of this *charter* in parliament: our learned regester, Sir George Ent, entred that defeat in his elegant Latin, concluding with these words; *rem non sibi minus, quam nobis, utilem futuram sufflaminarunt:* they put a stop to a *charter*, which must have been as useful to themselves, as to the college: that is, in suppressing empirics. But whatsoever the apothecaries of that age might think; those of the present must be perfectly sensible; that it requires the strictest union and harmony between the college and them, to obviate the mischiefs and absurdities of *quackery*. Such is the disposition of every age; such is the disposition even of this inlightned age; to set up, and worship that senseless, *brazen calf* (k)! In this *charter* however, Mr. S. took a place for his client; and, by his *ipse dixit*, declared him *to be one of its commonalty*; that being a necessary qualification in it for a *fellowship*: which was making even this favorite *charter* absurd in reality. For this was declaring, in other terms: *that although it confines all its privileges expressly, to those onely, who are first admitted by the college; yet it extends them, at the same time, to one, who has never been admitted at all.* If this is not an absurdity: there can be no such thing as an absurdity (l). This is the mathematical *reductio ad absurdum, vel impossibile*: when it is demonstrated, that, by admitting the proposition advanced, a thing must *be, and not be,* at the same time. But

to

(k) *Oppida tota canem venerantur, nemo Dianam.* Juv.
 Οὐκ ἐστὶν ἀνοσίᾳσ οὐδέν ἐυδαρσέρερον. Men.
 Homine imperito numquam quicquam injustius. Ter.
 —Non est quod multa loquamur:
 (l) *Nil intra est olea, nil extra est in nuce duri.* Hor.

to procede: if it is possible for such great parts ever to be *puzzled*; as much *puzzled* as Mr. S. praetended to be, to find out the successors, under the first charter; he will certainly be yet more *puzzled* in good earnest, to find out the commonalty, under this last charter; to find out that nursery, where he thought to stick in his client, ready to be transplanted a fellow. For that commonalty, distinct from the fellows, by charter; that commonalty, out of which all future fellows were directed to be chosen; although named, is no where described, or to be found, in this charter. On the contrary: that commonalty, and fellowship, by charter, will be found, upon a scrutiny, to be one and the same. The Stat. 14. 15 K. H. VIII. ch. 5, from which we derive our existence, demonstrates our commonalty, and fellowship, by charter, to be synonymous terms: for the preamble calls us a perpetual commonaltie or fellowship of the facultie of phisicke, which is repeted immediately after, the same fellowship and commonaltie: and our Latin name, in the charter, collegium seu communitas facultatis medicine London, in the subsequent clause, appointing our order of electys, is rendred in English, the corporation of the commonaltie and fellowship of the facultie of physyke. And the Stat. 32 K. H. VIII. ch. 40, enlarges our privileges, by the same name of the corporation of the commonalty and fellowship of the science and faculty of physick: and uses the words commons, and fellows, by charter in several places, as planely synonymous. It is inconceivable, how Mr. S. could take, omnes homines ejusdem facultatis, or eandem facultatem exercentes, to be this commonalty: since our collegium seu communitas, and these omnes homines of both descriptions, are expressly distinguished, in the clause, describing the power of the praesident, and in that, directing the extent of our statutes; the former is to be, ad—gubernand—collegium sive communitatem predict et omnes homines ejusdem facultatis; the latter are to be, pro

—gubernatione—collegii seu communitatis predictæ et omnium hominum eandem facultatem—exercentium. Nor would these *omnes homines* be at all complimented, by this introduction of his client among them. Because, as he has no sort of right or qualification by law, to exercise, as he does, *the faculty of physic*: so, if they are to be dignified with the title of their new companion, they must all be stiled *eandem facultatem illicite exercentes*, practisers in defiance of law; who are called many hard names in our *statutes* and *charter*, and punishable by the college, *by penalties, fines, americiaments, and imprisonments*, according to the *Statute* confirming our *charter*. It appears indeed, by the *determination of the kings-bench*, in the *case* of Dr. Goddard's *mandamus*, two years before the date of this *last charter*: that *every fellow of the college* has two distinct *fellowships*; one, as being admitted a member of the *commonalty* or *fellowship* by *charter*; the other, as being appointed, and named *fellow* by *statute*, or by-law, to assist in *comitiis*, in governing the *college* or *commonalty*: that this appointment, being a service of *attendance and consultation*, without *fee or reward*, as the *election* is *voluntary*, so may be the *ejection*: that consequently, although he may be arbitrarily expelled from, and can have no right to be restored to, this *fellowship* by *statute*, yet he still retains, and is not expelled from, his *fellowship* by *charter**. But yet here, is no *commonalty*, distinct from the *fellowship*, by *charter*. So that this *commonalty* at last, on which Mr. S. built all his hopes, will prove, in truth, onely a *commonalty in nubibus*! What issue then can be expected from such a *charter* as this! *Nascetur ridiculus mus (m)!*

THE next misrepresenta-tion, my Lords, was the giving
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(m) —Hoc scriptum est tibi;
Qui, magna cum minaris, extricas nihil. Phaedr.
* See Keble's Reports, Vol. I. p. 75. 84. Dr. Goddard's case.

us a very hard name: by charging our college, with being, or claiming to be, a monopoly of physic. But, when two very different powers come to be duely distinguished; the corporate power of governing the college of physicians, and the particular power of exercising the profession of physic: when our statutes direct, the former indeed to be conferred discretionally, this being essential to societies, on the admission of those onely to be fellows, who being graduates of Oxford or Cambridge, besides approved learning and morals, have also agreeable or sociable dispositions; *qui—se virum doctum praestiterit, moresque etiam honestos et amabiles habuerit, de quibus insignem curam haberi cupimus, admittatur per majorem partem sociorum praesentium**; but the latter, the power of practice, to be granted equitably, this being essential to professions, on the admission of all to be licentiates, who are found sufficiently instituted in learning and morality, who will be obedient to the statutes, and for this reason expressly, that the college may not be charged with being a monopoly; *aequum—censemus, ut censores et socij examinatos omnes, quotquot tam doctrina quam moribus idoneos reppererint, ad medicinae praxin admittant, ne collegium monopolij accusetur, modo tamen statutis collegii morem gesserint***: when, according to this direction, so equitable, so liberal a distribution of this power of practice has actually been made, as to defie one single instance to be produced, where it ever was denied to any duely qualified: surely this must appear, a very groundless, and to use the softest epithet, a mistaken accusation (n).

ANOTHER misrepresenta-tion, my Lords, was the declaring: that we are so strange a body, as to be like no other body whatsoever. Not like common corporations; because we have no
fixed

(v) —Laborant,
Cum ventum ad verum est: sensus, moresque repugnant,
Atque ipsa utilitas, justj prope mater et aequi. Hor.

* See Statut. Coll. Med. Lond. cap. 16. Forma examinationum.

** See Statut. Coll. Med. Lond. cap. 15. De permissis.

fixed rules: whence poor Groenevelt was, by our censors, committed to Newgate, for giving cantharides; which are since become an established praeparation in our pharmacopoeia. As if there could be no fixed rules, but those, like the laws of the Medes and Persians, which alter not: as if a body, for continually labouring to improve its rules, might therefore be said, to have no fixed rules at all: and as if a physician could not be guilty of mala praxis, and deservedly punished by our authority, for injuring or destroying his patient, by the improper use of a medicine, because that medicine may hereafter, or perhaps even now, stand authoris'd for proper use in our dispensatory (o). Nor are we like colleges in the universities; because not endowed: by which if Mr. S. intended any reflection, it must be this; that bodies not rich are therefore ridiculous (p). But, if we have not, like them, an eleemosynary endowment; an endowment of substance and property; we certainly have, like them, an endowment of much greater value. For our body, like theirs, was originally endowed, and we hope, like theirs, will ever appear endowed, with the greatest and most valuable treasure of all; with the onely treasure, that can truly adorn and enrich such a body; with learning, with utility, with honor, and integrity. This is a treasure, so like coelestial treasure; that, whatsoever may become of the chest committed to my care; howsoever that may be ridiculed for not being rich; whatsoever law-stratagems may be formed to rob us even of that; this, we are sure, neither moth nor rust can corrupt, nor thieves break through nor steal (q).

ANOTHER misrepresentation, my Lords, was an abuse of
our

(o) *Si foret in terris rideret Democritus.* — Hor.

(p) *Nil habet infelix paupertas durius in se,
Quam quod ridiculos homines facit.* — Juv.

(q) *— Quod nec Jovis ira, nec ignes,
Nec poterit ferrum, nec edax abolere vetustas.
— Nomenque erit indelebile nostrum.* Ov.

our *statutes*: with which Mr. S. attempted to divert his audience, in so light and ludicrous a manner; as if he thought the college-doctors could not be conquered, by any character so successfully, as by that of a merry Andrew (*r*): founding perhaps his opinion, politically enough, on the present prevailing fondness for farce. So far at least he proceeded, as to bring these *statutes* upon the stage; and to introduce *Moliere* as most proper to be their author. The great joke of all was, one of our rules for consultation; which was repeated, with much ridicule, as measuring wisdom and judgement by age: and if this were true, it would indeed be ridiculous. But here, Mr. S. was forced to make use of empirical *conjurat*ion, a little rhetorical *so*rcery and *witchcraft*, a false *apparition* of *pars*, not *pro toto*, but *contra totum*: for he conveyed away, and secreted the last part of the sentence, that the first part might appear in a sense no way belonging to it (*s*). Thus far he quoted in great triumph; *Si duo tantum medici fuerint, junior cedat seniori*; which seemed indeed to agree with his construction; *If there are two physicians in consultation, the junior must always submit to the senior*: but he sunk the words following; which conclude the period, and explain the foregoing, to be onely alternative or disjunctive, and not positive, as he translated them; *vel tertium advocent, cui res referatur*. So that the *rule*, when taken fair and intire, stands thus: *If there are only two physicians in consultation, either the junior must submit to the senior, or they must call in a third to determine the matter* (*t*). This, my Lords, is the great *rule* of majority: the *rule*, dictated by reason, in all difference of opinion: the *rule*, not onely of our college, but also of your Lordships benches, and even of the parliament itself,

(*r*) — *Dummodo risum*
Excusiat sibi, non hic cuiquam parcat. — Hor.

(*s*) Τουτω μεν μηδ' υπερ των αλλων πισευετε, δηλου γαρ ως ομοιως απαντα επλαττετο. Dem.

(*t*) Αλλ' ευδ' αισχυνη των νομων αφαιρων μερη, ους ολους δικαιον ην αναγνωσκεισθαι; Dem.

itself, that great *consultation of state-physicians*. These *statutes*, although twice or thrice reenacted for the sake of some occasional alterations, and the last time so lately as in the year 1736, were originally composed, above two centuries before, by our celebrated Caius: with such elegance of expression; with such prudent provision, for the care of the patient in the first place, for the dignity of the profession in the next place, and for the reputation of each professor in the last place; that whosoever will nibble at them, like the *viper* biting the *file*, may draw blood from himself, but none from them. *Fragili quaerens illidere dentem, Offendet solido.*

THE last misrepresentation, my Lords, with regard to our college, was the averring: *that this refusal to receive his client into our society, is all the work of an idle, inconsiderable faction: not onely without the concurrence in opinion, but even with the avowed disapprobation of the majority, and most eminent of our body; whose better employed time, does not permit them to attend on college-affairs.* This, if true, would be but an ill compliment to that *majority*: since by not rectifying, as they both might and ought, any *injustice* done by a *minority*, they must make themselves abettors of this very *injustice*. Nor is that intended compliment, on the *employment of their time*, any better; since every *public duty* must be, in its nature, not inferior, but superior to *private*: besides that our ordinary *college-affairs* require but four stated *comitia* in the year; an *attendance* therefore, very reconcilable to *private* considerations; an *attendance*, as easily to be paid, as it is solemnly promised, on the *faith* of every *fellow* at his admission. But, my Lords, it is so far from true: that no step was set in this affair, without

out the *praesence* and *concurrence* of the *most eminent in our body*, and in highest station, both of honor, and employment. Nor can it be conceived, that any of our *society* would be for admitting into it, one, who openly defies its authority; one, who continues to practise in contempt of its *interdict*; one, who has even declared, both in his *petition*, and by Mr. S. before your Lordships, *that he has actually practised physic, no less than seventeen years*; which, being without our *licence*, has in fact planely proved him, an old offender against the law of the land, and a deep debtor to our college, by the forfeiture of *five pounds pro quolibet mense* within our liberties, amounting to a very great sum of money. Mr. S. confessed: *our college had signified to his client; that he was at liberty to apply to be admitted a licentiate. This would, indeed, give him the full exercise of his profession: but it is a title, too low for him to accept; it would be an indignity to his doctor's degree; it would be an indignity to our university that conferred it.* And yet it was a title high enough, to content the great Sydenham, our British Hippocrates, to his death. Nor did he think it an indignity, either to his doctor's degree, or to our university that conferred it. Nor did he chuse to exchange it for a higher; so remarkable was his modesty as well as ability: although our *society* would have received, with open arms, one, who was so great an ornament to it, even as a *licentiate*; one, who must have added lustre, even to its highest honors. One compliment, indeed, Mr. S. was pleased to make our college: *that from its foundation, until this instance, it has always acted with such constant candor; as never once to refuse admitting into it, any of the doctors of our own universities.* This however, was planely intended, for

a most ingenious, a most sarcastical sneer, on our praesent *body*, and our praesent *proceedings*: by exposing the greatness of our degeneracy. But here again, Mr. S. missed his aim; and, like an over-hasty marksman, instead of his adversary, hit and desperately wounded his client. For, by that unerring maxim in philosophy, *Idem semper agit idem*; the *same candid body*, which by his own confession has acted as such, for almost three centuries, must be praesumed, still to act in the *same manner*: and the first complaint to the contrary, must be praesumed to come from some person, so remarkably singular, so particularly behaved, as not to be an object of *candor* at all. And this, my Lords, is actually the case: for what all others ever asked, and obtained, as a *favor*, he alone demanded as a *right*; and consequently left us nothing at all to give him. And in this unpraecedented, unaccountable *clame*, he was supported even by Mr. S. who declared, before your Lordships, *that it is his right, as well to be admitted into the government of our society, as to be authorized in the exercise of his faculty*. Although the *argument*, advanced to prove this right, *mutatis mutandis*, would as soon prove; that a person who has a right to demand the free exercise of his trade, in the city of London, must also have a right to be one of the *court of aldermen*: and that, for this most wonderful reason; *because the credit of that office, would promote and inlarge his trade. It is not sufficient for us, to give his client a bare right of practice: because that practice, would be extended and improved, by the credit of being a fellow of our college*. When a *fine reasoner*, must descend, to use such *reasoning* as this; such *misrepraesentations* as these: how desperate must be his *cause*! how deep his distress! even that of a rhetorical *felo de se*!

forced

forced to destroy the very *life* of argument and oratory! he must appear! like the *ghost* of a self-mangled great *orator*! *Hei mihi!* — *Quantum mutatus ab Illo!* — *Quae CAUSA indigna!* *serenos Foedavit vultus!* *aut cur haec vulnera cerno (t)!*

BUT, my Lords, to shew, that Mr. S. was sensible he had got a *cause*, that required yet more misrepresentations: misrepresentations of both sorts, for both sides of the question, not onely *categorical*, but *panegyric*: after having, with the former, labored so hard, but labored in vain, to strip our college of its true and proper *ornaments*; ornaments, which it esteems far beyond its robes and ermins; its justice, its prudence, its candor; he labored as hard, to dress up his client in necessary indeed, but false and borrowed *plumes*, with two of the latter sort of misrepresentations (*u*). The first of these, my Lords, was the asserting: *that no exception had been made to his qualification; and therefore, he praesumed, that none could be made.* Whereas unluckily, one of the four censors, who examined him, on record in our *annals* has declared, *that according to the oath he had taken, and the statutes of the college, he did not think him upon the whole, idoneus qui admittatur in numerum candidatorum.* All former approbations of our *censors*, on their examinations, appear to have been unanimous: here therefore, is an *exception* with a witness; which must call aloud for a recantation, how unusual and hard soever that task may be, of so defenceless, so ill grounded an *assertion*. Nor was this

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. prae-

(t) — Καρη δ' ἄπται ἐν κινήσει

Κεῖλο, παρὸς χαρίεν. —

Hom.

(u) Ne, si forte suas repetitum venerit olim

Grex avium plumas, morveat cornicula risum

Furtivis nuata coloribus. —

Hor.

praesumption, that no exception could be made to his qualification, any happier: for we have another to make yet stronger, founded on the opinion of counsel; that, being a naturalised foreigner, he is, by the Act of settlement, rendered incapable of those offices of legal trust and jurisdiction, which it is the duty of a fellow to discharge. Here therefore is a new exception with legislative authority; which must not onely overturn the basis of this praesumption, but also extinguish even the very hope, and possibility of such qualification (x). The other misrepresentation of this sort, my Lords, was yet more extraordinary: for here, besides the declaration of Mr. S. the petitioner himself was made an instrument, to offer an imposition on your Lordships, by affirming in his petition, although he was not permitted, for reasons very obvious, to go so far as to swear it in his affidavit; that he had performed the usual exercises, in the university of Cambridge, for his doctor's degree. Whereas, my Lords, on the contrary, the fact is: that these usual exercises are, one act and one opponency for batchelor, and two acts and one opponency for doctor, in all five, of which he has performed onely one; and for the rest, has paid into the university-chest a large sum of money, after the rate of twenty pounds for each act, and proportionally for each opponency; partly as a forfeiture, for what was not performed in time; partly as a caution or deposit, to make good an after-performance; a deposit, he has never redeemed. Behold then a degree! intended as a test of performing many exercises in learning; and praetended, praetended did I say, nay, declared positively by counsel, affirmed solemnly under hand, to be taken accordingly! but, in reality, taken without performing any

(x) *Una salus victis, nullam sperare salutem.* Virg.

any more than *one*! Behold a *graduate of Cambridge!* so far from *having accomplished all things for his fourme without any grace*, as the *Stat. 14. 15 K. H. VIII. ch. 5*, requires expressly, before he can be intitled to *practise, as such, any where in England*: that he *hath accomplished onely one thing for his fourme!* and consequently has got a *degree*, that is almost all over *grace!* a *degree!* therefore, that does not give him the privilege of acting, in the capacity of a *physician*, any where at all! Such, my Lords, is Mr. S's *hero (y)!* and such are the *arms (z)!* with which Mr. S. has equipped him; for this peerless, this original *adventure* against our college *(a)!* *Arma, virumque cano!*

But,—I shall trouble your Lordships no farther: having, I hope, said enough, to *vindicate* our royal college of *physicians (b)*, as constituted by its great founder *K. H. VIII*, and his *parliament*, from all the *misrepresentations* of Mr. S *(c)*. I purposely pass over all direct *abuse*, where neither, wit nor argument was concerned: *that* being always much the severest *reply* to itself. Nothing, my Lords, but my looking upon this, as an attempt against the being of our college, against the *life* of our *venerable parent*, as in the case of the dumb *son of Croesus*, could have enabled me to *say* any thing at all: and all I have *said*, is reducible to his four words, *Man! Kill not Croesus (d)!* All I can
say,

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|-----|--|------------|
| (y) | —Majorane viribus audes? | Virg. |
| (z) | <i>Arma acri facienda viro: nunc viribus usus,
Nunc manibus rapidis, omni nunc arte magistra.</i> | Virg. |
| (a) | —Sed cur certaminis hujus
<i>Intentata mihi fortuna relinquitur? inquit,
Audentes Deus ipse juvat. —
Iste tulit pretium jam nunc certaminis hujus;
Quo cum victus erit, mecum certasse feretur!</i> | Ov. |
| (b) | Σον δὴ τοι κλεος εἶσαι, ὅσον τ' ἐπιμιδναται ηῶς. | Hom. |
| (c) | Εσθλός Μυρμιδόνων βουλευφόρος, ἠδ' ἀγορητής. | Hom. |
| (d) | Ἄνθρωπε, Μὴ κτείνε Κροίσον. | Herodotus. |

say, is too little, to express my *obligation* to your *Lordships*, for this your *singular indulgence*, for this your *unparalleled patience*.

Paulo longius oratio mea provecta est, hac de causa, ut conditionem societatis diligenter cognosceretis. CICERO.

Εἰ μὲν καλῶς καὶ ἀξίως τοῦ ἀδικημάτων κατηγορηκᾶ, εἶπον ὡς εἰβουλομένη
εἰ δὲ ἐνδεεστέρως, ὡς ἐδυναμένη. AESCHINES.

THE END.

