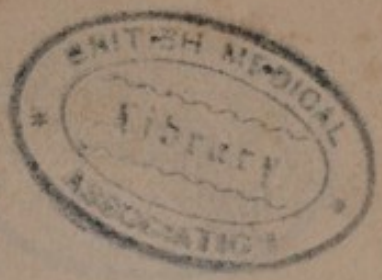
The laws relating to the medical profession; with an account of the rise and progress of its various orders / By J.W. Willcock.


H/5



THE LAWS

RELATING TO

THE MEDICAL PROFESSION;

WITH

AN ACCOUNT OF THE RISE AND PROGRESS

OF

ITS VARIOUS ORDERS.

BY J. W. WILLCOCK, ESQ.
BARRISTER AT LAW.

LONDON:
PRINTED BY A. STRAHAN,
LAW-PRINTER TO THE KING'S MOST EXCELLENT MAJESTY;
FOR J. AND W. T. CLARKE,
LAW-BOOKSELLERS AND PUBLISHERS, PORTUGAL STREET,
LINCOLN'S INN.
1830.

PREFACE.

As this is the only work affecting to treat generally on that branch of the law to which it relates, the Author's endeavour has been to render it useful, as well to the members of the medical as to those of the legal profession. With this object he has divided it into two parts. In the first, he has treated the subject in such a manner as he hopes will relieve those to whose pursuits it particularly applies, from the irksomeness of which the general reader has often to complain, in the perusal of works more immediately addressed to the lawyer. The second part comprises the Acts of Parliament, the decided cases, and several ancient records, which will supply the legal student with the information in which the Treatise may be found deficient, and the medical reader with the most authentic sources of the history of his profession, while they may, from their spirit and language, occasionally afford him amusement.

For the present at least, the Author reserves his opinion on the propriety of continuing the existing medical institutions, or substituting any new or general arrangement of their professors: although

it will be evident that the Legislature has seldom interposed for the regulation of the practice of medicine, with a view either to the relative situation of the practitioners, or to the security of the public health; most of the provisions which have been introduced for that purpose having originated in the establishment of the particular institution which applied for the enactment.

The Author cannot dismiss these pages without acknowledging his obligation, for much valuable information, to Dr. Macmichael, lately the Registrar of the College of Physicians, from which learned gentleman he was induced to seek such information, by the perusal of a volume of very elegant and entertaining biographical sketches of the most distinguished Presidents of the College, which is said to have emanated from his pen under the title of the "Gold-headed Cane."

61. *Chancery Lane*,
19*th July*, 1830.

CONTENTS.

PART I.

CHAPTER I.

Page

ANCIENT ORDERS OF THE MEDICAL PROFESSION :

Druids and bards - - - - - 3
Romans - - - - - 4
Saxons - - - - - 5
Various orders of practitioners - - - 8
physicians - - - - - *ib.*
surgeons - - - - - 12
apothecaries - - - - - 18
empirics - - - - 19
experimentalists - - - - 20
alchymists - - - - *ib.*
astrologers - - - - 24
sorcerers - - - - 25
witches - - - - 26
Jews - - - - - *ib.*
pretenders in all sects - - - 27
ladies - - - - 28

CHAPTER II.

PRESENT ORDERS OF THE MEDICAL PROFESSION :

SECT. 1. Physicians - - - - 30
their practice - - - - *ib.*
classes - - - - 31
college - - - - - *ib.*

Page
London licentiates - - - 32
officers of college - - - *ib.*
examiners of apothecaries' wares - *ib.*
constitutional members of college - 33
original fellows - - - 34
succeeding fellows - - - *ib.*
duties of college - - - 36
community - - - - 37
vice-president - - - 38
licentiates in London - - 39
candidates - - - - 43
fellows - - - - 44
country licentiates - - - 53
partial licences - - - 54
university physicians - - - *ib.*
Sect. 2. Surgeons - - - - 56
their practice - - - - *ib.*
classes of - - - - 58
of the college - - - *ib.*
in and about London - - 64
in the country - - - *ib.*
right to be examined - - - *ib.*
by the college - - - 65
by the ordinary, &c. - - 66
Sect. 3. Apothecaries - - - - 67
their practice - - - - - *ib.*
classes - - - - - *ib.*
licentiates of the company - - 68
examination - - - - 69
assistants - - - - 71
duty on licence - - - *ib.*
in practice before 1st August 1815 - 72
Sect. 4. Chemists and Druggists - - - 73
Sect. 5. Accoucheurs - - - - 74
Sect. 6. Persons administering medicine gratuitously - *ib.*

CHAPTER III.

Unqualified Practitioners in Medicine - - 75
Sect. 1. Unqualified practitioners in physic - - 76
Sect. 2. ——————— in surgery - - 82
Sect. 3. ——————— as apothecaries - 83

CHAPTER IV.

Page

MALPRACTICE IN MEDICINE
Kinds of - - - - - 86
Punishment of by the general law - - - *ib.*
——— the college of physicians - - 91
——— the college of surgeons - - 101
——— the apothecaries' company - - 103

CHAPTER V.

CIVIL RESPONSIBILITY OF MEDICAL PRACTITIONERS:
SECT. 1. Want of skill or attention - - - 105
SECT. 2. Experiments in medicine and surgery - 109

CHAPTER VI.

REMUNERATION OF MEDICAL PRACTITIONERS:
SECT. 1. Physicians - - - - 111
SECT. 2. Surgeons - - - - - 113
SECT. 3. Apothecaries - - - - 115

CHAPTER VII.

PROTECTION OF MEDICAL MEN
SECT. 1. Character - - - - 120
SECT. 2. Writings, lectures, &c. - - - 129
copyright at common law - - - *ib.*
legislative provisions - - - 130
protection in equity - - - 131
works not printed by the author - - *ib.*
injurious works - - - 132

CHAPTER VIII.

PRIVILEGES OF MEDICAL MEN
SECT. 1. In respect of insane persons - - 133
form of certificate - - - - 134
false certificate - - - - *ib.*
medical attendants of madhouses - - *ib.*
exceptions - - - - *ib.*
commissioners and visitors - - - *ib.*
SECT. 2. In respect of employment - - - 135
for public purposes - - - - *ib.*
surgeons of vessels - - - *ib.*
selling spirits as medicines - - - 137

Page

Sect. 3. Exemption from serving on juries - - 137
physicians - - - - - *ib.*
surgeons - - - - - *ib.*
apothecaries - - - - - 138
Sect. 4. Exemption from serving offices - - *ib.*
physicians - - - - *ib.*
surgeons - - - - 139
apothecaries - - - - 140
Sect. 5. Exemption from bearing arms - - - 141

CHAPTER IX.

Contagious Diseases, &c.
Plague - - - - - - 142
Syphilis - - - - - 143
Leprosy - - - - - *ib.*
Small-pox - - - - - *ib.*

CHAPTER X.

On Dissection
the operation - - - - - 148
obtaining bodies for - - - - 150

PART II.

Physicians
statutes, charters, by-laws, &c. - - - iii
cases - - - - - xxxvii
Surgeons
statutes, charters, by-laws, &c. - - - clxv
cases - - - - - - cciii
Apothecaries
statutes, charters, by-laws, &c. - - - ccxix
cases - - - - - - cclxi

STATUTES.

PHYSICIANS.	Page
9 Hen. 5.	iii
22 Hen. 6.	10
19 Hen. 7. c. 7.	v
3 Hen. 8. c. 11.	vi
14 & 15 Hen. 8. c. 5.	vii
32 Hen. 8. c. 40.	xii
1 Mar. ses. 2. c. 9.	xv
3 Jac. 1. c. 5. s. 8.	xviii
10 Geo. 1. c. 20.	xxviii
6 Geo. 4. c. 50. s. 1.	xxxi
10 Geo. 4. c. 7.	xviii

SURGEONS.	
3 Hen. 8. c. 11.	vi
5 Hen. 8. c. 6.	clxx
32 Hen. 8. c. 42.	clxxi
33 Hen. 8. c. 12.	clxxvi
34 & 35 Hen. 8. c. 8.	clxxvii
18 Geo. 2. c. 15.	clxxxv
6 Geo. 4. c. 50. s. 1.	xxxi

APOTHECARIES.	
32 Hen. 8. c. 40.	xii

	Page
1 Mar. Ses. 2. c. 9.	xv
6 & 7 Will. 3. c. 4.	ccxxxiv
10 Geo. 1. c. 20.	ccxxxv
55 Geo. 3. c. 194.	ccxxxvi
6 Geo. 4. c. 50. s. 1.	xxxi
6 Geo. 4. c. 133.	ccl

GENERAL.	
5 Hen. 4. c. 4.	21
33 Hen. 8. c. 8.	152
1 Ed. 6. c. 12.	152
1 Mar. ses. 1. c. 1.	152
5 Eliz. c. 14.	152
2 Jac. 1. c. 12.	152
8 Ann. c. 19.	130
9 Ann. c. 2.	142
9 Geo. 2. c. 5.	153
16 Geo. 2. c. 8.	137
42 Geo. 3. c. 90.	141
43 Geo. 3. c. 56.	136
43 Geo. 3. c. 58.	88
6 Geo. 4. c. 78.	142
9 Geo. 4. c. 41.	133

PATENTS, &c.

PHYSICIANS.	
32 Hen. 6.	iv
Canon of Lateran	v
——— Tours	7
7 Eliz.	xvii
15 Jac. 1.	xviii
15 Car. 2.	xxi
Statutes of the College	xxxi

SURGEONS.	
3 Hen. 5.	14
4 Hen. 5.	15
25 Hen. 6.	clxv
1 Edw. 4.	clxvii
15 Hen. 7.	clxix
19 Hen. 7.	*ib.*
2 Hen. 8.	*ib.*
3 Hen. 8.	clxix
2 Jac. 1.	clxxix
5 Car. 1.	*ib.*
40 Geo. 3.	clxxxviii
3 Geo. 4.	cxcvi
Ordinances	cxcviii

APOTHECARIES.	
— Edw. 3.	22
19 Edw. 3.	ccxxix
22. 27. & 30 Hen. 6.	22
34 Hen. 6.	22
35 Hen. 6.	24
13 Jac. 1.	ccxxx
By-laws	cclviii

CASES.

PHYSICIANS.

Alphonso *v.* Physicians' Col. Page cxxxiii
Askew, R. *v.* xlvii
Atkins *v.* Gardiner xcviii

Bolcot, Chorley *v.* cli
Basset, Physicians' Col. *v.* cxii
Bonham's case lxxx
Bowerbank, R. *v.* cxxxiv
Brendon *v.* Lewes (Prior of) 9
Brown, Fell *v.* cliii
Burnell or Burwell, Groenvelt *v.* cxxxvii
Bush, Physicians' Col. *v.* cxii
Butler ——— c. cxix
——— *v.* Physicians' Col. cxxi

Chorley *v.* Bolcot cli

Darby, Pindar *v.* clxiv

Fell *v.* Brown cliii

Gardner, Atkins *v.* xcviii
———, Laughton *v.* xcvii
Goddard's case xxxvii
Groenvelt's case cxxxiv
——— *v.* Burnell or Burwell cxxxvii
Gutch, Pickford *v.* clviii

Harrison, Physicians' Col. *v.* cxxviii
Holmes, Lipscombe *v.* clii
Huybert, Physicians' Col. *v.* cxxiii

Laughton *v.* Gardiner xcvii
Letch's case xxxix
Levett, Physicians' Col. *v.* lxxix
Lewes (Prior of), Brendon *v.* 9
Lipscombe *v.* Holmes clii

Macleod *v.* Wakeley 123
Moises *v.* Thornton clviii

Needham, Physicians' Col. *v.* cxxvii

Physicians' Col., Alphonso *v.* cxxxiii
——— case cxi
——— *v.* Basset cxii
——— *v.* Bush *ib.*
——— *v.* Butler c. cxix
——— Butler *v.* cxxi
——— *v.* Harrison cxxviii
——— *v.* Huybert cxxiii
——— *v.* Levett lxxix
——— *v.* Needham cxxvii
——— *v.* Rose xciii
——— Rose *v.* xciv
——— *v.* Salmon cxiii
——— *v.* Talbois c
——— *v.* Tenant xcviii
——— *v.* West lxxx
Phillips, Turner *v.* cliv
Pickford v Gutch clviii
Pindar *v.* Darby clxiv
Pordage's case clxiii
Pordich, R. *v.* *ib.*

Rex *v.* Askew et al. xlvii
——— *v.* Bowerbank cxxxiv
——— *v.* Physicians' Col., 1st case lv
——— 2d case lvii
——— 3d case lxvi

PHYSICIANS — *continued.*

Rex *v.* Physicians' Col. 4th case lxvi
Rex *v.* Pordich clxiii
Rose, Physicians' Col. *v.* xciii
—— *v.* Physicians' Col. xciv

Salmon, Physicians' Col. *v.* cxiii
Schomberg's case lxxviii
Sloane's, Sir Hans, case 35. 141
Talbois, Physicians' Col. *v.* c
Tenant, Physicians' Col. *v.* xcviii
Thornton, Moises *v.* clviii
Turner *v.* Phillips cliv

Wakeley, Macleod *v.* 123
West, Physicians' Col. *v.* lxxx

Liability for neglect and want of skill, — extracts clv

SURGEONS.

Abernethy *v.* Hutchinson 132
Allison *v.* Haydon ccxx
Anderson, Dunn *v.* 125
Anon 143

Baker et al., Slater *v.* ccxiii
Batting, Tuson *v.* ccvii
Bois Valon, Gremaire *v.* ccvi
Burnett, R. *v.* 143

Chapple, R. *v.* ccxvii
Cooper *v.* Wakeley 124
Cundick, R. *v.* 156

Davis *v.* Mason ccxviii
Duffit *v.* James ccviii
Dunn *v.* Anderson 125

Farriers' (the) case ccxxii

Gremaire *v.* Bois Valon ccvi

Haydon, Allison *v.* ccxx
Haynes's case 153
Hayward *v.* Young ccxviii
Hutchinson, Abernethy v. 132

J——, Walden *v.* ccxxii
James, Duffit *v.* ccviii

Kannen *v.* M'Mullen ccix

Law, Sharpe *v.* cciii
Lawrence *v.* Smith 132
Lynn, R. *v.* 155

Mason, Davis *v.* ccxviii
M'Mullen, Kannen *v.* ccix
Morton's case ccxxi

Pond, R. *v.* ccxvii
Prentice, Seare *v.* ccx

Rex *v.* Burnett 143
—— *v.* Chapple ccxvii
—— *v.* Cundick 156
—— *v.* Lynn 155
—— *v.* Pond *ib.*
—— *v.* Simpson ccxxvii
—— *v.* Surgeons' Company cciii
—— *v.* Sutton 143
—— *v.* Van Butchell ccxxiv
—— *v.* Vantandillio 144
—— *v.* Williamson ccxxiii

Seare *v.* Prentice ccx
Sharpe *v.* Law cciii
Simpson, R. *v.* ccxxvii
Slater *v.* Baker ccxiii
Smith, Lawrence *v.* 132
Sorcerer's (the) case 26
Surgeons' Comp., R. *v.* cciii
Sutton, R. *v.* 143

SURGEONS — *continued.*

Tuson *v.* Batting ccvii

Van Butchell, R. *v.* ccxxiv
Vantandillio, R. *v.* 144

Wakeley, Cooper *v.* 124
Waldon *v.* J —— ccxxii
Williamson, R. *v.* ccxxiii

Young, Hayward *v.* ccxviii

APOTHECARIES.

Abbot, Walmsley *v.* cclxx
Anon cclxi
Apothecaries' Comp, *v.* Bentley cclxii
—— *v.* Roby cclxvii
—— *v.* Warburton cclxiii

Bentley, Apothecaries' Comp. *v.* cclxii
Blogg *v.* Pinkers cclxix
Brown *v.* Robinson cclxxvi
Bunning, Chadwick *v.* cclxxiv

Chadwick *v.* Bunning *ib.*
Chapham, R. *v.* cclxi

Gresley, Towne *v.* cclxxvii

Handey *v.* Henson 118
Hatto, R. *v.* cclxi
Henley, Steed *v.* cclxxv
Henson, Handey *v.* 118

Lewis, Thompson *v.* cclxxvi

Phillips, R. *v.* 89
Pinkers, Blogg *v.* cclxix

Rex *v.* Clapham cclxi
—— *v.* Hatto *ib.*
—— *v.* Phillips 89
Robinson, Brown *v.* cclxxvi
Roby, Apothecaries' Comp., *v.* cclxvii

Sherwin *v.* Smith cclxxiii
Smith, Sherwin *v.* *ib.*
Somerville, Wogan *v.* cclxxviii
Steed *v.* Henley cclxxv

Thompson *v.* Lewis cclxxvi
Towne *v.* Gresley cclxxvii

Walmisley *v.* Abbot cclxx
Warburton, Apothecaries' Comp. *v.* cclxiii
Wogan *v.* Somerville cclxxviii

THE LAWS

RELATING TO

THE MEDICAL PROFESSION.

PART FIRST.

THE LAWS

RELATING TO

THE MEDICAL PROFESSION.

CHAPTER I.

ANCIENT ORDERS OF THE MEDICAL PROFESSION.

We possess few materials for a history of the medical profession anterior to the reign of Henry the Eighth. Science has little to regret the circumstance; nor is it probable that much amusement would be derived from the story of desolation and misery, involved in a detail of the attempts of ignorance to alleviate the sufferings of mankind.

Druids and bards.

Some of the medicinal properties of herbs have been known in the most savage state of society, and applied as well for the cure of wounds as of other corporeal maladies. We are informed that the druids and their attendants cultivated the science of physic and surgery to this extent; and to acquire the reputation of supernatural power, mingled incantations with their medicaments. We are told that their panacea was the misletoe, clipped from the oak on a certain mysterious night, when the moon, in a particular stage of her renewed existence, lighted on it a propitious beam, with a consecrated

golden hook used by sacred hands, and received on a pure white and sanctified cloth, and afterwards treasured for many a day in the sanctuary of the woodland god. As every failure of the medical art was readily ascribed to some omission in these numerous ceremonies, or to some religious disqualification of the patient, the skill of the physician and the virtues of the misletoe were ever secure from imputation. We read also, in the pages of Tacitus, of the competition of the German dames with these venerable priests in the science of physic; and as they were believed to be endued with divine wisdom, and were naturally both more attentive in the choice of their medicines and to the comfort of their patients, it is highly probable that their reputation was by no means inferior to that of the regular physicians.

Romans. During four hundred years the Roman dominion was established in this country; and so considerable became its power, that one of our governors appeared as a candidate for the imperial diadem, and for a long time wore the purple, though at length overthrown. Yet scarce a wreck of Roman magnificence remains, and the retiring legions seem to have left not a trace of science or of learning in their rear.

Saxons. We find the Saxons almost as barbarous as the Britons had been, before the eagle visited our shores. There was scarcely a historian to record their battles: the humble efforts of science were of course unworthy of memorial. The introduction of Christianity from the papal states brought with it many of the Roman writings; but they were confined to the monastic libraries, where they were more frequently obliterated than read. The barbarous of all ages have believed in the existence of spirits, and their interference not only with the ultimate destinies, but also with the health and happiness, of mankind. The nations of southern Europe, and even the druids of the north, assigned a divinity to every sanitary herb ready to exert its benign influence in in favour of weak mortality, and to counteract the ma-

lignity of the evil genii who presided over the poisonous and unwholesome. This superstition of the Britons was probably little affected by the residence of the Romans among them; and the Saxon tribes brought other legions of spirits as auxiliaries to the ancient mythology. Nor was it eradicated by the introduction of the Christian religion. It was modified only, the new faith converting the deities into demons, who were now supposed to exert a beneficent influence on the bodies of men to establish dominion over their souls. The gloomy fancy of the times representing necromancers and witches engaged in intercourse with these spirits, in the most monstrous and ridiculous forms.

The first of the monkish practitioners, perhaps, blended with their medical applications a little learning, and all the other pretenders in physic mixed with theirs a great deal of superstition. Yet the monastery which produced a Bede can hardly be supposed to have been destitute of students in the medical science to the extent in which it might have been derived from the Latin authors; and on the institution of colleges, medicine necessarily became an object of considerable attention. Could we fully authenticate the cure of the unfortunate Queen Elgiva, whose lovely and fascinating face the brutal clergy are said to have mutilated with hot irons, we should place the science of surgery, in the Saxon times, on a higher footing than it seems to have held for many ages after. In the middle of the seventh century, was founded the medical school at Salerno, an establishment not long afterwards followed by similar seminaries in every kingdom of Europe. The degree of bachelor of physic seems to have been known at Oxford soon after the conquest*; and in the fourteenth cen- An. 955. An. 1357.

* We find from the Exon Domesday, which furnished a portion of the materials from which the Great Domesday, or General Survey of William the Conqueror, was compiled, that Nigel the physician (Medicus, and not Bachelor or Doctor of Physic) had five hydes of land in demesne in the hundred of Scipe.—*Exon Dom.* 5.

tury, we find that the degree of doctor of physic was by no means uncommon. *

The monks and other clergy were necessarily the only regular physicians and surgeons, as none but the learned could be deemed fully accomplished in this science, and none but the clergy paid the slightest attention to learning. The Latin was the only language generally known in the Catholic states of Europe. To supply the deficiency of medical books in that language, the students of Salerno resorted to the Arabic authors, which were for the most part bad translations from the Greek, abounding with the interpolations and commentaries, undistinguished from the text, of the Arabian physicians. These were at length presented to the world in a Latin garb. This bad translation of a bad translation, overwhelmed with the new commentaries of the scholastics, which were mere sophistical speculations founded on the Aristotelian logic, and having no relation to experience, formed the library of the doctor of physic in those days.

These doctors appear to have practised physic in all its branches; that is, in the operative parts of surgery, and in the administering as well as the prescribing of medicine, in imitation of their Grecian, Arabian, and Roman preceptors. This practice seems also to have become so lucrative, as to induce many of the monks to leave their monasteries during long intervals, to the neglect of their religious devotions. Their brother ecclesiastics, either scandalised by this neglect of their order, or envious of the profits derived from these secular avocations, prohibited them by the canons of several councils †; and at length, at the council of Tours ‡, it was by the eighth canon declared, that none of the regular

* Wood's Hist. of Oxford, fo. vol. ii. p. 18. Quarto, Gutch, vol. ii. p. 765. vol. i. p. 52. 54. Chaucer's Doctor of Physic's Tale.

† Council of Rheims, 1131. Council of Lateran, 1139.—*Concilia*, vol. ii. pp. 986. 1004. 1421.

‡ An. 1163.

clergy should devote their attention to physical compositions *, and that such as should absent themselves from their house during two months, should be treated as excommunicated, and afterwards degraded. This canon is drawn up in terms of great moderation, and with an unusual degree of respect towards the persons against whom it was aimed; for at the same time that it charges them to have been tempted by the arch-enemy to undertake duties at variance with their religious character, they are complimented as being the dainty morsels of Satan, the most worthy members of their profession, and seduced through the best feelings of their nature — a desire to alleviate the sufferings of their brethren. From this time the monks confined themselves to the prescribing of medicines, to be compounded and administered by others, and wholly abstained from the manual operations of surgery; and the secular clergy, though not within the interdict of the council, may in general be supposed to have imitated their brethren of the rule. And as the monks were in possession of the seminaries of learning, the study of prohibited surgery probably found but few admirers.

* Non magnopere antiqui hostis invidia infirma membra ecclesiæ precipitare laborat: sed manum mittit ad desiderabilia ejus; et electos quoque nititur supplantare dicente Scriptura, escæ ejus electæ. Multorum si quidem casum operari se reputat, ubi pretiosius aliquod membrum ecclesiæ fuerit aliqua calliditate detractum. Inde nimirum est, quod se in angelum lucis more solito transfigurans, sub obtentu languentium fratrum consulendi corporibus et ecclesiastica negotia fidelius pertractandi, *regulares* quosdam ad legendas leges et *confectiones physicales* ponderandas de claustris suis educit. Unde ne sub occasione scientiæ spirituales viri mundanis rursum actionibus involvantur, et in interioribus eo ipso deficiant, ex quo se aliis putant in exterioribus providere, de præsentis concilii assensu, huic malo obviantes, statuimus ut nullus omnino post votum religionis, post factam in aliquo religioso loco professionem, ad physicam legesve mundanas legendas permittatur exire. Si vero exierit et ad claustrum suum infra duorum mensium spatium non redierit: sicut excommunicatus ab omnibus evitetur et in nulla causa, si fratrocinium præstare presumpserit aut tentaverit, audiatur. Reversus autem ad claustrum, in choro, capitulo mensa et cæteris, ultimus fratrum semper existat: et nisi ex misericordia forsan sedis apostolicæ, totius spem promotionis amittat.—*Concilia*, vol. x. p. 1422. ed. Lut. Par. 1671. *Fleury, Hist. Eccl.* tom. xv. p. 134.

Hence arose the distinction of the orders; the abandoned profession of surgery fell into the hands of the barbers and smiths, as the kindred avocations, of whom more will be said hereafter.

Various orders of practitioners.

From this time there grew up three regular, and many irregular, orders of medical practitioners. But as there was no legal prohibition to restrain any adventurer from entering upon the profession, it may, perhaps, be better distributed into the following classes: first, the scholars; secondly, surgeons of all sorts; thirdly, the grocers or poticaries; fourthly, the empirics; fifthly, the alchymists; sixthly, the sorcerers; and lastly, the witches or herbalists; to whom may be added the astrologers, who rather foretold sickness and recovery, than attempted by any natural means to prevent or cure diseases.

Physicians.

The physicians were almost uniformly of the order of Galen,ever compounding and varying their compositions. To have prescribed a simple medicine would have been an act of ignorance; it was necessary to prescribe a mixture in all cases to prove that they were learned, and the learning of the rival physicians was estimated by the number of ingredients in a mixture. It is not therefore surprising that the unfortunate bishop of Salisbury should have found that no two of his physicians could ever agree in opinion, and that the results of their practice should have proved so greatly at variance with what their learned disquisitions might have led him to expect.*

The more ingeniously complicated mixtures were duly recorded and pressed into the commentaries on the already deformed Greek writings, until every disease was provided for by a thousand contradictory prescriptions, and a mighty thesaurus medicinæ compiled, of which we have the quintessence transmitted to us in John of Gaddesden's Medical Rose.†

* J. Sarisburiensis, Policrat. lib. ii. c. 29. p. 147. Ib. Metalog. lib. i. c. 4. p. 743.

† Some of their prescriptions were of a very fanciful character, of

These gentlemen however made a vast parade of their learning; and being often men of ecclesiastical rank obtained for themselves great wealth, and for their profession a respectable footing in society, with which the surgeons and apothecaries, though often rewarded by considerable profits, could never raise themselves to any degree of equality; and the rate of their remuneration may be inferred from the case and patent given in the note.†

---

which the Medical Rose furnishes among others the following infallible remedy for the small pox :—

After prescribing an interminable list of medicines and other regulations with regard to diet, &c. this first of English physicians proceeds. Postea ad alia est pergendum, capiatur ergo scarletum rubrum, et qui patitur variolas involvatur in illo totaliter, vel in alio panno rubro; sicut ego feci, quando Inclyti Regis Angliæ filius variolas patiebatur, curavi ut omnia circa lectum essent rubra, et curatio illa mihi optime successit; nam citra vestigia variolarum sanitati restitutus est.—*Rosa Anglica*, p. 1050, ed. 1595.

† Master Simon de Brendon v. the Prior of Lewes. Writ of annuity for 20*l.* arrear. Plaintiff declared that the predecessor of the prior granted him an annuity for the term of his life.—*Candish.* It appears that it was granted for his counsel and aid, and Master Simon is a doctor of physic, and defendant's predecessor, the successor of him who granted the annuity, was ill, and sent to plaintiff one A. of B., and requested his counsel and aid in the presence of A. C., and he would neither counsel nor aid him, whereby the annuity is extinct.—*Belknap.* It is a double plea to say he requested his counsel and also his aid et non allocatur, for the one is dependent upon the other. Wherefore he afterwards said, the deed does not show expressly that plaintiff must travel to him, but that he is to have our counsel and aid, that is in the place where we may be found, and he has not shown what his complaint was, so that we could give him counsel, nor does the deed show that we were to give him counsel rather in physic than in any other thing.—*Candish.* We have alleged that you are a physician, and that the annuity was granted on that account, and the malady he could not himself have known, in as much as it is a private thing which appears only by inspection of urine, which he could not himself understand, and therefore could not certify to you. If I grant an annuity to one pro consilio et auxilio habendo, that shall be understood in such matters as he best understands; for if such annuity be granted to a lawyer, he ought to aid and counsel in the law.—*Finchden.* It has been adjudged that where an annuity was granted to a lawyer pro consilio, &c. he is not bound to travel, but only to counsel him where he may be found; therefore, since the prior did not go to him he was not in

41 Ed. 3. b. a. Ib. 19. b.

In the year 1237 were made the celebrated regulations of the college of Salerno, by which every person was required to spend three years in the study of philosophy, and five years in the study of physic, and to obtain a licence after examination by two doctors before he could enter upon practice in that faculty. Similar regulations appear to have been soon after adopted by the French and English universities.

The laity were never expressly excluded from the practice of physic, provided that they obtained the

---

default, and therefore he could not give his counsel unless the prior signified to him what was his disease, for if one grant you such annuity, you cannot counsel him unless he disclose his case. — *Candish.* As to the law every one knows how his case stands, in point of fact, on which I can give advice; but a disease is so secret that no one can know it except a physician; therefore, as the party could neither inform the physician of his case, nor travel to him on account of his disease, the physician was bound to go to him. — *Thorpe* to *Candish.* The deed is pro consilio et auxilio, &c. and if he were learned in any science other than physic; as surgery, law, or the like, tell me in which he is bound to counsel and aid him. — *Candish.* In that for which the annuity was granted. — *Thorpe.* Put it that he knew not how to counsel or aid, would the annuity be extinct? — *Candish.* No truly, for he is not bound to aid or counsel him beyond his knowledge; but when we have alleged that he was a doctor of physic, and that that was the reason why the annuity was granted, sc. pro consilio et auxilio suo nobis et monasterio nostro impenso et inposterum impendendo, and that our predecessor sent to and requested him, &c. and he does not deny it, it seems that the annuity is extinct. — *Belknap.* You have not said that you informed us what was your complaint, so that we could give you our counsel, and the deed does not show that we ought to travel. Besides we say that the prior purchased the church of Thames to his own use, of which Master Simon was in possession, and Master Simon resigned the church to them, and that the annuity was granted on that account.—The remainder of the case turned on a point of pleading, and no judgment is reported.

A.D.1444. Claus. 22 H. 6. m. 9.

Pro physico Regis.

Rex collectoribus parvæ custumæ suæ in portu civitatis suæ Londoniæ, qui nunc sunt et qui pro tempore erunt, salutem.

Cum de gratia nostra speciali concesserimus dilecto servitori nostro magistro Johanni Faceby, physico nostro, centum libras percipiendas annuatim a festo Sancti Michaelis ultimo præterito pro termino vitæ suæ de parva custuma nostra in portu prædicto, &c.

The patent afterwards proceeds to direct the collectors to pay this sum annually, and take Faceby's receipt for the same, which is to be allowed them in their accounts at the Exchequer.

necessary degree; but as few remained long at the colleges without receiving holy orders, we do not find many laymen among the medical practitioners, who were often beneficed clergy, and sometimes even bishops and other dignitaries of the church. The canon of the council of Lateran*, also, which provides that the physician for the health of the body should first call in the physicians of the soul, and postpone all attempts to cure the body until the sick person had taken care for his spiritual medicament, gave the clerical physicians a considerable advantage over their lay competitors.

Nor could the English colleges of their own authority prevent any from undertaking to practice, though they had not obtained a degree in physic. On this account, therefore, in the ninth year of the reign of Henry the Fifth† our universities proposed to pass an act of parliament for the purpose of excluding every one from the practice of physic who had not taken the degree of bachelor of medicine, either at Oxford or Cambridge, under the penalty of 40*l.* and imprisonment, whether man or woman.

This measure had not, however, the desired effect; indeed, there appears to be some doubt whether it ever obtained the force of an act of parliament, on account of its being referred to the privy council for confirmation. In the third year of the reign of Henry the Eighth was passed an act‡, which is generally received as the first operative law on the subject, and which takes no notice of the supposed statute of Henry the Fifth. By this, which is especially aimed against the sorcerers, witches, and smiths, "who can no letters on the book," provision is made both as to sufficiency of learning, and purity from supernatural attainments, by appointing the bishop of the diocese to exorcise the fiend, and two doctors to examine the medical qualification of the candidate. This statute evidently shows that there were many phy-

* P. iii. † Ibid. ‡ P. vi.

sicians openly and legally practising, who had derived no sanction from Alma Mater; for they alone appear to have been the proper objects of the examination, as the third clause of the same act provides for the right of the university graduates to practise without undergoing it.

In the fourteenth year of the same reign *, another act was passed, relative to physicians only; by which, in as much as they were concerned, the examination was taken from the persons appointed for that purpose by the former statute, and reposed in the college instituted by a charter of that king. Under this the university graduates who might desire to practise in London, were included, as well as the other physicians; and since that time the Legislature has seldom interfered on the subject.

The health of royalty has generally occupied much of the national attention, and in less civilised times created no little anxiety in those to whose care it was entrusted. The attendants of King Pyrrhus are not the only royal physicians who have been suspected of an intention to make away with a tyrant. Nor was Galen singular in deeming pepper in wine too strong a prescription for an emperor. The appointment of physicians and surgeons for the King of England was from a very early period made by his majesty, with the assent of the privy council; and the persons honoured with this great trust, deemed it expedient to obtain a licence for every thing which they might think it necessary to prescribe or perform, in the discharge of their duty. The list of the remedies which they were permitted to use is rather curious, and shows how careful they were to be indemnified in their proceedings.

Vide p. iv. and Lord Coke's eulogium on the royal precaution, 4 Inst. 251.

Surgeons.

At first, as it has been already shown, the monkish physicians were the only regular surgeons, and it is not unlikely that they sometimes employed the barbers and farriers in the less agreeable part of the occupation.

In the eleventh century arose two singular orders of

* Page vii.

medical practitioners. The Knights of the Hospital, in addition to their military duties, undertook the care of the sick and wounded, and accompanied the Christian armies in the double capacity of warriors and surgeons; but the more remarkable order was that of St. Lazarus. The members of this fraternity at first associated themselves for the purpose of taking care of such as were subject to the leprosy, or rather, were themselves lepers; who, excluded from general society, formed a separate community, and at length becoming numerous and useful, obtained this order of knighthood, into which they admitted many who were not infected with this complaint. They afterwards formed two classes, the healthy and the diseased, of which the former, like the sons of Esculapius, accompanied the armies to battle, but declining the privilege claimed by the heroes of the Barber-Surgeons' Company to stand therein, unharnessed and unweaponed, signalised themselves far more by their martial achievements than in the feats of anointing and plastering; but in reference to the origin of the order, it was a regulation among them that no one could attain the rank of its master, who had not himself been a leper.

The operative part of surgery being totally abandoned by the scholars in pursuance of the canon of Tours, it fell into the hands of the barbers and smiths. The members of each of these mysteries having perhaps been often before then called upon by the regular doctors, to aid with their sharp and burning instruments, it was natural that they should assume this part of the business as soon as their superiors had relinquished it, and extend their practice by the application of the recipes which they had picked up in the course of their service as assistants. But the more dignified and regular surgeons were the gentlemen of the Barbers' Company. The familiars of the rich, skilful in the application of baths and ointments, they associated the knife and lancet with the razor and scissors; and gleaning from the books of the physicians such receipts as had been translated into English, esta-

blished as rigorous a doctrine in surgery as the scholastics had previously introduced concerning physic.

An. 1199. The first recorded instance of the co-operation of physicians and surgeons, to which our attention is particularly attracted, is in the unfortunate case of Richard the First, who seems to have been attended and horribly maltreated by both when wounded at the siege of Chalus: his life was the price of his confidence.*

With the exception of a few surgeons about the court†, the body seems to have held a very low place in society, although they were by no means numerous. The indenture between King Henry and Thomas Morestede, his body surgeon‡, shows that though their number

* William the Breton, a contemporary poet, in his Phillipiade, speaking of this event, says,

Interea regem circumstant undique mixtim,
Apponent medici fomenta, secantque chirurgi
Vulnus, ut inde trahant ferrum leviore periclo.

Vide *Pasquier Recherch. de la France*, lib. ix. c. 31. p. 825.

In the thirtieth and two following chapters of this book of Pasquier's, will be found a particular detail of the proceedings of the French surgeons and physicians, and of the contests between them relative to the extent of their respective practice.

† Henry the Sixth granted letters of denization to Michael Belwell, valetto ac sirurgico suo, to enable him to hold lands and to sue, &c. Rym. Fœd. vol. xi. p. 18. A. D. 1443.

‡ This indenture contains some very curious clauses, of which the following have been selected as most applicable to the subject: — Ceste endenture fait parentre le roi nostre souverain seignur d'une part, et Thomas Morstede surgien de mesme nostre le roy d'autre part, Tesmoigne que ycellui Thomas est demorez devers nostre dit seignur le roy, pur lui servir par un act entier en un viage que mesme nostre seignur le roy ferra en sa propre person, si Dieu plest, en son Duchie de Guyenne, ou en son royaume de France. Comenceant le dit an le jour de la moustre a faire des gens de sa retinue, au lieu que depar nostre dit seignur le roy lui serra assignez, dedeinz le moys de May prochain venant, s'il serra lors prest de faire ycelle moustre, et avera le dit Thomas avec lui en dit viage quinze persones, dont seront trois archers et les austres hommes de son mestier; et en cas q'en la campaigne de nostre dit seigneur le roy le dit Thomas passera vers le dit Duchie de Guienne, il prendra pur lui mesmes quarante marcs, et pur les gages de chascun des ditz quinze persones vynt marcs, pur le susdit an entier; et si en la campaigne de nostre dit

An. Dom. 1415. 3 Hen. 5. Rym. Fœd. t. 9. p. 237.

was small, their remuneration was by no means great; and that, indeed, the companions which this high contracting party was to take with him, were rather his servants and assistants than his equals, and that their

---

seigneur le roy l'avant dit Thomas passera vers le susdit royaume de France, il prendra pur lui mesmes dousze deniers, et pur chascun des ditz quinze persones sys deniers le jour, durant l'an susdit; et en cas du dit viage de France il prendra pur lui mesmes regard accustumes, c'estassavoir, selonc l'affetant de cent marcs pur trent homes d'armes le quartier.

Et pur la suretee de paiement pur le second quartier ferra nostre dit seignur le roy liverer au dit Thomas, en gage, le primer jour de Juyn pronchain venant, joiaux, queux par l'agrement du dit Thomas se purront bien valoir la some a laquele les ditz gages, ou gages avec regard, pur ycel quarter s'extenderont, les queux joiaux serra mesme cellui Thomas tenuz de restituer a nostre dit seignur le roy, a quele heure qu'il le veuille quitter deinz une an et demy et un moys prochein apres la reception de mesmes les joiaux, et autrement bien livre au dit Thomas et as autres queconques, as queux serront les susditz joiaux par ycellui Thomas deliverez, dispouser, apres la fin du dit moys, pur mesmes les joiaux, a lour plesir, sans empeschement du roy, ou de ses heirs, &c.

Et serra tenuz le dit Thomas d'estre prest a la meer, avec ses ditz gens, bien montez, armez et arraiez, come a lour estatz appartient, pur y faire sa moustre, le primer jour de Juill prochein venant.

Et avera le dit Thomas as coustages de nostre dit seigneur eskippeson pur lui sa retenue lour chevaux, hernois, et vitailles, et auxi r'eskippeson come averont autres de son estat passantz en dit viage.

Et s'il aviegne que l'adversaire de France, ou aucun de ses filz, neveuz, uncles, ou de ses cousins germains, ou aucun roy du quel royaume qu'il serra, ou de lieutenantz, ou d'autres chivetains, aiantz poair du dit adversaire de France, serra pris, en dit viage, par le susdit Thomas, ou aucun de sa dit retenue, nostre dite seignur le roy avera le dit adversaire, ou autre des estatz susditz, qi serra ainsi pris, et en serra resonable agreement au dit Thomas, ou a cellui qui les avera pris; et, touchant autres profitz des gaignes de Guerre, avera nostre dit seignur le roy, si bien la tierce partie des gaignes du dit Thomas, come la tierce de la tierce partie des gaignes des gents de sa retenue, en le dit viage prinses, come les gaignes des prisoners, preyes, monoie, tout or, argent et joiaux, excedentz la value des dys marcs.

This part of the indenture, delivered to the king, is under the seal of the said Thomas.

There is a patent to the same Thomas Morestede and William Bredewardyn, the king's surgeons, directing them to collect, as well through the rest of the kingdom as in London, a sufficien number of surgeons and other artificers (sirurgicos et alios artifices) for making of the instruments necessary and proper for their mystery, for the purpose of the intended expedition over sea.

A. D. 1416. Pal. 4 H. 5. m. 22. Rym. Fœd. v. ix. p. 363.

profession by no means excused them from serving in the ranks of the army.

The barbers practising surgery associated themselves, and formed one of the guilds or companies in London; and, at length, in the first year of the reign of Edward the Fourth*, obtained a charter to legalise their corporate capacity, and to give them authority over the rest of their mystery in and about that metropolis. Notwithstanding this, another body of pure surgeons sprung up, who, though unwarranted by law, became competitors of so much influence, that the barber surgeons were obliged to admit them at once into their fraternity, in the 32d year of the reign of Henry the Eighth.† Yet neither the incorporated nor the unincorporated company could maintain their ground against pretenders, until the third year of the reign of the last mentioned king, when that law was enacted under which all persons are still bound to obtain a licence to practise, except those who are members of the college of surgeons.‡

These barber practitioners kept little shops for cutting hair, shaving, bathing, and curing the wounded, particularly about the royal palaces § and houses of the great, exhibiting the bandaged pole as a symbol that "all the king's subjects might know where to apply in time of need,"‖ until their trades were at length severed through the dread of contagion.¶

The state of surgery in his time is thus described by Guido de Cauliaco, who wrote about the middle of the fourteenth century, The practitioners are divided into five sects. The first follow Roger and Roland, and the four masters, and apply poultices to all wounds and abscesses. The second follow Brunus and Theodoric, and in the same cases use wine only. The third follow Saliceto and Lanfranc, and treat wounds with ointments and soft plasters. The fourth are chiefly Germans, who attend the armies, and promiscuously use charms, po-

* p. clxvi. † p. clxxii. ‡ p. clxx.
§ p. clxvi. ‖ p. clxxv. ¶ p. clxxiv.

tions, oil, and wool. The fifth are old women and ignorant people, who have recourse to the saints in all cases.* But Guido speaks only of their practice in lighter matters; in the more important, we hear little of ointments and wine, but only of the most horrible tortures, cuttings, and burnings.† Their mode of attempting to cure wounds was by keeping them eternally open, and rankling with tents and setons, until this system was partially superseded by the doctrine of sucking them, indifferently of whatever description. The mode of stopping the effusion of blood consequent upon amputations was by applying a variety of red-hot irons to the arteries, and cementing their mouths by the formation of eschars.‡ In minor diseases, their inventive genius contrived to effect the operations of cutting and searing at the same time, by the use of red-hot knives §, or to supersede both by the application of the strongest caustics. The operation of trepanning appears to have been the subject of amusement; and the object of rivalry was to bore as many holes in the wounded skull as the instrument could make, without destroying it altogether. Whether the same ultimate remedy was usual in the case of a broken head, we are not informed; but wonderful are the virtues ascribed to the application of a yet bleeding capon to the stump from which a hand or a foot had been severed after the process of burning. ‖

* To these classes seem to have belonged the surgeons introduced by Chaucer in the Knight's Tale, as attendants on the tournament.

Men sayden eke, that Arcite shal not die,
He shal ben heled of his maladie.
And of another thing they were as fayn,
That of hem alle there was none yslain,
Al were they sore yhurt, and namely on,
That with a spere was thirled his brest bone.
To other woundes, and to broken arms,
Som hadden salves, and som hadden charms:
And fermacies of herbes, and eke save
They dronken, for they wold hir lives have.

† V. Bell's Surgery, passim.
‡ Ib. et V. p. clxxvi.
§ Fabricius de Aquapendente.
‖ P. clxxvi.

Cruel and bloody as it seems, this was the orthodox method of practice, a deviation from which was visited in this land by punishments nearly similar to those prescribed on the like offence by the laws of the celestial empire. *

Apothecaries.

The apothecaries, or rather the grocers, had their own share in the business long before the distribution of the medical faculty into physicians and surgeons. The grocers having collected, for culinary purposes, wine, oils, acids, honey, pepper, lard, and a few kinds of herbs, added to the stock some ointments, and such herbs as were peculiarly applicable to medical purposes. The making of diet drinks was among their ordinary vocations. The village and even the city apothecary was a dealer in eatables and drinkables of all sorts. The itinerant quack was the only exclusive vender of medicine. Some who had stored up the prescriptions of the physicians †, which they were bound to file as their vouchers, or the recipes of the good mothers in the neighbourhood, acquired a reputation for the knowledge of simples, and took upon them to doctor their customers. ‡ It was not until the introduction of chemical medicines, and too great a variety in the mixtures of the learned physicians had rendered the medical department of their trade unintelligible to the ordinary grocers, that the pharmacopolites appeared as a separate class, and claimed a superiority over the dealers in cheese, butter, and sugars.

The grocers or poticaries, as they are indifferently

* Pp. cliv.—clviii.

† The amicable relation between the doctor and apothecary, in his time, is thus described by Chaucer, in his character of the Doctor of Physic : —

Ful redy hadde he his apothecaries
To send him drugges, and his lettuaries,
For eche of hem made other for to winne :
Hir friendship n'as not newe to beginne.

‡ Richard Fitz-Nigel, who died Bishop of London, had been apothecary to Henry the Second. — *Ang. Sacra*, t. 1. p. 304. *Vide etiam post*, p. ccxxix.

designated, formed one of the ancient companies of the city of London; and it was only in the 13th year of James the First * that they were formed into two distinct corporations. Even from this period the apothecaries were regarded as a trading company in that city; and whoever thought proper to do so was at liberty to sell physic throughout the rest of the kingdom, provided that he had complied with the terms imposed on all traders, in serving an apprenticeship of seven years. They had, from a very early period, occasionally prescribed the medicines which they sold, thus trespassing, as it was thought, on the province of the physician, until their right to do so was supported by the decision of the House of Lords, in the case of the College of Physicians against Rose †; since which they have continued to enjoy this privilege without molestation, taking nothing for their pains ‡, or rather including a remuneration for their skill and attendance in the price of their medicine. § So generally had this branch of the faculty superseded, in many respects, the practice of the physician, that in the 55th year of the reign of the late king ‖ an act of parliament was passed to provide for the sufficiency of their education; thus, for the first time, placing them as a body on the footing of a liberal profession. The several prosecutions and actions which have recently occurred afford the clearest information as to the capacity and quality of many who had previously assumed the character of apothecary, and undertaken the responsible office of dispensing medicine to the public. ¶

Empirics.

The fourth class was that of the empirics, under which denomination the alchymists, astrologers, sorcerers, and witches may be in some respects included. They were the irregular practitioners, who, despising or ignorant of the medical library of the schoolmen, and neglecting the

* P. ccxxx. † P. xciii. ‡ Ibid.
§ Post. ‖ P. ccxxxvi. ¶ P. cclxiii. et seq.

dogmas of the regular surgeons, chalked out for themselves a peculiar line of practice.

Experimentalists.

Some of these adventurers in the medical faculty were men possessing knowledge incomprehensible to all other persons of their age, and, effecting cures by remedies which appeared to the scholastics wholly inadequate to such a purpose, were supposed to have called in aid the science of magic. To these men alone is the faculty in the slightest degree indebted for any improvement.

Some of them, imprudently yielding to the sentiments of the time, gave countenance to this absurd notion, by attributing the credit of cures due to nature, and very simple applications, to ridiculous sympathies supposed to exist between the disease and either its real or imaginary cause.

A few of this class, more boldly assigning the remedy to its proper cause, were wholly discredited in their assertions, and suspected of concealing the most criminal communication with demons under their professed simplicity.

Another class relied on the potency of their medicines, and lavishly prescribing the most desperate remedies, their destructive practice was often signalised by extraordinary cures. Less suspected than the more systematic empirics, their success being widely published, and their failures ascribed to circumstances over which their art was supposed to have no control, they acquired some degree of celebrity, and sometimes considerable wealth: men languishing under a protracted disorder being often more willing to venture on a desperate and speedy remedy, than one more certain, if tardy.

Alchymists.

Meanwhile the alchymists, among whom we must number the greatest geniuses of the age, were occupied in the discovery of the elixir vitæ, the queen of medicine, the philosopher's stone, or by whatever other name the supposed panacea, or rather panourgon, was to be called: for the master-mind of the dark ages, our illustrious countryman Roger Bacon, concurred with others, who,

surprised at their progressive discoveries in chemistry, deluded themselves with the notion of at length finding that all-pervading, all-purifying essence, which, depriving earths and base metals of their alloy, should convert them into diamonds, silver, and gold, of the utmost purity; and at the same time destroying all corruptions of the human frame, should divest age of its wrinkle, and imbuing our constitutions with an eternal vigour, render them triumphant over every disease. Though the mighty discovery never was, and never will be made, each attempt produced some new result valuable to science, and peculiarly conducive to the progress of medical knowledge; and, though unattended with the wished-for consequence, was sufficiently flattering to beguile the experimentalist to further exertions. Fortunate indeed was it for science, that it could hold out temptations so influential as the multiplying of gold, and the invention of immortality, to encourage the observation of nature and the investigation of its most hidden secrets, and to lure men of higher genius from the study of an absurd philosophy. The statute against the pursuit of this science *, supposed to have been founded on the policy of deterring the people from wasting their property in the fruitless search for gold †, was indeed merely an act to secure to the king a monopoly in this expected treasure: for, rigorously as it was enforced against private persons, we find that our royal masters had esta-

* Item ordinez est et establiez que nul désore en avant usée de multiplier or ou argent ne usée l'art de multiplicacion. Et si ascuny le face et de ceo soit atteint que il encourge la peyne de felonie en ceo-cas. 5 Her. IV. c. 4. An. 1403. This act was repealed by statute 1 W. & M. c. 30., whether in hopes of discovering the gold mine, by allowing the public to share in the adventure, or not, the preamble is silent.

† The tale of the Chanon's Yeoman (by Chaucer, who wrote about sixty years before the passing of this act,) affords an account of the proceedings of the quack alchymists, their various materials, and the innumerable technicalities and pretences by which credulous and deluded people were defrauded of their gold, which may be reasonably suspected to have more frequently found its way to the pocket than to the crucible of the adept.

blished a great laboratory for the manufacture of gold, diamonds, and physic; and pressed into their service, in this employment, every one suspected of possessing the valuable secret. There are among our records several commissions, not merely indemnifying the alchymists against the pains of the statute, so that the king were supplied with the gold, but others which required all men to pursue and take the offenders wherever they could catch them, and to compel them to labour in the royal mint. * In this appears the proud indemnity of

* Super metallo argenti per artem Alkemoniæ conficiendo.

Rym. Fœd. t. iv. p. 384. A. D. 1329. Ed. III.

Rex vicecomitibus, et omnibus aliis ballivis, ministris, et fidelibus suis tam infra libertates quam extra, ad quos, &c. Salutem.

Sciatis quod,

Cum datum sit nobis intelligi quod Johannes le Rous et Magister Willielmus de Dalby per artem Alkemoniæ sciunt metallum argenti conficere, et hujusmodi metallum ante hæc tempora fecerunt et adhuc faciunt. —— Et quod ipsi per artem illam nobis et regno nostro, per factionem hujusmodi metalli, multum prodesse poterunt si id veraciter fieret. —— Assignavimus dilectum nobis Thomam Cary ad predictos Johannem et Willielmum ubicunque inventi fuerint, sive fuerint infra libertates sive extra, ad nos sub salvo et securo conductu una cum instrumentis et aliis rebus quibuscunque dictam artem contingentibus secum inventis ducendum.

Ita tamen quod si gratis ad nos venire voluerint, tunc eos salvo et honeste ducat; et si gratis accedere noluerint, tunc eos capiat et ad nos, ubicunque fuerimus, ducat in forma supradicta.

Et ideo vobis omnibus et singulis mandamus firmiter injungentes quod eidem Thomæ in premissis faciendis et explendis auxiliantes sitis et intendentes prout idem Thomas vobis scire faciet ex parte nostra.

In cujus, &c.

Teste Rege; apud Eltham nono die Maii,
Per ipsum Regem.

Rym. Fœd. t. xi. p. 68. 240. 309.

There were similar patents granted in the 22d, the 27th, and 30th years of the reign of Henry the Sixth; but the most curious of the collection is the following, granted in the 34th year of the same reign: —

De licentia ad conficiendum Elixir Vitæ et Lapidem Philosophorum, quocunque statuto, in contrarium edito, non obstante.

A. D. 1456. Pat. 34. Hen. 6. m. 7. Rym. Fœd. xi. p. 379.

Rex omnibus ad quos, &c. Salutem.

Sciatis quod, &c.

Cum antiqui sapientes et famosissimi philosophi, in suis scriptis et libris, sub figuris et integumentis docuerint et reliquerint ex vino et lapidibus pretiosis, ex oleis, ex vegetalibus, ex animalibus, ex metallis, et ex mediis mineralibus, multas medicinas gloriosas et notabiles confici posse.

Et præsertim quandam pretiosissimam medicinam quam aliqui philoso-

science; the supposed secret not only protected its possessors from bodily injury, as that would have endan-

---

phorum matrem et imperatricem medicinarum dixerunt, alii gloriam inestimabilem eandem nominârunt, alii vero quintam essentiam, alii lapidem philosophorum et elixir vitæ nuncupaverunt eandem.

Cujus medicinæ virtus tam efficax et admirabilis existeret quod per eam quæcunque infirmitates curabiles curarentur faciliter, vita humana ad suum naturalem prorogaretur terminum, et homo in sanitate et viribus naturalibus, tam corporis, quam animæ, fortitudine membrorum, memoriæ claritate et ingenii vivacitate, ad eundem terminum mirabiliter præservaretur.

Quæcunque etiam vulnera curabilia sine difficultate sanarentur quæ insuper contra omne genus venenorum foret summa et optima medicina, sed et alia plura commoda nobis et reipublicæ regni nostri utilissima, per eandem fieri possent, veluti metallorum transmutationes in verissimum aurum et finissimum argentum.

Nos frequenter meditatione multa revolvimur quam delectabile et quam utile tam pro nobis quam pro regni nostri republica foret, si hujusmodi medicinæ pretiosæ, divina favente gratia, per labores haberentur virorum doctorum, necnon quod a retro actis diebus et annis plurimis datum fuit paucis aut nullis ad veram praxim dictarum medicinarum gloriosarum pertingere, tum propter arduas difficultates circa earundem compositionem incidentes et circumstantes, tum quia timor pœnalis ab investigatione et practica tantorum secretorum multos viros ingeniosos, naturalibus scientiis doctissimos, et ad earundem medicinarum practicas dispositissimos, ab multis diebus hucusque abduxit, abstraxit, et distrahit in præsenti, ne ipsi in pœnam incidant cujusdam statuti tempore regni Henrici, avi nostri, contra multiplicatores editi et provisi.

Quapropter congruum et expediens visum est nobis viros aliquos ingeniosos, scientiis naturalibus sufficienter imbutos, et ad practicandum dictas medicinas benevolos et dispositos, qui timeant Deum, veritatem diligant, et opera deceptoria et fallaces tincturas metallicas odiant, providere, eligere, et assignare; quorum securitati, indempnitate, et quieti sufficienter ex nostra auctoritate et prærogativa regali provideamus ne vel dum in opere et practica fuerint, vel post eorum labores et diligentias, occasione hujusmodi practicæ quovis modo perturbentur, inquietentur, aut damnificentur in personis aut bonis suis, seu eorum aliquis perturbetur aut inquietetur in aliquo.

Nos igitur confidentes de fidelitatibus, circumspectionibus, profundis scientiis, et benevolentiis egregiorum virorum Johannis Fauceby, Johannis Kirkeby, et Johannis Rayny, in scientiis naturalibus eruditissimorum, &c.

The remainder of this patent contains a grant that they might make such medicines and gold and silver without interruption, and that they might employ others to assist them; and commands all judges, magistrates, officers, and other subjects, not to interfere with their proceedings, and to make immediate compensation to them for any injury or interruption they

gered the treasure, but it extorted from sovereignty a reluctant patronage, in the hope of a remuneration exceeding the wealth of nations.

Astrologers.

But in speaking of the astrologers we are obliged to reverse the picture: the study of astronomy had led to astrology, but the progress in that science was calculated to supersede it; therefore, knowledge was impeded rather than advanced, by the students diverting their attention from the actual state of the universal system, to the investigation of imaginary affinities and influences of the relative parts over each other. After men entered upon the study of astrology they soon ceased to pursue that of astronomy, every discovery in which was likely to subvert some dogma of the astrological system. Resting content with a partial observation of the heavens, they turned to the books of the logicians, and expounded the operations of the planets by the rules and arguments of the sophists. The name became with them the actual representative of the star; and whatever were the attributes ascribed by the Greek or Roman mythology to the deity or hero whose name it bore, were immediately transferred to his personification in the celestial system. As science is only valuable in as much as it is useful to mankind, and men are ever anxious to be made acquainted with their future health and happiness, the most profitable part of the astrologer's business was thought to consist in discovering the influences of the heavens over the human frame, and especially over the affairs of their particular customers. As astronomy was not likely to afford the same profit as its meretricious sister, the study was degraded to the

---

might casually experience, concluding with a dispensation of the statute against multiplication.

3 Inst. 74. But at other times the kings do not appear to have been quite satisfied with the procrastinated promises of health and treasure: in Rot. Pat. 36. m. 13. is a patent to Wm. Cautelus, directing him to enquire into the truth of what had been written on the subject of multiplying gold and silver; and there is a similar patent to Harvie and others, rot. 35 H. 6.

purposes of gain; and those who had made some progress in the knowledge of the system, yielding to the pecuniary inducement, set an example quickly followed by others, who, knowing nothing of the matter except the hard names, applied themselves exclusively to the abracadabra of its professors.

Sorcerers.

The arch-sorcerer was his majesty the king, who set an example which has prevailed down to times comparatively modern, in affecting to cure the scrofula by his royal touch. While such an absurdity was tolerated, it was dangerous for men, however they might have despised it, to question the peculiar powers claimed to himself by every audacious magician.

But the sorcerers were of various descriptions. The first class, among whom was not his majesty, was that of those empirics who, concealing the methods by which they really effected their cures, pretended to employ supernatural means; or who, using natural and, as was supposed, inadequate modes of treatment, were suspected by the ignorant of having resort to diabolical agency.

The second and only legal class of conjurors, comprising the king and the clergy, were those who, either resorting to the aid of nature and medicine in secret, or neglecting it altogether, engaged to restore their patients to health by means of fasting, praying, preaching, and the exhibition of ecclesiastical pageants.* The diseases

* The Medical Rose offers us a peculiar and very approved remedy for the epilepsy. Advising the patient to stand upright, saying the Lord's Prayer with the mouth wide open, to prevent the first attack, and informing us that a lunatic, an epileptic, and a demoniac were the same, he gives the following sacrophysical directions:—"When the patient and his parents have fasted three days, let them conduct him to a church. If he be of a proper age, and in his right senses, let him confess. Then let him hear mass on Friday, during the fast of *quatuor temporum*, and also on Saturday. On Sunday let a good and religious priest read over his head in the church the gospel which is read in September in the time of vintage, after the feast of the Holy Cross. After this, let the same priest write the same gospel devoutly, and let the patient wear it about his neck, and he shall be cured. The gospel is,—'This kind goeth not out but by prayer and fasting.'"—*Ros. Ang.* p. 78. ed. 1491. *Ib.* p. 415. ed. 1595.

of the imagination, by no means few, were easily cured by each of these sects; the diseases of the body only by the former.

The third class of sorcerers were those who were merely inferred to adopt magic in effecting their cures, although they often resorted to remedies sufficiently characteristic and powerful, because they pretended, or were suspected, to blend magic with their studies. These are the men who were sometimes discovered with a book in strange characters (in those times the most conclusive and fearful evidence), and a human skull, or some other part of the human body, in a secret lamp-lit chamber. It was scarcely possible to imagine that any knowledge could be derived in such a place from such materials, except by the attendance and under the instructions of a demon preceptor. Recollecting the denunciations of the legislature, and the persecutions of the bigoted and ignorant clergy, we are rather surprised at the lenity with which these awful characters were sometimes treated by the courts of justice*; unless we suppose that the lawyers had felt the advantage of being attended by men who had, through these secret arts, obtained some knowledge of the organisation of the human frame.

Witches. The last of this class, who, if male, were called wizards, a word descriptive of an inferior grade, and if female, witches, were the humbler race of herbalists, who, in administering their simples, affected to imbue them with the power of healing, — if good, by psalmody; if evil, by muttering ridiculous incantations.

Jews. There was one class of physicians, however, that has not yet been mentioned, who, at an early period of our

* There is a note in the year book, 45 Ed. 3. fo. 17. b., of which the following is a literal translation:—A man was taken in Southwark with a head and face of a dead man, and with a book of sorcery in his mail, and brought before Sir J. Kinvet, Justice of the King's Bench; but there was no indictment against him, so the clerks made him swear that he never would be a sorcerer; and he was delivered from prison, and the head and book were burnt at Tothill, at the charge of the prison.

history, alone possessing any valuable knowledge of medicine, pursued their course in secret, and under the foulest suspicion. Sorcerers, magicians, wizards, witches, stigmatised with each opprobrious name, not because they appeared to belong to any of these various sects, but because they were Jews, whose most wholesome drugs were supposed to operate as poison upon a Christian body; whose simplest experiment in surgery was supposed to be fatal to every follower of the cross. The fact is, that this scattered race had among their brethren learnt the arts of healing practised by the Arabians, Greeks, and other Orientals, and, introducing them into these parts without the pomp of learning, were infinitely superior to the leeches of Catholic Europe. When a more friendly intercourse with the Moors of Spain had led to a translation of the Arabian authors, the mysteries of the Jewish physicians were for the most part divulged, and their skill in medicine was gradually superseded; so that, at length, their only remaining excellence was in the simplicity of their practice, their timidity and precarious situation deterring them from more desperate and dangerous measures, in which they were eventually emulated, and perhaps excelled, by the more scientific among the empirics.

Pretenders in all sects.

In all these sects there were innumerable pretenders, of whom some wholly unacquainted with medicine, and furnished with a panacea of the properties of which they were ignorant, applied it alike to all diseases. It was fortunate for their deluded patients when the recipe was so inefficient that it permitted the disease to pursue its progress without interruption, and left the vigour of the constitution no worse enemy with which to contend. But dreadful must have been the consequence of a medicine of the more formidable class getting into their hands. The mercurial regimen for the syphilis, successfully as it was applied by the more cautious practitioners, appears to have made horrible havoc under the management of quacks, the chief advantage obtained by their

patients being a speedy relief from their sufferings by poison or suffocation.

Others, armed only with the charms, the sympathetic powders, the book, skull, crucible, or strange vocabulary of the more talented empirics, and uninitiated in the secret of their practice, imagined themselves sufficiently furnished, and were often believed by others equally competent, to effect the cures which they had witnessed and heard of, produced, as they supposed, by similar ceremonies. Many of them, surprised at the efforts of nature in vanquishing disease, acquiesced in the popular opinion, and thought themselves favoured with supernatural assistance.

The statutes and prosecutions against witchcraft and sorcery would, of themselves, furnish an amusing view of the manners and sentiments of the times: for the parliament seems to have entertained as much jealousy of their interference with physic, as the churchmen of their interposition in the spiritual concerns of the people; and their influence was equally dreaded as likely to prevent injuries, and to defeat the ends of justice. On which account, the champions in the trial by battle were required to take an oath that they possessed no herb, spell, or enchantment, whereby the power of God might be abused, or that of the devil exalted.* But it

Ladies.

was not the low and vulgar class of witches or old women alone who took upon them to attend on the sick. In the age of chivalry, the high-born damsel deemed it an essential part of her education to acquire some proficiency in the art of healing. Nor does her attention appear to have been confined to the knowledge of the medicinal virtues of herbs. She was not only skilful in composing soothing drinks, and making ointments, but

* The oath was couched in the following or similar terms: — "Hear this, ye justices, that I have this day neither eaten, drank, nor have upon me neither bone, stone, ne grass, nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased, or the law of the devil advanced. So help me God, and his saints."

our ancient poets describe her as occupied in setting broken and dislocated limbs, and superintending the dressing of the wounds of her champion.* The kindness and attention of such a surgeon would, at least, alleviate the mental sufferings of the knight; and probably her simple remedies were, with the aid of nature, the best regimen of the period.

* Mills's History of Chivalry, vol. i. p. 187.

" Where many grooms and squires ready were
To take him from his steed full tenderly ;
And eke the fairest Alma met him there,
With balm, and wine, and costly spicery,
To comfort him in his infirmity :
Eftsoones she caused him up to be convey'd,
And of his arms despoil'd easily ;
In sumptuous bed she made him be laid,
And all the while his wounds were dressing by him stay'd."

Fairy Queen, l. 2. c. 11. st. 49.

" So prosper'd the sweet lass, her strength alone
Thrust deftly back the dislocated bone ;
Then culling curious herbs, of virtue tried,
While her white smock the needful bands supplied,
With many a coil the limb she swathed around,
And nature's strength return'd, nor knew the former wound."

Ib.

CHAP. II.

PRESENT ORDERS OF THE MEDICAL PROFESSION.

The law recognises only three orders of the medical profession: physicians, surgeons, and apothecaries. It tolerates, however, such persons as through charity, and without receiving any remuneration, minister to any outward sore, uncome, or apostumation, outward swelling or disease, any herbs, baths, poultices, or emplasters, according to their experience or knowledge; or drinks for the stone, strangury, or agues.* Chemists and druggists also are noticed as persons who may make and vend medicines; and it may be difficult to show that they may not compound them according to the prescriptions of a physician, or the orders of an apothecary: but they cannot, in any case, prescribe physic of their own authority.†

Section I.

Physicians.

Their proper practice.

The first class of medical practitioners in rank and legal pre-eminence is that of the physicians. They are, by statute 32 Henry 8., allowed to practise physic in all its branches, among which surgery is enumerated.‡ The law, therefore, permits them both to prescribe and compound their medicines, and as well to perform as to superintend operations in surgery. These privileges are also reserved to them by the statutes and charters relating to the surgeons and the apothecaries.

Yet custom has more decidedly distinguished the classes of the profession, and assigned to each its peculiar avocations. The practice of the physician is universally understood, as well by their college as the

* Vide p. clxviii. † Vide p. ccxx. ‡ Vide p. xv.

public, to be properly confined to the prescribing of medicines to be compounded by the apothecaries; and in so far superintending the proceedings of the surgeon as to aid his operations by prescribing what is necessary to the general health of the patient, and for the purpose of counteracting any internal disease.*

Classes. English physicians are of two classes: physicians of the College of London, and graduates of Oxford or Cambridge.

College. The physicians of the college are again subdivided, into licentiates who may practise within the precinct of London (that is, in that city, and within seven miles round it); and licentiates who may practise in other parts of England, and in Wales and Berwick-upon-Tweed †, but not within the precinct of London.

* Vide post, sec. 2.

† Wales was first annexed to the English crown by Edward the First; yet it was treated by him not as a new acquisition, but as a portion of the kingdom which had been formerly held as a fee of the crown of England, and then resumed on account of the rebellion of its princes. In the same manner was it considered by Henry the Eighth, in whose reign it was enacted (27 Hen. VIII. c. 26.) that the laws of England should extend to the principality of Wales.

The town of Berwick-upon-Tweed was first annexed to this kingdom in the reign of the first Edward, and also treated as a part of the ancient dominions of his crown. After being several times taken by, and retaken from, the kings of Scotland, it was finally incorporated with England, by statute 22 Edw. IV. c. 8. By a more recent statute, 20 Geo. II. c. 42., it was, as Lord Mansfield * and the learned Commentator † have observed, perhaps superfluously declared and enacted, "that in all cases where the kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any act of parliament, the same has been, and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales and town of Berwick-upon-Tweed." So much, therefore, of statute 14 & 15 Henry VIII., and other statutes relating to the medical profession, as applies to persons practising in other parts of the kingdom of England, than London and its precinct, is equally applicable to Wales and Berwick-upon-Tweed, although neither of them may be expressly mentioned.‡

---

* R. *v.* Cowle, 2 Bur. 850 — 864. † 1 Bl. Com. 99.

‡ Vid. Vaugh. 215.; Com. Dig. Wales, A. 2.

London licentiates.

The licentiates of the college who may practise within the precinct of London are of three orders: fellows, candidates, and mere licentiates, of whom the last are alone generally denominated licentiates.

It is proposed, therefore, first, to make a few remarks on the constitution of the college; then to treat in order of the mere licentiates, the candidates, and the fellows of the college; afterwards of the country licentiates; and, lastly, of the graduates of the universities.

Constitution of the college.

The charter (10 Hen. 8.) granted to J. Chambre, T. Linacre, F. di Victoria, N. Halsewell, J. Francis, and R. Yaxley, that* they, and all men of the same faculty of and in the city of London, should be in fact and name one body and perpetual community or college; and that the same community or college might yearly for ever elect and make some prudent man of that community, expert in the faculty of medicine, president of the same college or community, to supervise, observe, and govern, for that year, the said college or community, and all men of the same faculty and their affairs; and also, that the president and college of the said community might elect four every year †, who should have the supervision and scrutiny, &c. of all physicians within the precinct of London.

President.

Censors.

Elects.

The statute (14 Henry 8.) confirmed this charter, and further ordained, that the six persons above mentioned, choosing to themselves two more of the said commonalty, should from thenceforth be called and cleaped elects‡; and that the same elects should yearly choose one of them to be president of the said commonalty, and then provided for the election of others to supply the rooms and places of such elects as should in future be void by death or otherwise, which was to be made by the survivors of the same elects.

Examiners of apothecaries' wares, &c.

The statute 32 Henry 8. provides, that from thenceforth the president, commons, and fellows might

* P. ix. † P. x. ‡ P. xii.

yearly, at such time as they should think fit*, elect and choose four persons of the said commons and fellows, of the best learned, wisest, and most discreet, such as they should think convenient, and have experience in the faculty of physic, to search and examine apothecaries' wares, &c.

This last appointment is independent of the constitution of the body, the persons so appointed being officers for a special purpose; and it has been usual to select for this office the same four persons, in whom the government of the physicians is reposed by the charter and statute of the 14th of that king.

Same as the censors.

The constituted officers of this corporation are then the eight elects, of whom one is to be president, and four governors, who have generally borne the name of censors.

Constitutional number.

There is nothing to be gathered from the charter or statutes in any manner tending to exclude any of the elects, except the president, from the office of censor; and as no duties are assigned to the elects, except those of filling up their own number, electing one of themselves to be president, and granting testimonials to country practitioners, they may be rather regarded as candidates for the office of president than as active officers of the corporation.

The college is bound to choose four censors, for the purpose of discharging the duties confided to it, which are to be executed by these officers. It is incumbent, also, on the elects to preserve their number, so that there may at no time be less than five, including the president, as they would not, after a further reduction, be capable either of electing a president, or choosing others to fill the vacancies in their own body.†

And the statute having directed that the choice of a new elect should be made within thirty or forty days

* P. xiv.

† R. v. Fowey, 2 Barn. and Cres. 596. S. C. Dow. and Ry. 141. R. v. Grampound, 6 T. R. 302.

after the happening of each vacancy, if the survivors should not make such election within the latter period, the court of King's Bench will, on the application of any person having an interest in the corporation, issue a writ of mandamus to require them immediately to fill the office.*

There is no power expressly given to the corporation to supply any deficiency in the number of censors occurring through the death of either of the persons selected to fill that office, before the expiration of his year.

Original fellows.

It is evident that the charter so far incorporated all persons of the same faculty, of and in London; that every person on the 23d of September, in the 10th year of the reign of Henry the Eighth, falling within that description, was entitled to be admitted into the association.† Such of them as had availed themselves of this privilege, and others subsequently admitted, are the persons described by statute 32 Hen. 8., as commons and fellows ‡. But as to the persons who should afterwards enjoy that distinction, the original charter, and all subsequent statutes, are silent.

Succeeding fellows.

James the First and Charles the Second granted charters to this body. The first is silent as to the mode of continuing it; but the charter of Charles, after limiting the number of fellows to forty §, directed that when a vacancy should occur in that number, the remainder should elect ‖ one of the most learned and able persons skilled and experienced in physic, then of the commonalty or members of the college. Each of these charters seems to have been granted with a view to the enactment of a bill to the same effect, as the monarchs respectively pledged themselves to give it the royal assent. ¶ No statute has been at any time passed in pursuance of this purpose; and it is very doubtful how far, and in what

* R. v. Sparrow, 1 Bott. P. L. 34. 2 Strange, 1123. 2 Ses. Ca. 140.
† P. lxxvii. ‡ P. xiii. § P. xxii. ‖ P. xxiii.
¶ Pp. xxi. xxviii.

manner, the charters have been accepted by the college.

They have certainly been several times acted upon; and in one case, the latter was made the foundation of protracted proceedings in the Court of King's Bench*, but of the ultimate result of this case I have not been able to find any account. It was probably abandoned on the opinion expressed by the judges; and, as far as I have been able to trace it, this charter appears to have been considered as duly granted, and unconditionally accepted.

As to the restriction of the number of the fellows, Lord Mansfield held a bye-law of the college, which purported to fix it at twenty†, utterly void, as a regulation contrary to the constitution of the body. His Lordship's attention does not appear to have been directed to this charter. What would be the effect of such a charter, duly granted to, and accepted by, a corporation instituted by a charter confirmed by act of parliament‡, such original charter being in its language general, would be exceedingly doubtful; and in this case the difficulty would be considerably increased by reason of the circumstances under which this patent was granted. There exists a strong and just feeling against almost all the charters granted by Charles the Second to any corporation exercising any kind of municipal jurisdiction §, all of them having been issued for political purposes, and in consideration of surrenders for the most part void, as a surrender by the College of Physicians, whose franchises were held under an act of parliament, must undoubtedly have been. To this must be added the consideration that this patent is in many respects nugatory and void, as it was evidently understood to be when granted, from the circumstance of its contemplating a confirmation by statute. On the whole, it would not, perhaps, be going

* Sir Hans Sloane's Case, 8 Mod. 12. † Vide p. 1.

‡ R. v. Miller, 6 T. R. 277. R. v. Haythorne, 5 B. & C. 425.

§ Quo. War. Ca. p. 10. 2 Shower, 252. 1 Strange, 387.

too far, notwithstanding the case of Sir Hans Sloane*, to say that an attempt to restrict the number of fellows, by any absolute rule in conformity with this charter, would be very imprudent, if not altogether nugatory: and that the safer course is to regard both these charters as unaccepted and void. The office of registrar, mentioned in each of them, had existed from the institution of the college, and every corporation having an incidental authority to appoint all convenient officers it is unnecessary to resort to either of these charters to sustain his appointment.

As to the election of fellows, it will appear, from another part of this work, that the charter of Charles is wholly immaterial. But as that subject will be there fully treated, it is sufficient in this place to speak of their public functions after election.

Duties of the college.

This college is, to a certain extent, a private body. It was instituted in a reign during which patents of monopoly and exclusive privileges were daily granted, and more frequently for the purpose of replenishing the exchequer, and enriching individuals by the profits of the monopoly, than in consideration of the public welfare. But whatever motives may have been imputed to Cardinal Wolsey, and the associates of Linacre†, there is no reason to believe that the latter were influenced by mercenary views in procuring this incorporation; for in it were included all the physicians then practising in London; and, from its general tenor, it is more reasonable to attribute the omission of the continuance of this inchoate right in future practitioners to inadvertence than design, as it was for a long time thought to afford sufficient grounds for contending that it did actually continue such right.

Yet the effect of this omission has been to create this a private corporation to a certain extent; that is, in as much as relates to the mode of enjoying its property and

* Ante, p. 35. † Vide p. cxi.

the regulations which it may think proper to make as to the conduct of its members; and in other respects to give the public an interest in the institution, by vesting in the body at large the exclusive power of permitting physicians to practise * within the precinct of London †, and of making ordinances for the government of all men of the faculty within that district; in the president and elects a concurrent authority with the universities, to license country physicians ‡; in the president and censors the exclusive government and regulation of the affairs of all men of the faculty of physic, practising within the precinct of London §, and in the censors alone the examination of apothecaries' wares. ‖

From this it appears that the public functions of the fellows are to judge of the qualification of applicants for a license to practise within the precinct of London, to make ordinances for the regulation of all practitioners therein, and to elect, from time to time, proper persons to discharge the offices of censors and of examiners of apothecaries' wares.

Community of the college.

The president and fellows, whether censors or elects, or merely fellows, constitute the community of this college, being the only members of it. In all acts to be done by the body at large the other fellows have equal rights with the censors and elects; for these form select bodies for special purposes only, and not for the making of bye-laws, or the other general purposes of the corporation.

Were the elects and censors select bodies for general purposes, the presence of the president, three censors, and four elects, would have been necessary to constitute a corporate meeting. But as they are not such select bodies, it is only requisite that there should be present for the making of bye-laws and admitting physicians, the

* P. ix. Licentiates.
† Ib. Ordinances.
‡ P. xii. Licentiates.
§ P. x. Correction.
‖ P. xiv.

president and such of the fellows, whether censors, elects, or not, as may think proper to attend.

Had the number of fellows been limited to forty, it would have been necessary that twenty-one of them should have been present on all such occasions, and that each of the forty, residing within seven miles of London, should have had express notice of every corporate meeting. But as the number is unlimited, it is merely necessary that the corporate business should be done on certain fixed days, known to be set apart for such business, and that some of the fellows should be present as well as the president, without any restriction as to number: and that notice should be given of extraordinary meetings, or of extraordinary business to be done at an ordinary meeting, to each fellow residing within the precinct of London.

Vice-president.

The charter of Charles the Second * affected to empower the president to appoint a vice-president to act in his absence. The circumstance of such an officer having been frequently appointed, and being noticed by the regulations of the college, affords reason to believe that these charters were accepted. But the effect of such appointment by such charters may be very doubtful, and render it advisable that this officer should not act in in granting licenses, or making bye-laws, or with the censors in punishing physicians for malpractice. It is, however, proper to observe, that the vice-president was mentioned by statute 10 Geo. 1. c. 20, which though temporary may be considered as a legislative recognition of the legality of the office.

London licentiates.

The London licentiates, as has been already mentioned, are divided into mere licentiates, candidates, and fellows.

Mere licentiates.

The first of these classes alone, generally called licentiates, are those who have only a licence to practise physic within the precinct of London.

* P. xxiii. † P. xxix.

Candidates.

The second class are those who have received that licence; but whose licence also states, that they are admitted to the order of candidates.

Fellows.

The third class are those who have received that licence, but whose licence also shows that they are admitted to the order of fellows. This licence has often been called a diploma, but as it confers no degree, the word is not properly applied, according to its more strict signification.

Licentiates to practise in London.

The order of licentiates was created by the following clause of the charter of Henry the Eighth:—We have granted also to the same president and college *, or community, and their successors that no one in the said city, or within seven miles around it, may practise in the said faculty until admitted to this by the said president and community, or their successors, for the time being, by the letters of the same president and college, sealed with their common seal, under the penalty of one hundred shillings for every month for which, unadmitted, he may have practised in the same faculty, half to be applied for us and our heirs, and half for the same president and college.

The common law has given every man a right to practise in any profession or business in which he is competent.† The statute 3 Hen. 8., had referred the examination of this competency as to physicians, within the precinct of London, to the bishop of that diocese, or the dean of St. Paul's, calling to him four doctors of physic. The preceding clause of the charter was therefore void, as against common law and an express statute. But the effect of incorporating it into the statute 14 Hen. 8. was to render it legal; and the only remaining question was, whether it superadded this qualification to that required by 3 Hen. 8., or whether it indirectly abrogated that statute. The general opinion of the lawyers and of the medical profession appears to be, that the qualification required by 3 Hen. 8., was superseded by the sub-

* P. ix. † P. xli. 1 Bl. Com. 427. Post. p. xli.

sequent enactment; and it would be difficult, and by no means desirable after so long an acquiescence in that opinion, and the dictum in Bonham's case *, to maintain a contrary doctrine, notwithstanding the loosely reported observation of the court in the case of the physicians against West. †

The effect of 14 Hen. 8. must, therefore, be taken to be this. It has left to every man his common law right of practising in the profession of physic as in any other profession if competent, and has appointed the president and college judges of this competency.

The president and college are by this means appointed to exercise an inquisitorial and judicial office, and bound by their duty to the public, to pronounce an impartial and just sentence. Nothing is left to favour, nothing to inimical prejudice; they are to decide between the individual and the people. It is their duty to admit every man to whose competency in learning, medical knowledge, and integrity they are satisfied, in the exercise of a fair discretion, that they may confide the health of the patient; and every other person they are bound to reject until he shall have acquired that competency which he does not, on his examination, appear to possess. ‡

This being a judicial power requiring the exercise of discretion, the body in whom it is vested cannot delegate it even to a select number of their own members; therefore the admission must be by the president and fellows, or the majority of those present, in the same manner as the election of a fellow. Each member must retain his right to vote on the competency of the applicant, whatever previous examination may have taken place. In the exercise of that right he is bound to receive the favourable report of the previous examiners, in those respects in which they are commissioned to examine; but he may, nevertheless, vote against the candidate's admission, notwithstanding that report, either

* P. lxxx. † P. lxxx. ‡ P. xlviii.

on the ground of the want of such other qualifications as he may judge necessary to the character of a physician, or on an evident want of that reported competency, appearing on any further examination to which the applicant may submit before him or the body at large.*

Although this power cannot be delegated, yet, inasmuch as the process of examination can be conducted by a few only at the same time, it is competent for the body at large to appoint particular persons of their own number to have the immediate direction of it. But it is necessary, in the first place, that the immediate examiners should be of their own body; and, secondly, that every member entitled to vote on the competency of the candidate, should have an opportunity of hearing, and, should he think proper, of taking a part in the examination; that he may, if necessary, either correct the opinion of the examiners, or put any further questions which he may think proper.†

For this purpose the college has confided the actual examination, as to medical knowledge, to the censors; following the spirit of the statute, which has confided the particular oversight of the faculty to these officers. It has also appointed that the doors of the censor's chamber shall be open to all fellows who may think proper to be present, and that they may take part in the examination, should they think fit; and that the fellows may have an opportunity of availing themselves of this right, it is appointed that all examinations shall take place at a court held at certain regular intervals.

The opinion of the censors is to be ascertained by ballot, and certified to the aggregate meeting of the body.

If the censors refuse to examine a person who has applied to them for that purpose, the Court of King's Bench will issue a mandamus to the body at large, requiring them to admit such person to an examination,

* Vide Dr. Letch's case p. xxxix. et seq. † Ib.

or to make known some sufficient reason for not doing so.* If the corporation obey the former direction of the writ, they will either cause the censors to institute such examination, or discharge that office at a meeting of the whole body, as they may think expedient. Their only mode of showing a sufficient reason for not complying with this part of the writ, is by making known to the Court some circumstance from which it is evident that the applicant is totally unqualified to enter upon an examination.

But the Court always grants a rule to afford the corporation an opportunity of showing this cause before it allows the writ to be issued.

The reason usually assigned is, that the applicant is deficient in the qualifications which the rules of the college require him to possess previously to his examination.

The statutes of the college require that every candidate for the licence shall have attained the age of twenty-six years, and have received the degree of doctor of medicine, after two years' residence in some academy for the purpose of studying physic; that every one who has used any nostrum in his practice shall make known its composition and mode of application, to the president or vice-president, and censors; and that every applicant who is a member of the society of surgeons or apothecaries, shall resign his place in such society previously to offering himself for examination.†

It might be difficult to sustain the bye-law, requiring that the applicant should have obtained the degree of doctor in medicine, as it refers to a qualification dependent on the opinion of a body of men unconnected with the college ‡; but as that degree may be obtained in any university, or at least in any university within the British empire, the validity of this regulation is not likely to become the subject of discussion. The other

* Vide Dr. Letch's case, p. xxxix. et seq. † Vide pp. xxxi, xxxii.
‡ R. v. Bird, 13 East, 384.

regulations appear to be within the scope of the statutes, and the authority conferred on the college.

The mode of examination is wholly in the discretion of the college, and its sufficiency is a more proper subject for the consideration of medical men than of a lawyer.*

Should the college refuse the licence to a person approved by the president and censors, they would probably find it necessary, in answer to an application for a mandamus, either to show that they had subsequently examined him on the subjects in which the comitia minora had reported him sufficient, and found him insufficient on such further examination; or to state that they had examined his sufficiency in other respects, and found him unfit to be licensed. This point was not important to the case of Dr. Letch †; because the president and censors had, in fact, found him insufficient, and the mistake of one of them in putting a wrong ball into the box, was wholly immaterial; besides which there was a ready answer to it; for the fellows stated by affidavit that they had good and conscientious reasons for rejecting him.

Should the president, or other proper officer, refuse to grant the letters testimonial and licence under the seal of the college, to a person who had been found sufficient by the body at large, the Court of King's Bench would issue a writ of mandamus, requiring him to do so, which would be in its nature peremptory (for an alias and peremptory writ would issue of course), as such officer would not be able to make any other return to it than that he had granted such letters testimonial; for this is a ministerial duty, similar to that of the head or other officer of a corporation, who is bound to admit every person who has been duly elected.

Candidates.

The order of candidates is not founded on any act of parliament or charter, but created by the bye-laws of the college. They are not, therefore, officers or even mem-

* P. xxxii. † P. xxxix. et seq.

bers of the corporation, but mere licentiates, concerning whom the college has manifested, by admitting them to this distinction, an intention of making them the peculiar objects of future election into their body; and the admission into this class amounts merely to a declaration of present intention, which creates no kind of obligation on the body to elect into the order of fellows.

Although the college has thought proper to prescribe certain qualifications, which it requires those to possess who may seek admission into this order, it does not, nor can it confer on persons possessing that qualification a right, far less an exclusive right of admission to any distinction beyond that of the licentiates.* All that persons so qualified can claim is, an examination, admission to practise, and the grant of letters testimonial.

Were one to obtain an admission into the order of candidates merely, without an admission to practise, and the proper letters testimonial, he would possess merely the character of a nominee, whom the college intended at some future time to elect a member, but would have no right to practise physic, and would be equally liable to the penalties as any other unlicensed practitioner.†

Fellows. The order of fellows comprises those who are admitted into the fellowship, community, commonalty, or society of the college. The charter incorporated all physicians then legally practising in London, so that each of them who thought proper to accept it, became ipso facto, a member or fellow ‡; but as all future practitioners, within the precinct of that city, were required to obtain the licence of the college, there soon arose two orders in the profession. The fellows attempted by various bye-laws to limit their own number, but seem to have considered the licentiates as members of the college or the commons, and themselves as forming a select body for the purposes of government. To this state of the society, the statute 32 Hen. 8., seems to allude in

* Dr. Shomberg's case, p. lxxviii. † Vide pp. xxxviii. xxxix.
‡ P. lxxvii.

speaking of the commons and fellows. The charter of Charles the Second expressly notices these orders as forming the body of the society, inasmuch as it directed that new fellows should be elected from among the commons of the society. In resisting the application of Dr. Goddard for a mandamus to restore him to the fellowship, the college relied upon this arrangement of their body, contending that all the licentiates or practitioners were fellows; and that the peculiar order generally called the fellowship was merely a constitution of their own, introduced by bye-laws, and not a legally recognised distinction; and on that ground it was that they defeated the doctor, and the court held that the writ did not lie *; for had it been thought that the fellows were the only members of the college, there is not the least doubt that the doctor would have been entitled to the writ, and that the return would have been held insufficient. But in the course of the long and expensive struggle which succeeded between the fellows and licentiates, the former position was gradually abandoned, and the fellows at length contended that they were the only members of the college.

The first of the series of cases in which the licentiates attempted to establish themselves as members of the college, was that of Dr. Askew † and the other censors, which seems to have originated in the observations of the judges in the case of Dr. Letch. ‡ In this case it was necessary for them to show that by reason of the licence they had become actually members of the college as fully as though elected and admitted, and the case was determined against them on the ground of their not having been actually admitted. But, from the observations of the judges relative to their supposed right to be admitted, they were induced to try the question again; and Doctors Fothergill and Archer, after failing § on their first writs for want of setting forth the foundation on which their title rested, brought it forward ‖ on the ground of their

* P. xxxvii. † P. xlvii. ‡ P. xxxix.
§ P. lv. ‖ P. lvii.

licence giving them a right to claim an immediate admission. They were then defeated on another point, that whatever might have been the right derived from a general licence, these gentlemen were excluded by the terms under which they claimed, inasmuch as they were obliged to rely upon the very bye-laws by which they were formally excluded, on account of the mode in which they had obtained their licence.* The discussion was again revived by Doctor Stanger †, relying upon what had appeared to be the sentiments of most of the judges who had determined the former cases. By the decision against this gentleman, the question seems to have been set at rest, Lord Kenyon strenuously supporting the exclusive bye-laws, which had been so severely condemned by his more liberal predecessor. The ground on which this question was at last professedly decided was erroneous ‡; but the decision was itself right, and should be referred to other grounds alluded to by Mr. Justice Lawrence. §

It was determined on the ground that the bye-laws were valid, whereas the bye-laws are void.

It ought to have been so determined on the ground that every corporation, to which no other exclusive mode of filling the vacancies which may occur in the body is prescribed by statute, custom, or charter, has an incidental right of perpetuating itself by electing as members any persons they might prefer, provided that they came within the general object of the incorporation.

The following is a short account of the bye-laws of exclusion :—It was at first provided (anno 1555‖), that no one should be admitted into the college until he had practised for some time under a probationary licence, which time was afterwards limited to four years. This was perfectly reasonable and consistent, as affording a proper opportunity of making the candidate and his

* P. lxv. † P. lxvi. ‡ P. lxix.
§ Pp. lxxvii. lxxviii. ‖ P. xlix.

qualifications, and title to precedence, known to his electors. About the same time * were established the three classes of fellows, candidates, and licentiates. In 1637 † it was ordained, that no person should be admitted a fellow until he had performed all his exercises and disputations in one of the "British universities," without dispensation; and in 1737 ‡, that none should be admitted into the society of the college, who should not first have been of the number of candidates for one whole year, or have publicly read physic for three years in some "university of Britain;" or been doctor of the chair in some university of this kingdom; or ordinary king's physician. In 1751 §, under the pretence of explaining the words "any British university," in some of the former bye-laws, it was declared that no person should be admitted who was not a doctor of physic of Oxford or Cambridge. Another alteration was introduced in 1765 ‖, by excluding all except such candidates, and the King's or Queen's ordinary physician with salary, and the royal professors of physic of Oxford and Cambridge. And in or soon after the year 1768 ¶, it was declared that no person should be admitted to the order of candidates, unless he had been created a doctor of physic in the University of Oxford or Cambridge, or having obtained that degree in the University of Dublin, been incorporated into the University of Oxford or Cambridge, and until he had been examined as to his knowledge of physic at three of the greater or lesser meetings of the college. And that no person might be admitted a fellow unless he had been a candidate for a year, except that the president might once in every other year propose at the comitia minora one licentiate of ten years' standing: and if the major part of the comitia minora should consent, propose him at the next comitia majora, to be elected a fellow: and if the major part of

* P. lviii. lix. † P. lxvii. ‡ P. lx.
§ P. lxvii. ‖ P. lx. ¶ Pp. lxvii. xviii.

the fellows then present should consent, such licentiate might be admitted a fellow: and that any one of the fellows might propose a licentiate of seven years' standing, and of the age of thirty-six years, in the comitia majora to be examined: and if the major part of the fellows should consent the licentiate might be examined by the president; or vice-president, and censors: and if approved by the major part of the fellows then present, he might be proposed to the next comitia majora to be a fellow and admitted, should the majority of fellows then present consent.

These regulations appear to have been made in the spirit of Coke's fantastic eulogy of Cambridge *, and founded upon the distinctions in the medical faculty existing at the time of the incorporation; for there were then two orders, the graduates of the universities, and the practitioners licensed by the bishop or dean, and four doctors. The college seems to have taken it that the doctors or graduates were to form the governing party or fellowship, and that the other practitioners were to derive their licence from them instead of their former licensers the bishop or dean, and doctors; regarding them as altogether of an inferior grade, and rather the objects toleration than worthy of being associated with His Majesty's physicians. Some of the latter class may certainly have been the progeny of foreign universities, but probably very few, as Oxford and Cambridge were at that time always ready to incorporate their brethren from the Continental schools. The greater part of them were persons who had not received any regular education, and mostly of the empirical order. Scotland was for a long time subject to England, before her universities became the chosen schools of English medical students; and the facility with which degrees might have been heretofore obtained from the North, induced a very reasonable prejudice against them as scarcely distinguishing their owner

* Vide p. lxxxiv.

from the class which had been habitually regarded as inferior. These circumstances seem to have caused the passing and constant observance of the preceding bye-laws, but they afford no argument in favour of their validity.

The charter merely incorporates the men of the faculty in and of London. From this it appears that the corporation was constantly to consist of men of the faculty; but this is the only qualification which the charter requires. It has been already observed, that there is in every corporation an incidental power of continuing itself, which, when no other mode is expressly pointed out, is to be exercised by the body at large as often as they may think expedient, electing such person or persons as they consider most fit to supply the vacancies in the definite, and to keep up a reasonable number in the indefinite, classes.

In this corporation, therefore, on this first principle of corporation law, the original fellows had, and their successors have, an unfettered right to elect such persons as they may think necessary to continue its perpetuity, provided only that they be men of the faculty of and in London; and the persons so elected are entitled to be admitted into the body: and to enforce that right, if resisted, they may obtain aid from the Court of King's Bench, which will direct its mandamus to the officer resisting it.

Were the bye-law before mentioned valid, it would have the effect of abridging that right of the fellows by narrowing the number of the eligible; such a bye-law would be an innovation and a restriction of the charter and statute of incorporation, and contrary to the constitution of the society, and no corporation can make such a bye-law.*

The statute rendered all men of the faculty of and in

* Vide p. lxix. et R. v. Tappenden, 3 East, 191.; et Willcock on Corporations, I. 294.

London eligible to the fellowship. The bye-law says, all men of the faculty of and in London are not eligible: those only are eligible who have been of the order of candidates for one year; and none can become candidates who are not graduates of Oxford or Cambridge. This is directly in the teeth of the statute: it is the imposing of a qualification not required by the constitution; and what is most fatal to such a qualification, one which does not depend upon the body imposing it, or any select portion of that body *, but on two universities in legal acceptation strangers to, and unconnected with, this college, and wholly overlooked by the statute by which it was established.

Lord Mansfield was clear that some of the bye-laws were bad. Lord Kenyon says that Lord Mansfield could not refer to these bye-laws; yet self-evident it must be to every one who can read, that these were the very bye-laws against which Lord Mansfield directed his observation. These were the most illiberal bye-laws, the others were mitigations of them; these were the bye-laws which had nothing to do with the extent of education, but with the place in which the party might happen to have been educated. A judge is ever to be suspected who can so far forget himself as to glory in his prejudice. The sarcasm of Lord Holt, the most intrepid and upright of judges, is singularly applicable to Lord Kenyon:—It is strange that he should have fallen into the absurdities of Coke after his master had been so lashed for his folly. †

It is evident that the statute did not contemplate any examination as preliminary to adoption into the society, otherwise they would have mentioned it; for where they contemplated examination they required it. They deemed an examination of the licentiates necessary, and no one could be of the body (except the original members) until he had been a licentiate; therefore they

* Vide ante, p. 40. † Vide p. cxliv.

required that the licentiate should receive letters testimonial *: they deemed an examination necessary for those from among whom the president was to be elected; therefore they required it†: and they deemed it expedient that country practitioners should be examined, and omitted not to require that they should be examined.‡ But an examination of already approved physicians, as a preliminary to their eligibility to the fellowship, the legislature justly thought superfluous, and therefore did not require it.

With regard to the mode of examination, none is pointed out; but it is required that London licentiates should have the testimonial of the college, and that country practioners should have the testimonial of the president and three elects; and the preamble of the third section § describes, in the quaint language of the times, the necessary qualification of physicians, for a commentary on which it is sufficient to refer to the equally quaint explanation by Lord Coke.‖

The examination is to secure the health of the people against the ignorance, rashness, and folly, of uneducated physicians; this, therefore, can have relation to the licence alone, and not to the distinguishing office of the fellows. If any peculiar qualification be necessary for that office, it would be a general acquaintance with the manners of medical men, a reputation for superiority among the other members of his profession, and that knowledge of the world which might render him particularly capable of judging of the rules necessary for the regulation of the conduct of medical practitioners. If an examination on these qualifications be desirable, it is for the fellows themselves to judge of the candidate's pretensions. The circumstance of his having spent his time on the banks of the Cam or Isis, of his having inhabited the Gothic cells of the English universities, or even of

* Vide p. x. † Vide p. xii. ‡ Ibid.
§ Vide p. xi. ‖ Vide p. lxxxv.

his having studied the antiquated statutes of these institutions, affords no proof of his acquirements in this respect. The more reasonable ground of admission would surely be, that the fellows have long observed his practice and conduct in the course of his professional career, and that the majority has, from such observation, been induced to consider him peculiarly qualified to become an example to his brethren, and to take a share in the "oversight and correction of the men of the faculty within the precinct of London." *

The reliance placed on the ordinance which rendered licentiates, under certain circumstances, eligible to the fellowship, can be regarded only as a mere subterfuge; for that, as far as it relates to the extraordinary qualification required, is equally objectionable with the other bye-laws. The original act of incorporation gave the fellows an unrestricted right of electing whom they might think proper. It was competent to the fellows, at any time, to appoint a convenient mode of exercising that right, but they could not restrain either their successors or themselves to the exercise of it in respect of particular persons only, to the exclusion of others not excluded by the charter or statute.

The result of the cases relative to this and all other corporations is, that the fellows alone may elect into their number any persons they may feel disposed thus to distinguish, unrestrained by their constitution, except in respect of the profession of the elected, and wholly unrestrained by the bye-laws, which are null and void: the election must be at a corporate meeting, either on a day on which it is customary to make such elections, or on any other day, after notice of the object and time of the meeting to each of the fellows then residing within the precinct of London: and no person has, or can, by any bye-law or regulation of the college, acquire any inchoate right of admission into this order.

The fellows have not, indeed, repealed the invidious

* Vide pp. ix, x.

bye-law, but they have lately admitted several of the licentiates into their association; and it may be reasonably expected that the jealousy which has for a long time disturbed the harmony of that highly respectable profession, will gradually abate, until at length the manners, virtue, and talents of the man will be deemed in him a higher recommendation to the good opinion of his competitors, than the mere circumstance of his having cultivated these talents within the walls of certain buildings, or on the banks of a certain river.

Country licentiates.

The country licence originated in the third clause of 14 Hen. 8. By the former statute (3 Hen. 8.) it was declared that no one should practise physic in other parts of the country beyond the precinct of London, until he had received letters testimonial after an examination by the ordinary, or, during his absence, the vicar-general, calling to him such expert persons in the faculty as their discretion should think convenient. This statute provides, "that whereas, in dioceses of England out of London, it is not light to find alway men able sufficiently to examine, after the statute, such as shall be admitted to exercise physic in them, no person shall from henceforth be suffered to exercise or practise in physic through England, until such time as he be examined in London by the said president and three of the said elects, and to have from the said president or elects letters testimonial of their approving and examination."

The difference, therefore, between the licence of these who practise within the precinct of London, and of those who practise elsewhere, consists in the former requiring the consent of a corporate assembly of the college, the latter requiring only the concurrence of the president and some three of the elects.

Every man desirous of practising as a physician, and possessing the fair indicia of competency, has the same right to demand an examination at the hands of the president and elects, as they who are desirous of practising in London have of claiming an examination by the

college, and he has also the same remedy in case of refusal.

The college appears to have made some regulations respecting the evidences of qualification which will be required from one desiring to be examined with a view to a country licence. If these regulations were made by the president and elects acting in their distinct capacity, they may be sustained; but if made by the president and censors, or by the president and college, the body making them had mistaken its authority: for the president, and censors, and the college, as a corporation, have no more to do with country physicians, than the college of surgeons or the apothecaries' company, the power of licensing them being restricted to the president and elects, as officers for a special purpose foreign to the institution of the college of London.

Partial licences.

The college seems to have been in the habit at one time of granting licences to practise in certain complaints only.* But I am not aware that any such licences have been granted for some time past, and notwithstanding what is said on the subject by Lord Mansfield, I should doubt their legality.

Stamp duty on admission.

Admission of any person to be a fellow of the College of Physicians in England or Scotland, 25*l.* †

Admission or licence of any person by the College of Physicians in England or Scotland, to exercise the faculty of physic, or practise as a licentiate, 15*l.*

Unless such duty is paid the admission or licence is absolutely void.

Physicians of the universities.

The only other class of physicians who are recognised by the law, are those who have obtained a degree in physic at Oxford or Cambridge.

The petition to parliament, in the 9th year of the reign of Henry the Fifth prayed, that none might use the mystery of physic unless he had studied it in some university, and were at least a bachelor in that science.

* Vide p. 1.

† 55 Geo. 3. c. 184. sch. 1.

This was referred by the parliament to the privy council, to make what regulations they might think proper. Of what the privy council did on the subject we are no where informed; but it may be inferred, that the bachelors of the universities were from that time regarded as the only legitimate physicians, but that from the absence of any penal law the other physicians had become too numerous to be suppressed. Under these circumstances was enacted the 3 Henry 8., which, appointing examiners of all other medical practitioners, provided that nothing therein contained should be prejudicial to the universities of Oxford and Cambridge.

From that time there were two legal orders of physicians; those examined under the statute, and such graduates of the two universities as had before been entitled to practise, who were at liberty to enter on that profession as well within the precinct of the metropolis as in other parts of England. Seven years after this the charter was granted to the college, but this could not of itself exclude the university physicians from the metropolis; but the statute by which it was confirmed, containing no saving clause for these institutions, had the effect of excluding them from the precinct of London *; yet it expressly saved their right in other parts of the kingdom by these words, "except he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form without any grace." †

From the nature of the profession, it is necessary that this degree should be in physic; but the obtaining of the lowest, that of bachelor, is sufficient to satisfy the terms of the statute. And conformable with this was the opinion of Lord Ellesmere, chancellor; Popham, chief justice; Fleming, chief baron; Walmesley, Warburton, Williams, and Tanfield, justices, on a series of questions proposed to them by order of James the First in the year 1607‡; although their opinions

* Vide pp. lxxix, lxxx. † Vide p. xii. ‡ Goodall, 276—281.

on some of the questions then proposed cannot be regarded as law.

In the year 1535, (27 Henry 8.,) Wood says *, that "because divers scholars, on a foresight of the ruin of the clergy, betook themselves to physic; who though raw and inexperienced would venture to practise, to the ruin of many; the visitors ordered that none should practise or exercise that faculty unless he had been examined by the physic professor concerning his knowledge therein: which order being of great moment was the year following confirmed by the king, and power by him granted to the professor and his successors, to examine those who were to practise according to the visitors' order."

In the reign of Queen Mary †, the university of Oxford having conferred a degree on one who had been rejected by the college, for the purpose of settling the disagreement between them, another visitation was made to it by Cardinal Pole, the chancellor of that university, who made some regulations relative to the admission to the degree in physic, which he is stated to have approved and sanctioned by his authority as legate and chancellor.

In Oxford, the degree of bachelor of physic may be now obtained in the thirty-first term, and that of doctor at the expiration of three years from the time of taking the degree of bachelor. In Cambridge, the degree of bachelor cannot be obtained until the candidate has entered his sixth year, and resided nine terms. A doctor of physic must be a bachelor of five years' standing.

Section II.

Surgeons.

Their practice.

The second class of medical practitioners is that of the surgeons. Their peculiar practice consists in the use of

* Wood's History and Antiquities of Oxford, vol. ii. p. 62.

† Goodall, pt. 2.

surgical instruments in all cases, and in the cure of all outward diseases, whether by external applications or by internal medicines. Several diseases, which may sometimes be regarded as internal complaints, have also been recognised by the legislature by ancient usage, and by the charters granted to this body, as within the scope of their practice. Among these are the pestilence, syphilis, and such other contagious infirmities *; letting of blood in all cases, and drawing of teeth †; customable diseases, as women's breasts being sore, a pin and web in the eye, uncomes of hands, burnings, scaldings, sore mouths, the stone, strangury, sanceline and morphew, and such other diseases, apostemations, and agues ‡; all wounds, ulcers, fractures, dislocations, and tumours.§ Indeed it would be very difficult to determine what diseases fall within the meaning of the word outward, as applied to this science. It was at one time thought that the distinction consisted in the mode of administering the remedy, that it was the office of the surgeon to use the knife, and merely, to apply ointments and external medicaments, and that of the physician to prescribe all medicines. But this distinction cannot be supported, in as much as many complaints are considered exclusively surgical, for the cure of which internal remedies are necessary; and the surgeon has an undoubted right to prescribe medicine as ancillary to the removal of all surgical complaints, even by counteracting the impediments which may be presented to his peculiar practice by the concurrence of diseases ordinarily regarded as physical.‖

There is no doubt that the surgeon may make and compound all medicines and medicaments applicable to the diseases, submitted to the superintendence of his branch of the faculty. And he may either administer them himself, or prescribe what he thinks proper to be administered by others.

* P. clxxiv. † P. clxxv. ‡ P. clxxviii. cxxii.
§ P. clxxxii. ‖ P. ccxx.

In the case of Allison against Haydon*, it was held that the typhus was not a surgical but exclusively a medical complaint. But it is very doubtful whether this determination can be sustained; for, if that be an infectious and pestilential disease, as it is generally considered, it is included among the diseases regarded as surgical by statute 32 Hen. 8.†, to which no allusion seems to have been made in that case, by either the counsel or the bench.

The pure surgeons, as they are denominated, have generally directed their attention to certain diseases manifestly surgical, treating the minor complaints as common to each branch of the profession, and calling for the advice of the physician whenever those disorders of the system present themselves, to which the studies of the latter have been particularly directed.

Classes of surgeons.

There is, in fact, but one class of surgeons, who are legally entitled to practise in this kingdom, the members or licentiates of the college of surgeons. The statute 3 Hen. 8. is, however, still in force, though it has been generally regarded as obsolete, in as much as there is no instance of any person having obtained a licence under it for several centuries. On this statute alone can any punishment be inflicted on persons for practising surgery without licence in any part of the kingdom, except within London and Westminster, and seven miles around these cities.‡

Surgeons are of the college.

The ancient guild of barber-surgeons in London was incorporated in the first year of the reign of Edward the Fourth§, by a charter, which affected to vest in that body the government of all surgeons practising within that city and its suburbs; and for the future to exclude all persons from practising surgery therein until approved by its governors as able and sufficient, and learned in the mystery, and admitted and afterwards presented by them before the mayor. This charter was several times confirmed by

* P. ccxx.
† P. clxxiv.
‡ Vide post, Illegal practitioners.
§ P. clxvii.

succeeding kings.* But as it was not within the scope of royal authority to exclude or punish such other surgeons, a great number of them had sprung up and associated themselves into a fraternity. In the third year of the reign of Henry the Eighth†, it was enacted that no person within the city of London, or within seven miles of the same, should take upon him to exercise or occupy as a surgeon, except he were first examined, approved, and admitted by the bishop of London, or the dean of Paul's, calling to him or them four expert persons in that faculty; and for the first examination, such as they should think convenient, and afterward alway four of them that had been so approved.

By this statute, every pretence of a right to exclusive practice in the barber-surgeons' company was taken away, and such of the other surgeons as obtained the testimonial under it were legalised.

In the 32d year of the same reign, the two companies were united by act of parliament ‡, under the name of the Mystery and Commonalty of Barbers and Surgeons of London. By this act the privileges of the former company were confirmed to the united body §, but in such manner only as they could have been previously enjoyed; and therefore this confirmation could not give them any right of excluding other surgeons from practising within their limits. And it would seem, from the whole of the act, that although the legislature intended to subject all persons practising surgery within London, and one mile around, to the government and oversight of this company, it did not mean to exclude other persons duly licensed from practising within that district.

The charter granted by King James I.‖, assumed to give the surgeons of the company an exclusive right of practising within three miles of London. And the charter of Charles I.¶, proposed to exclude every person

* P. clxix. † P. vi. ‡ P. clxxii.
§ P. clxxiii. ‖ P. clxxix. ¶ Ibid. A.

from using or exercising the art of surgery within London and Westminster, or seven miles of London*, until examined by four of the examiners of the company, and by the public letters testimonial of two of its masters approved of and admitted to exercise the art.† The same charter also declared, that the freemen of this company might practise surgery in all parts of the kingdom.‡

These restrictions and privileges the king could not by his charter impose or grant. The right, therefore, of those admitted by the bishop and dean with their co-examiners remained unaffected, and the members of the college were obliged to obtain the testimonials of the ordinaries before they could lawfully practise either within the precinct of London, or in the other dioceses of the kingdom.

But in the 18th year of the reign of King George II., an act was passed §, by which, after reciting these clauses of the charter of Charles I., and dissolving the union between the barbers and surgeons, and constituting the surgeons a separate company, it was enacted (sec. 8.), that ‖ the said company of surgeons and their successors, and all persons who should be freemen of the same company or corporation, should and might have, hold, and enjoy all and every such and the same liberties, privileges, franchises, powers, and authorities, as the members of the united company, being freemen of the said company, and admitted and approved surgeons could or might respectively have had, held, and enjoyed by virtue of 32 Hen. 8., and the letters patent of Charles I. &c., and that *in as full, ample, and beneficial manner, to all intents and purposes, as if the same had in and by this act been expressed, repeated, and re-enacted.* The introduction of the words printed in italics has the effect of incorporating as a part of this statute all the provisions

* P. clxxxi. C. † P. clxxxii. ‡ Ibid.
§ P. clxxxv. ‖ P. clxxxvi.

of the charter of King Charles which are not at variance with the other clauses of this act, and to invest this corporation, as well with such powers as that charter ineffectually assumed to grant, as with those which it effectually granted; and to impose, as by a new law, such penalties on persons practising surgery within seven miles of London and Westminster, before they have been examined and approved according to the terms of that statute and the late charter, as the letters patent of Charles I. purported to impose on those who so practised, before they had been admitted, according to the provisions which they contained in that respect.

This statute, therefore, conferred on the members of this company the right of exclusive practice within London and Westminster, and seven miles around, and virtually repealed the power of the bishop of London and the dean of Paul's to license surgeons within this district. *

It secured to them, also, the privilege of practising, without restraint, the art and science of surgery throughout all and every his majesty's dominions. †

The corporation thus instituted became suspended, by reason of the sudden death of the master on the day of election, and their consequent incapacity of electing a successor.

It was supposed that this accident had caused a dissolution of the body, and on that account a charter was obtained from his late majesty in the fortieth year of his reign. ‡

The meaning of the word dissolved, has been very little understood as applied to a corporation; or rather, perhaps, it has been often misapplied. If the word be used in its strict sense, as meaning a dispersion of its members from their being incapacitated to discharge

* Ante, pp. 39. 64. † P. clxxxvi.
‡ P. clxxxviii.

their corporate duties, it is proper. * But it has been generally understood to signify a determination of the corporation, or the annihilation of the corporate franchise, which is erroneous. To carry the doctrine to the extreme, the corporation would not be determined or annihilated by the death of every member of the body, before a single person had been elected to succeed them. The franchise is in so much independent of the members, that it subsists, although its privileges are dormant, its powers unexercised, its property unoccupied, although none of its officers remain. And there is inherent in the royal prerogative a power of again giving vigour to this suspended character or franchise, by nominating a sufficient number of new officers and members to enjoy its privileges, and exercise all its functions. This has been called the revival of a corporation, the effect of which is to invest the new corporators with all the rights and privileges of their predecessors, and to subject them to all former debts, duties, and liabilities. It is indifferent whether the new set be incorporated by the same or another name: it is immaterial whether they have merely the same powers, or the same and also other powers, or a portion only of the powers and privileges of their predecessors: it is equally unimportant, whether they be the same persons in the same or other offices, or strangers to the old corporation, or a mixture of both: and the king may either repeat the former grant in an entire new charter, or he may merely, leaving the survivors in their former character and offices, nominate a sufficient number of persons to fill up the vacancies which the corporation is no longer able to supply. It

* In another place I have substituted the word suspended for dissolved, as used in the sense put upon it in the text. The word suspended implying the state of the powers assigned to the body politic, and the word dissolved being properly assignable only to the situation of its component parts, as in some respects dissociated by reason of the members being no longer able to convene as a corporate body. Vide Willcock on Corporations, pt. 1. sec. 859, et seq.

is merely requisite that the charter should manifest the king's intention of continuing the ancient franchise.

This explanation was necessary, to show the state of the present college of surgeons. Had the original body been extinct, and its franchise annihilated; had the corporation been, according to the ordinary acceptation of the word, dissolved, actually determined, every member of this college would be liable to a penalty of *5l.* for every month during which he may continue his practice; their charter would be altogether void, as granted to an illegal body of men, and there would not be one surgeon in the kingdom entitled to exercise his science: for had the corporation been determined, the king could not have granted a charter to any set of men, under which they would have acquired a right to practise surgery, without undergoing the examination prescribed by statute 3 Hen. 8.

But according to the proper signification of the word dissolved, as applied to a corporation, the state of this body may be thus described. It was created by the charter of Edward I., which has been several times confirmed. Its members were subjected to the examination of the ordinary, in common with all other surgeons, by 3 Hen. 8. It obtained some privileges under 6 Hen. 8. and others under 32 Hen. 8., by which the body was considerably augmented. It received charters of privilege from James I. and Charles I.; and was separated from the barbers' branch of the union by 18 Geo. 2., which relieved its members from the necessity of obtaining the license under 3 Hen. 8., and gave them an exclusive right to practise in and about London, and a concurrent right with those licensed by the ordinary of practising in all other parts of the kingdom. On the death of its principal governor, such of its powers were suspended as could not be exercised without his concurrence. The corporation continued, however, to exist; all its former members continued to enjoy their individual privileges; and all powers, privileges, lands,

and other acquisitions, still remained vested in the corporation. By the charter of Geo. 3., a new governor being appointed, and all the necessary offices filled, the corporate functions were revived, and the society was restored to precisely the same state as though such governor had lived and a regular succession had been kept up to the present day, except in those respects in which they have submitted to any new regulations, by accepting charters from the late king and his present majesty. For the king may, with the concurrence of the corporation manifested by their accepting the charter, alter the formal arrangement of the body, though originating in an act of parliament, provided that such alteration in no manner affect the rights of the public; and strictly within this authority appear to be all the regulations prescribed by the charters subsequent to statute 18 Geo. 2.

Surgeons in and about London,

As the statute 18 Geo. 2. operated to legalise the illegal exclusion of the charter of Charles I., none can practise surgery within London and seven miles around, until examined and admitted by the college of surgeons; but there may be two classes of surgeons throughout the rest of the kingdom.

in the country.

First, the members of the college of surgeons, who may practise in every part of his majesty's dominions; and secondly, the surgeons licensed under the 3 Hen. 8.* who may practise within any particular diocese in which they are licensed, except within London and Westminster, and seven miles around these cities.

Right to be examined,

As it has been said of physic, so every man is by the common law entitled to practise surgery, if competent. Two classes of judges of that competency have been appointed by statute; the examiners of the surgeons' company, and the ordinary of the diocese, or, in his absence, the vicar-general, with such as he is empowered to associate with him. The office of each class of

* Ante, p. 59.

examiners is inquisitorial and judicial. They must perform their duty with impartiality. They must approve every man whom, on examination, they find sufficient: and they will be guilty of a breach of that confidence reposed in them by the legislature, if they approve any one who appears to them to be insufficient.

by the college;

There is this difference, however, between the admission into the company of physicians, and into that of the surgeons: in the former, the whole body have a right to vote; in the latter, the examiners alone. These examiners are appointed by act of parliament, and recognised by the charter of revival. Every person approved by the majority of the examiners present (and the presence of four only is necessary), before two of the governors, is entitled to claim admission: he has thus acquired an inchoate right under the regulations of the statute, and cannot be excluded even by the votes of a majority at a corporate meeting. If the examiners refuse to examine a person who has presented such testimonials as are sufficient to satisfy reasonable men in their situation that he is so qualified that their time will not be wasted by admitting him to an examination, he may obtain a writ ofmandamus to compel them to do their duty. If the majority of a sufficient number of examiners approve the applicant as sufficiently able and learned, the Court of King's Bench will, after refusal, compel the president and other proper persons to grant him the necessary testimonial.

The college has, from time to time, published information as to the testimonials which they require from persons who seek an examination; but these rules * are, like those of the college of physicians, directory only, and not obligatory. Inasmuch as they appear to be reasonable, and point out a proper series of studies, the court will be at all times inclined to support them: but it may be stated without qualification, that no body of

* P. cxcviii. et seq.

men to whom a special power is delegated can transfer the exercise of it to others; and that no corporation can by any means impose a qualification on the parties entitled to admission into it, or to an examination preparatory to such admission, which is not imposed by the statute, custom, or charter on which it is founded. The court of examiners is invested with a power which they are required to exercise, of examining every person desirous of practising as a surgeon. It may with much propriety inform those who may think proper to present themselves of the nature of the acquirements which they will be expected to possess; but as to the persons and places under whom and in which they may be supposed to have attained them, their rules cannot be obligatory. Should any person to whom an examination had been refused inform the Court of King's Bench that the course of his studies and observations had for a reasonable time been such as to induce a fair presumption that he was competent to sustain an examination by these officers, and that he had informed them of these facts, I doubt not that the writ would be allowed to issue, although it did not appear that he was within the terms of the regulations published by the college. But I doubt much whether such a case is likely to occur, as long as this body is content to adhere to the regulations which they have lately published in this respect.

by the ordinary, &c.

Every one desirous of practising in any other part of England than within seven miles around London and Westminster, and who has not been admitted by the college of surgeons, must, before he takes upon him to exercise that science in any diocese * within the realm, be examined and approved by the bishop of the same diocese; or, if the bishop be out of the diocese, by his vicar-general; either of them calling to him such expert persons in the faculty as his discretion shall think convenient, and giving his letters testimonial under his seal to him that they shall so

* P. vii.

approve. If the applicant be approved by the majority of these examiners, he is entitled to claim the proper testimonials, for which, after refusal, the Court of King's Bench would afford him a remedy by issuing its mandamus.

Section III.

Apothecaries.

The third class of medical practitioners is that of the apothecaries. Their proper practice consists in preparing with exactness, and dispensing, such medicines as may be directed for the sick by any physician lawfully licensed to practise physic by the president and commonalty of the faculty of physic in London, or by either of the two universities of Oxford or Cambridge, and in applying or administering the same.* They are also at liberty to administer medicine of their own authority, and without the advice of a physician.† It is not usual, however, for them to prescribe medicine to be prepared and supplied by others: but though this is understood to be the peculiar privilege of the physicians, it might be very difficult to make out a case of violating the statute of 14 Hen. 8. against an apothecary, by merely proving that he had written a prescription, and received such fee as is usually paid to a physician, provided that it did not purport to be the prescription of a physician; and though no person is bound to prepare the medicine prescribed, I am not aware of any penalty incurred by compounding it. Their practice.

There are two classes of apothecaries recognised by law: first, the licentiates of the apothecaries' company; and, secondly, a temporary class — such apothecaries as were in practice on the 1st day of August 1815. Classes.

There was an ancient guild in London, called indiscriminately the grocers or the poticaries. By the charter

* P. ccxxxviii. † P. xciv.

of James the First, the poticaries were separated from the grocers, and constituted a distinct company, by the more dignified name of the pharmacopolites; and certain privileges of exclusive business were granted to the new corporation. But to this charter we shall seldom have occasion to refer, as the right of exclusive practice, not only in London, but throughout the kingdom, with the exception before mentioned, was conferred upon the members and licentiates of the apothecaries' company by statute 55 Geo. 3.

Licentiates of the company.

The company of apothecaries is to consist of one master, two wardens, and twenty-one assistants *: the other apothecaries were formerly members of the company, and the corporation has an incidental power of electing members: but no one becomes a member by obtaining the certificate required by statute 55 Geo. 3.; for that amounts merely to a licence to practise, as it is granted, not in consequence of an election, but of an examination, by officers appointed for that particular purpose.

This statute has declared that there shall be twelve persons annually † chosen by the master, wardens, and assistants, to be the court of examiners of apothecaries and of assistants to apothecaries throughout England and Wales ‡, — for which office no one is qualified who has not previously been a member of the society for ten years. §

It has also directed that the master and wardens, or the court of examiners, may, by writing under their hands, from time to time appoint five apothecaries in any county throughout England and Wales, except within London and its suburbs, and thirty miles therefrom, to act for that or any adjoining county or counties, with power to examine assistants to apothecaries throughout such county or counties ‖; for which office no one is

* P. ccxx. † P. ccxlii. ‡ P. ccxli.
§ P. ccxxxviii. ‖ P. ccxliv.

qualified who has not been previously an apothecary in actual practice for ten years. *

The master and wardens are respectively empowered to appoint and remove at pleasure, by writing under his hand, a deputy, with power to act in all respects as his principal might have acted. †

Examination.

No one can practise as an apothecary in England or Wales until he has been examined by the court of examiners, or the major part of them, and has received their certificate of his being duly qualified to practise as such, unless he was in practice upon the 12th day of July 1815, and also upon the 1st of August 1815. ‡ And no person has a right to claim, or can be admitted to, an examination, until he has attained the full age of twenty-one years, and served an apprenticeship of not less than five years to an apothecary, and produced testimonials, to the satisfaction of the court of examiners, of a sufficient medical education and of good moral conduct. §

Not only is the certificate void on non-compliance with these provisions of the act, but a false statement of the circumstances required, though not amounting to forgery, even if supported by falsified documents, is a grievous misdemeanor, for which the Court of King's Bench will punish the offender by fine and imprisonment. ‖

As evidence of a sufficient medical education "to the satisfaction of the court of examiners," that court has required the production of certain testimonials mentioned in another part of this work ¶: and although they cannot make rules in this respect wholly unreasonable, they have a far more extensive authority on the subject than the other medical corporations; having the express sanction of an act of parliament for the exercise of their opinion on the sufficiency of the testimonials.

* P. ccxxxviii. † P. ccxxxix. ‡ Pp. ccxliii. ccxlix.
§ P. ccxliii. ‖ P. ccxli. ¶ Pp. cclviii. cclix.

The applicant for the certificate is required by statute to give notice to the clerk of the society of such his intention, and to submit himself for examination at the following court, or at such subsequent meeting as may be appointed by the master, wardens, and society, or the examiners. * And the examiners have required such notice to be in writing, and to be given on or before the Monday previous to the day of examination, and the testimonials to be deposited with the beadle at the same time. †

Every person complying with the terms of the statute is entitled to an impartial examination, which the examiners are required to institute for the purpose of ascertaining his skill and abilities in the science and practice of medicine, and his fitness and qualification to practise as an apothecary; the court being empowered either to reject him, or to grant a certificate of such examination, and of his qualification to practise as an apothecary. ‡

Should the court of examiners refuse to examine a person possessed of the preliminary qualifications required by the statute and their rules, the Court of King's Bench would compel them to do their duty. Of the sufficiency of the candidate on examination, the examiners are the exclusive judges, and liable to correction only in case of their abusing their office, by sacrificing their discretion to the gratification of malevolence or other criminal motives.

The master, wardens, and assistants are empowered to supply vacancies among the examiners for the year, whether arising from removal, death, or resignation §; but any seven of the twelve are sufficient to constitute a court of examiners, and every question is to be decided by the majority of those present. ‖

This court is required to assemble for the purpose of examining applicants once, at least, in every week ¶,

* P. ccxliii. † P. cclx. ‡ P. ccxliii.
§ P. ccxlii. ‖ P. ccxli. ¶ P. ccxli.

when they are to elect a chairman, who is invested with a casting vote in case of equality. This meeting is, by their regulations, appointed to be held on every Thursday, at half past four o'clock. *

Assistants.

No person can act as an assistant to any apothecary in compounding or dispensing medicines unless he has obtained a certificate of his fitness and qualification for that employment either from the court of examiners or from the county examiners, or unless he had acted as an assistant on the 12th of July and the 1st of August 1815, or had then actually served an apprenticeship of five years to an apothecary. But any person duly qualified in medical knowledge and moral character has a right to claim an examination for this purpose from the examiners of the hall, unless there are examiners appointed for the county in which he is retained, in which case he is entitled to claim that examination at the monthly meeting of such county examiners. †

Duty.

There is a payment of ten guineas imposed on ‡ the certificate of every person intending to practise as an apothecary within the city of London, the liberties or suburbs thereof, or within ten miles of the same city; and a sum of six guineas on that of every person intending to practise in any other part of England or Wales, who is prohibited practising within the precinct of London until he has paid the further sum of four guineas, and had a receipt for it indorsed upon his certificate. § But where, in an action by an apothecary for his bill, incurred within the precinct of London, the defendant relied on the circumstance of the plaintiff not having paid the additional sum of four guineas until after the action was commenced, Lord Tenterden held the plaintiff entitled to recover, on the ground that the certificate was not in its terms restricted to other parts of the country than the precinct of London, and that the prohibition of section 19. was only as to persons who had

* P. cclx. † P. ccxliv.
‡ P. ccxlv. § P. ccxlv.

obtained certificates "to practise in any other part of England or Wales except London, &c. *

There is also a sum of two guineas charged on the certificate of every assistant to an apothecary. †

The company is required to publish annually a list of the names and residences of all persons who have obtained certificates to practise as apothecaries in the course of the year. ‡

Apothecaries before 1st August 1815.

The second class of apothecaries consists of those who are protected by the exceptive words, "persons already in practice as such." A doubt had arisen whether it was necessary to bring one practising as an apothecary within these words to prove that he was in practice on the 12th day of July 1815, the day on which the act received the royal assent, or on the 1st of August 1815, the day on which it came into operation; or whether it was not even necessary to prove that he was in practice on both these days. In the case of this Company against Roby it was held §, that, although the party had been in practice before and upon the 12th day of July, he was not entitled to resume his practice after the 1st of August, if he had discontinued it before that day. And this doctrine has been carried further by the temporary act of 6 Geo. 4. c. 133. s. 5., which declared that the privilege conferred by such exemption should extend only to persons in actual practice on the 1st of August 1815. But as this section is very inaccurately drawn, and the period during which it was declared to be in force has expired, it is unnecessary to offer any further observation upon its construction.

The exemption in favour of persons in practice before the 1st August 1815, extends only to persons who had been in practice as apothecaries; and the statute having in the fourth section described the proper business of apothecaries, none are entitled to the benefit of this exemption who were not, before or on that day, capable

* P. cclxxiv. † P. ccxlv. ‡ P. ccxlvii.
§ Pp. cclxvii—cclxix.

of performing such duties. And although the court will not enquire into the degree of skill and capacity of the practitioner in this respect, it will admit evidence showing a total incapacity to perform such duties, as it is conclusive evidence that he had not practised as an apothecary.*

And for the same purpose, although the court will not examine into the extent of practice before or on that day, it will examine whether the practice was in the character and according to the manner of an apothecary; for otherwise every surgeon dentist and druggist, and indeed every person who had, either for or without reward, in any manner taken upon him to administer medicine, or to prepare it according to a prescription, would be entitled to practise in all respects as an apothecary. †

Section IV.

Chemists and Druggists.

Chemists and druggists have been formerly in the habit of preparing and dispensing medicines according to the prescriptions of physicians; and although this seems to have been at one time considered the peculiar privilege of the apothecaries, the right of the druggists to do so does not appear to have been at any time brought in question. And as the apothecaries have, in the course of time, established as a right what was at first considered an encroachment on the department of the physician, — the administering of medicine to the sick of their own authority, — so the druggists seem to have acquired, by general acquiescence, a right of compounding medicines according to the prescription of a physician, which was certainly at first an infringement on the privileges of the apothecaries. The statute of 55 Geo. 3. has expressly reserved to chemists and druggists the right of using, exercising, and carrying on their trade and business in

* P. cclxiii. † P. ccxxi—cclxxvii.

such manner, and as fully and amply to all intents and purposes, as it was used, exercised, and carried on by chemists and druggists before the passing of that act; and that for the express purpose of not prejudicing them in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinable compounds, wholesale and retail.*

Section V.

Accoucheurs and Midwives.

No restriction appears to be imposed on any who may think proper to undertake the occupation of accoucheur or midwife, within its strict limits, as their office is rather ancillary to nature than an interference with the art of healing.† But their acting in this capacity will not warrant their interfering in the cure or relief of any diseases antecedent to or consequent upon childbirth.

Section VI.

Persons administering Medicine gratuitously.

The administering of medicine gratuitously is not a violation of any law relative to the medical profession; and the act of parliament made in the thirty-fourth year of Henry the Eighth, for the purpose of protecting the old women from the persecutions of the barber surgeons, appears to have originated rather in prejudice against that body than in any necessary precaution against their inconsiderate proceedings.‡

* Pp. ccxxi. ccxlviii. † R. v. Williamson, p. ccxxiv.

‡ P. clxxvii. The preamble to this statute is perhaps the most curious specimen of libel to be found among our legal records.

CHAP. III.

UNQUALIFIED PRACTITIONERS IN MEDICINE.

WHATEVER may have been the origin of the various distinctions in the medical faculty, however inconvenient it may be to retain them, however inadequate to their purpose the present institutions may be by some persons considered, all must concur in deeming some examination necessary before men are allowed to enter upon the dangerous profession of administering medicine, and performing hazardous experiments upon the human frame; yet, either on account of the antiquity of the laws against the offence, or the difficulty in furnishing sufficient evidence, or the want of persons particularly appointed or interested in enforcing them, this kingdom is overrun with illegal pretenders in medicine, often as ignorant as its ancient professors—the artificers, smiths, barbers, astrologers, and witches.

When the practice of a profession is of such a nature that the conduct of the practitioners is before the eyes of the public, so that all men may be able to form a fair estimate of their comparative capacity, a preliminary examination may not produce any great public advantage, as the various talents and deficiencies of the competitors soon become known to those who may have occasion to select from among them. But, on the contrary, when the practice is secret, so that people have no opportunity of forming a general opinion on the competency of the practitioner; when, too, it requires a considerable portion of scientific knowledge in each individual who is to be separately subjected to his operations, to enable him to arrive at any reasonable conclusion as to the skill or ignorance of the professor; and particularly

when it is of such a nature that the incompetency of the practitioner is often attended with fatal, generally with irremediable, and always with most dangerous consequences; — the fear of punishment for malpractice, and the liability to damages for ignorant or negligent practice, are by no means sufficient to indemnify the public, and to deter rash empyrics, who, too ignorant to be conscious of their own incapacity, too avaricious to be restrained by compassion for their unfortunate patients, and confiding in that impunity with which they too often escape, through the difficulty of furnishing that direct and conclusive evidence which is necessary to bring them within the scope of the law, may sacrifice the lives and impair the constitutions of thousands before their ignorance and rashness are detected.

The statute law is perhaps deficient in not having provided an adequate punishment in these cases. The more ancient writers on the common law seem to have regarded such practice either as justifiable or criminal, according to the result; and the more modern writers have either too readily followed, or too generally condemned, these authorities, without a sufficient consideration of the changes which have taken place in the state of the profession.

Section I.

Unqualified Practisers in Physic.

At common law, every person competent was entitled to practise as a physician; for, being regarded from a very early period as a profession, no apprenticeship was prescribed: but he practised at his peril. He was not, as the Mirror and Britton would have it, to abide the accidental result of his prescription: he could not be convicted of murder, although his prescription might have caused death; as it is obvious that unless some direct malice appeared, it could not be inferred from his

profession, for his object was evidently to save life, and not to destroy, however rash or ignorant he may have been. To assert that the destruction of his patient was homicide, implies no crime, but rather a misfortune: to assert that it was unjustifiable homicide, implies only a misdemeanor. But he thus far practised at his peril. If he possessed a fair proportion of skill and knowledge, according to the state of the science, he was justified in adopting that profession, and indemnified against the accidental injuries which his occasional errors might produce; but if he were grossly ignorant of the faculty of which he professed to be a master, he practised a criminal deception on the public of the most dangerous character, and was liable to be punished by fine and imprisonment as guilty of a misdemeanor, though he had not as yet occasioned any serious mischief: and although he was not to be tried by the result of his practice, the want of skill necessarily producing such results was evidence, though not conclusive, against him of a general want of that knowledge without which he was not justified in undertaking the cure of the diseased.

The effect of 3 Hen. 8. was to leave the common law as it before stood with regard to those who ventured upon the practice before they had acquired the necessary skill and knowledge; and to impose the penalty of *5l.* a month upon every person who should practise without the requisite testimonial, although he might happen to possess competent learning and skill in the science.

The effect of 14 Hen. 8. in this respect was the same as that of 3 Hen. 8., except inasmuch as it required the testimonial to be obtained from a different class of persons.

This being the last enactment on the subject, the law may be thus briefly summed up: —

Any person, however learned and skilful, is liable to a penalty of *5l.* for every month during which he shall practise physic in the country, unless he is licensed by the president and three of the elects of the college, or

unless he is a graduate, that is, a bachelor or doctor of physic of Oxford or Cambridge; or, as the greater qualification is construed to include the minor, unless he is a fellow or licentiate of the college of physicians.

Any person, whatever his learning or skill in the science, or whatever degree he may have obtained at any university, is liable to a penalty of *5l.* for every month during which he shall practise physic within the precinct of London, unless he is a fellow or licentiate of the college of physicians.

Every person incompetent in learning and skill to undertake the practice of physic, and not duly admitted, is not only liable to the above penalties, but also guilty of a misdemeanor at common law, if he undertake the profession of a physician in any part of the kingdom; and this, before his practice has occasioned any serious calamity.

It is necessary to observe, that these rules apply only to such as practise or undertake the profession, and not to a person who, through kindness, may happen to administer medicine according to the best of his ability to such as may be unable to obtain the assistance of a regular practitioner.

The penalty of *5l.* is recoverable from such only as may have continued their practice, or rather profession, for one month at least. To prove this, it is necessary to show that the defendant has continued to hold himself forth to the public as a physician for one entire month, either within the precinct of London* if the proceeding be instituted by the college, or in the country if it be instituted by a common informer; and to show some instances, or at least one instance, of his actual practice within that period, from which it may appear that such practice was in the character of a physician.

But the word physician by no means implies the necessity of showing that the defendant was or assumed

* P. cxxviii. et seq

to be a graduate in physic * ; for both statutes were aimed more particularly, and the first in all respects, and the latter in some respects exclusively, against such as were not graduates in physic.

It seems to have been latterly considered that the prosecution will fail if it be at the suit of the college, and the practice proved be within the scope of the surgeon's department of the medical science; and on that ground the verdict of the jury seems to have been given in the case of Dr. Harrison. † Consonant with this opinion was the direction of the learned judge in that case, although his lordship very justly considered the evidence sufficient to show that the doctor had professed to be, and acted as, a physician. But with the utmost deference to so high and impartial an authority, I venture to submit that the earlier cases, and cases decided upon argument in full court, but which seem not to have been noticed in arguing Dr. Harrison's case, are directly and clearly to the contrary.

In the case of Dr. Laughton against Dr. Gardiner ‡, the statute 34 Hen. 8. was pleaded by the defendant, which is strictly and exclusively applicable to surgery. The same statute was again pleaded in the case of the Physicians against Butler §; the latter of which cases was three times argued before the Court of Common Pleas, and after a decision there, upon the Court's taking time to consider the arguments, it was re-examined on error in the King's Bench. We have, therefore, two decisions of the King's Bench and one of the Common Pleas on this point: for the confession in each case was exclusively of practice in diseases evidently treated by the legislature as surgical; and the question was on the sufficiency of the avoidance, that alone being met by the replication. Besides which, the statute 32 Hen. 8. has expressly declared that surgery is a special member of physic ‖, and within the legitimate range of the physician's vocation.

* P. cxlvii. † P. cxxviii. et seq. ‡ P. xcvii.
§ Pp. ci. cxix. ‖ P. xv.

My assumption therefore is, that the action will lie at the suit of the college, although the practice proved be surgical, unless the defendant by his plea show that he is legally entitled to practise as a surgeon, by specially setting forth his licence by the college of surgeons.

The action by the college may be brought either at the expiration of each successive month, or several penalties may be recovered on the same count, for it is not a popular action.*

But no action can be brought by the common informer against such as practise as physicians within the precinct of London; the penalty being given to the college and the king.†

It may be brought either in the name of the president alone‡, or in the corporate name, which is the more proper mode of declaring§: but unless brought in one of these names it may be defeated by a plea in abatement. ‖

It may be an action of debt¶, or an information on behalf of the king and the college.**

It has been generally thought prudent to set forth the statute 14 & 15 Hen. 8. specially, as doubts have been entertained whether it is a public or a private act of parliament.

Indeed, it has been contended that it is merely a petition surreptitiously introduced among the rolls of parliament; but this objection was so fully discussed and so clearly overruled in the cases of the Physicians *v.* ——, and of the Physicians against Huybert,†† (Lord Hale's decision in the latter of which contains a neat and amusing summary of the ancient mode of passing acts of parliament,) that it were vain again to revive it. But the general opinion of the judges appears to have been that this is not a public act of parliament, or at least that so much of it as particularly applies to the phy-

* Pp. civ. cix.
† Ibid.
‡ P. xcvii.
§ P. cxiv.
‖ P. cxvii.
¶ P. cxv.
** P. c.
†† Pp. cxi. cxxiii.

sicians of the college practising in London, is private, and it has been usual to set forth specially this statute: and also 32 Hen. 8., and 1 Mary. Lord Tenterden, however, expressed it as his then opinion* that it was a public act, inasmuch as it extended to all London; and although his lordship saved the point, I apprehend that inasmuch as the statute, in some one or other of its clauses, refers not merely to all the physicians, but is professedly made for the security of the health of all the people of the kingdom, it must be deemed a public statute. It is necessary to aver either that the practising was within London, or that it was within seven miles of that city, although it be alleged to have been in Westminster; for the court does not judicially notice the extent of inferior jurisdictions.† But the venue may be laid in London although the practising was in Middlesex.‡

But, although it is necessary to prove a particular instance of practice, it is not necessary to set it out specially in the declaration, it is sufficient to aver generally, that for and during a certain number of months, &c. from, &c. exercised, &c.§

And it is sufficient to allege that the defendant had no licence under the seal of the president *and* college, although the printed statute runs seal of the president *or* college.‖

If the action be brought in the name of the president ¶, he must claim one half of the penalty for the king and the other for the corporation, and not for the king and himself alone; and if he happen to die after judgment and before levy, the successor is entitled to execution, and not the executor of the plaintiff: for although the action may be brought in his name, it is merely as the representative or officer of the college.

The penalty for practising out of London may be recovered by a common informer by information or action

* P. cxxix. † P. cxii. ‡ P. cxi.
§ P. cxv. ‖ P. cxvi. ¶ P. cxx. et seq.

of debt, in which he sues for the king and himself: this penalty also is 5*l.* for every month of practice, and is to be sued for upon the two statutes, that is 3 Hen. 8., by which it is imposed, and 14 Hen. 8. c. 14. § 3., by which another set of examiners is substituted for those appointed by the former statute.

The punishment of such as illegally, *and* without competent knowledge and skill, undertake to practise as physicians, will be the subject of observation in the next chapter.

Section II.

Unqualified Practisers in Surgery.

In and about London.

Every person, except a physician, however learned or skilful he may be, is liable to a penalty of 5*l.* for *every time* wherein he may practise surgery within the cities of London or Westminster, or within seven miles of London, for his private lucre or profit, before he has been admitted so to practise by the college of surgeons. One half of this penalty is given to the king, and the other to the public use of the commonalty, or society; and the masters or governors for the time being are empowered to recover the same by action, in any court held within the city of London.*

I am not aware that any proceedings have ever been instituted under this clause of the charter of Charles the First, which is by way of reference incorporated in the act 18 Geo. 2. c. 15. by section 8.† And there may be some doubt whether, notwithstanding the words of that section, such penalty can be recovered in any manner except by an action in a court of record, or other public court of the country; for although the charter proposes to give the corporation a power of distress, such power cannot be exercised without making that college both judge and party, and giving some or the whole of the

* Vide pp. clxxxi, clxxxii. et ante p. 60. † Vide p. clxxxvi.

members of it authority to hear and decide in their own cause, which neither the charter nor the statute pretends to give them, and which Lord Holt has said even the legislature cannot give.

In the country.

Every person, except a physician, however competent he may be, is liable to a penalty of 5*l.* for *every month* during which he may continue to practise surgery in any part of England, except London and Westminster, and seven miles around the former city, unless he has been admitted by the college of surgeons, or approved by the ordinary, or in his absence by the vicar general of his diocese, and the other persons appointed by 3 H. 8. c. 11.* The proceedings under this act against a person practising surgery, are similar to those which may be instituted by a common informer against an unqualified physician.†

Section III.

Unqualified Practisers as Apothecaries.

Prohibition.

The act 55 Geo. 3. c. 194. § 14.‡ declares that no person shall practise as an apothecary in any part of England or Wales, unless he has been examined by the court of examiners of the apothecaries' company, or the major part of them, and received a certificate from that court of his being duly qualified to practise as such, or unless he was in practice at the time of passing that act. And the twentieth section § of the same act imposes a penalty of 20*l.* on every person so practising without such certificate, who was not practising *on* the 1st day of August 1815.

Penalty.

The same act (sec. 20.)‖ imposes a penalty of 5*l.* on every person acting as an assistant to an apothecary, unless he have obtained the certificate required by sect. 17 or 18 ¶; or unless he had, on the 1st August 1815,

* Vide p. vii. clxxxvi. † Ante, p. 81.
‡ P. ccxliii. § P. ccxlv. ‖ Ibid. ¶ P. ccxliii.

served an apprenticeship of five years to an apothecary, or was then acting as an assistant to an apothecary.

Recovery of.

The penalty of 20*l.* is recoverable* by action in any of the King's courts of record in England or Wales, in the name of "the master, wardens, and society of apothecaries of the city of London."

And although the act does not prescribe any mode of recovering the precise penalty of 5*l.*, having provided only for penalties exceeding or under that amount, yet as one moiety of it is given to the common informer, and the other to the company, it seems that a common informer may recover this penalty by action of debt for himself and the company, but that the company cannot recover it in its corporate name.

In an action for the penalty of 20*l.* it is necessary for the company to prove at least one act of practice as an apothecary; but it is not necessary to prove a continued practice for a month, or any similar period.

It is necessary that the declaration should allege that the defendant had not obtained the necessary certificate, and that he was not in practice on the first of August 1815. But as these are negative averments, it is not necessary for the plaintiff to prove either of them, as it is incumbent on the defendant to prove, either that he has obtained the certificate, or that he was in practice on that day.† And it is necessary for him to give reasonable evidence that he was in practice *on* the 1st August; but this may be fairly inferred from proof that he was in practice a short time before that day, unless the plaintiff show that he had discontinued his practice during the interval.‡

The defendant's practice must have been as an apothecary; therefore it is insufficient for him to show that he had acted as a druggist, or that he had gratuitously taken upon him to act as an apothecary. And if it appear that he was incapable of performing those

* P. ccxlvii. † P. cclxii. ‡ P. cclxvii.

acts which the fifth section requires an apothecary to perform, the evidence is conclusive that he had not acted as an apothecary, as it was impossible that he could have done so. But if it appear that he was capable in any manner of performing, and that he had professionally performed such duties, it is not competent to the court to enquire as to the degree of medical skill which he at that time possessed.*

It seems that one penalty alone can be recovered in the same action, although the defendant have continued his practice for some time, and in the course of it attended several patients.†

* P. cclxiii. † P. cclxii.

CHAP. IV.

MALPRACTICE IN MEDICINE.

MALPRACTICE, either by a physician, surgeon, or apothecary, or by an unqualified person pretending to act in either of these capacities, is of four kinds: —

Kinds of.

Wilful malpractice, or that which has for its object the destruction or injury of the patient, or of a child of which a woman is pregnant.

Avaricious malpractice, or that which has for its object the gain of the practitioner, by adopting intentionally improper modes of treatment, or substituting less valuable medicines or impure drugs for those which are more appropriate, or by any other means through which the health of the patient may be sacrificed to the lucre of the practitioner.

Negligent malpractice, in which there is no criminal or dishonest object, but a gross neglect of that attention which the case of the patient requires.

Ignorant malpractice, in which there is no object criminal or dishonest, immediately towards the particular patient, but a gross violation of that duty which every man owes to the public, in undertaking, for the sake of gain, that cure which he wants the ordinary professional skill to conduct according to the known rules of able physicians or surgeons, or in undertaking to compound medicines without a due knowledge of their names, nature, qualities, or quantities.

Punishment of by the general law.

Malpractitioners of the first class are guilty of an attempt to commit the same offence which others, with the same object in view, might endeavour to commit by different means; as murder, maim, or some serious bodily

injury. And if death, maim, or a serious bodily injury be the effect, they are guilty of murder or felony.

There is one subject of this division which, however, requires a more particular consideration—the attempt to destroy the embryo. There is one case, and one only, in which the accoucheur, or medical practitioner, is not only excused but justified in the attempt; that is, for the purpose of saving the mother, when, from a knowledge of her constitution, or the circumstances attending the conception, pregnancy, or approaching parturition, in the exercise of a due discretion and scientific judgment, he is satisfied that the attempt to save the child would place the mother in the utmost danger. In such cases, a prudent man would embrace the earliest opportunity of explaining the circumstances and his own motives to such as could understand and appreciate them; and would in all cases make known his intention, before he put it into execution.

It is not the purpose of this work to speak of infanticide, except in so much as it relates to the attempt as connected with the medical profession. But I cannot abstain from calling to the serious attention of such as may be connected with the legislature, the fearful responsibility which it incurs by denouncing that awful and immutable sentence against an offence which it is ever most difficult to prove to the satisfaction of sensible men, and of which many have been convicted, and probably will be convicted, on that evidence alone which accident, and that last vestige of virtue, the shame of exposure, are ever too likely to afford. Disgust and horror are excited by the mention of the crime: but a kind of madness has generally attended its commission; and, where many have been condemned through the ignorance of their judges, it is due at least to justice that a sentence so often founded in error should not be irrevocable, while imprisonment and labour may be deemed sufficient correction for the wretched individual, nor

perhaps less effectual than a heavier doom in deterring others from similar crimes.

With regard, however, to the attempt to destroy the embryo, inasmuch as it relates to malpractice in the medical profession, the law has made the following provisions: —

If any person* shall wilfully, maliciously, and unlawfully administer to, or cause to be administered to, or taken by any of his Majesty's subjects, any deadly poison or other noxious or destructive substance or thing, with intent thereby to cause and procure the miscarriage of any woman then being quick with child, the person so offending, his counsellors, aiders, and abettors, knowing of and privy to such offence, are felons, and shall suffer death as in cases of felony without benefit of clergy. And if any person† shall wilfully and maliciously administer to, or cause to be administered to or taken by any woman, any medicine, drug, or other substance or thing whatsoever; or shall use or employ, or cause or procure to be used or employed, any instrument or other means whatsoever, with intent thereby to cause or procure the miscarriage of any woman not being, or not being proved to be then quick with child, such person and such his counsellors, aiders, and abettors, are guilty of felony, and liable to be fined, imprisoned, and set in the pillory, publicly or privately whipped, or to suffer one or more of the said punishments, or to be transported for any term not exceeding fourteen years, at the discretion of the court before which they are tried and convicted.

When the party is indicted under the first section of this statute, it is necessary to prove that the woman was quick with child, that the medicine, drug, &c. was a deadly poison, or a noxious and destructive substance or thing, and that it was administered with a view to producing miscarriage. But when the party is indicted under the second section, it must not appear that the

* 43 Geo. 3. c. 58. s. 1. † Ibid. s. 2.

woman was quick with child ; nor is it necessary, indeed, to prove that she was pregnant, it being sufficient to show that the offender thought that she was pregnant, and did the act for the purpose of causing miscarriage or abortion ; nor is it necessary to show that the means adopted were calculated to produce the contemplated object.*

Malpractice of the second kind more frequently prevails among druggists and the lowest order of apothecaries. A man who sells one drug instead of another which is more valuable, or an adulterated instead of a pure medicine, being himself aware of the difference, is a cheat at common law, and punishable by fine and imprisonment.

But on account of the difficulty of discovering such malpractices by ordinary means, the correction of them is more especially confided to the medical corporations, whose power will be stated in another section.

Malpractice of the third kind is generally regarded rather as the subject of civil action than of criminal prosecution. Yet were a very gross case to come under the consideration of the court, there is no doubt that it would be treated as a great misdemeanor, whether in a licensed or unlicensed practitioner, " because it breaks that trust which the party had placed in his physician, and tends directly to his destruction †," as was resolved by the court in the case of Doctor Groenvelt. And it has been justly observed, that in the most serious cases of this kind, the offence would of itself defeat the civil remedy, by destroying the only person who would have been entitled to sue.‡

Malpractice of the fourth kind is without doubt a great misdemeanor at common law, whether in a licensed or unlicensed practitioner.§ For he who undertakes the public practice of any profession, undertakes that he has acquired the ordinary skill and knowledge necessary to perform his duty towards those who resort to him in

* R. v. Phillips, 3 Camp. N. P. 74.

† 2 Bl. Com. 122. post. ; clvi. clxxxvi. ‡ P.cxxxv. § Ib.

his assumed character. There is one circumstance of distinction alone between licensed and unlicensed persons in this respect. Those of the former class, having submitted to, and been approved upon, an examination by persons whom the law has considered competent to conduct that examination, may reasonably consider themselves qualified to undertake the ordinary avocations of their department in the faculty; but this is merely *primâ facie* evidence in their favour, the effect of which the jury will have to consider in determining on the whole case: as the question must ever be, whether, from all the circumstances, it appears that the accused exhibited such gross ignorance of the science, or such total want of skill, that he must be presumed to have entertained a reckless indifference to the welfare of his patient, and to have pursued his mischievous course with a view to his own interest alone. But the offence consists in the undertaking of the cure being wholly deficient in the skill and knowledge necessary to the conduct of it; therefore it is the same whether the patient sustain only an injury from which he may recover, or whether the imprudence of the practitioner is attended with the most fatal consequences. The treatment and its result are evidence of the want of skill, but the result does not aggravate the nature of the offence; for it does not consist in a supposed intention to destroy or injure his species, but in a disregard of the dreadful consequences which will probably attend his rashness in employing medicines, or other medical agents, of the appropriateness or effects and qualities of which he has not that knowledge, or over which he has not that control which the public has a right to expect from every man who takes upon him to exercise this profession. The practising thus improperly is a misdemeanor; and, at the same time, the injury arising to any individual from his being a victim to this practice is a private wrong, for which he may recover damages adequate to the loss he has thereby sustained.

Four persons* are to be annually elected by the college of physicians, who are to have "the supervision and government of all and singular physicians of the city of London, using the faculty of medicine in the same city, and of other foreign physicians whatsoever, in any manner exercising and using that faculty of medicine within the same city and suburbs thereof, or within seven miles around the same city; and the punishment of them for their defaults in not well exercising, making, and using it. Also, the supervision and scrutiny of all manner of medicines, and their receipts by the said physicians, or any of them of this kind, to our lieges for the curing and remedying of their complaints given, imposed, and used, as often and when there shall be need for the advantage and utility of the same our lieges; so that the punishment in this respect, of physicians using the said faculty of medicine so in the premises offending, be effected by fines, amerciaments, and imprisonment of their bodies, and in other like reasonable and convenient manner." Punishment by the college of physicians.

This section has invested the censors with a twofold authority over physicians practising within the precinct of London: first, in the correction of their defaults in not well exercising their faculty; secondly, in scrutinizing their medicines and receipts.

In both respects their jurisdiction extends to London, and seven miles around that city, and to all persons practising as physicians.

It is immaterial whether the malpractitioner be a fellow or licentiate of the college or not; whether he be or be not a graduate of Oxford, Cambridge, or any other university; or whether he do or do not assume the style of doctor, or the character of a physician.

An opinion has, indeed, prevailed, that the authority extends only over the members or licentiates of the college; or at least that it is restrained to such as have assumed a degree in physic. But this is erroneous: for,

* P. x.

in the first place, the principal object of this statute was similar to that of 3 Hen. 8., to impose a medical government on those who were not subject to the jurisdiction of the universities, and on that account deemed less worthy of being intrusted with the health of the people; and the subjugating of the university physicians to the control of the college, appears to have been a minor consideration in the erection of this institution. Moreover, it would be inconsistent, not only with law but with every principle of reason, that persons unfit to be intrusted with the regimen of the sick, should be allowed to exempt themselves from the heavier punishment which the censors are empowered to impose in respect of their malpractice, by committing the further offence of practising without a licence: and it would have shown a singular want of foresight in the legislature, to have imposed a trifling penalty on such as continued their illegal and also their malpractice for several months, and the severer punishments of fine and imprisonment on those who, having been examined and admitted, would, of course, be less suspected, and that in respect of each particular offence.

But this opinion is not merely to be refuted by argument: it is contrary to a solemn decision of the Court of King's Bench, in which Holt C. J., in pronouncing the judgment of the court, declared it sufficient to show that the party was a practiser of physic in London, &c.*

It is necessary that the malpractice should be in physic. But it is apprehended that this would include the practice of surgery† by all except legal surgeons, who are impliedly exempted from this jurisdiction, by being placed by the legislature within the immediate control of another set of governors; and that it would also include the practising of physic by apothecaries, although members of the apothecaries' company: for although they have the privilege of practising physic to a certain extent, without the licence of the college,

* P. cxlii. † Ante, p. 79.

they fall within the terms of the statute; and the jurisdiction granted by the 14 Hen. 8. is not supplied by any provision of 55 Geo. 3., which also contains a saving of the privileges of this college.*

It is for the censors alone to determine what is and what is not malpractice, — whether in the mode or other circumstances of the prescription, or in the unfitness of the medicine prescribed, or in the unfitness or unsoundness of the medicine administered, if the practitioner take upon himself to superintend its being administered. †

In forming this judgment, they unite the province of the judge and the jury: of the jury, in ascertaining all the facts, such as the nature of the disease, and what medicines were administered; and of the judge, in determining whether such medicines were applicable or genuine. ‡

The conclusion to which they may thus arrive is unimpeachable on any proceeding §, except, perhaps, on a criminal information, or indictment founded, not on error in judgment, or the mere question of the medicine being appropriate or bad, but on the motives by which they were induced to adjudge it improper or bad, when it was, in fact, proper and good; which is, indeed, showing that, under colour of their judicial authority, they have violated their duty and oath, and, through malicious motives, in reality abandoning, while they pretended to assume, the character of judges, made it the pretext of criminal oppression.

Inasmuch as these officers act as a court of justice, they are bound to observe all forms essential to the administration of justice; but they are not bound to follow any technical forms of proceeding, or special mode of recording their judgments. ‖

They are bound, therefore, to give the accused due notice of the nature of the charge against him, and of

* P. ccxlviii. † P. cxlvii. ‡ P. cxlii. et seq.
§ Ibid. ‖ P. xci. cxliv.

the time on which he is required to appear. They are bound on the trial to allow him to hear the charge, and to observe the ordinary rules of evidence in examining witnesses to prove the facts alleged; and I take it that such witnesses can be examined only on their oath, which the censors are, by consequence of law, enabled to administer, or such other guarantee for their veracity as a court of law requires, although Lord Holt declined giving a positive opinion on this point.* They are bound also to hear his defence, both by explanation and by the examination of witnesses on his part, as well as by his cross-examination of the witnesses adduced against him, and may, of course, if they think proper, hear the reply of the accuser. It may be doubtful whether they are bound to hear counsel on either side; but it is their duty to afford every fair opportunity to both parties in attaining the ends of justice; and not only may they do so, but they may select a legal adviser to be present, for the purpose of assisting them on all questions of law: for, being constituted a court of justice, they are incidentally invested with all powers necessary to the due discharge of their office.

Though their conclusion be not impeachable, it is necessary for them to form a positive conclusion on the whole examination, and to pronounce it as their adjudication. But no technical form is necesary, either in giving judgment, or in setting it forth.

They must, therefore, pronounce their sentence; and they may either fine, or imprison, or fine and imprison the party; or if they impose a fine alone, they may enforce payment of it by imprisonment.†

There may be some doubt whether they can impose any fine exceeding 20*l.*, as the liability of the gaoler to whose custody the party is committed, for not receiving him, or for permitting him to escape, is limited to the double of such fine‡; after which the statute proceeds,

* P. cxlvii. † Ibid. ‡ P. xvi.

"so that the same fine and amerciament be not, at any one time, above the sum of 20*l.*"

Their power of imprisoning is not restricted to any particular time; and not only the statute does, but had that been silent, the common law would, restrain that power to a sentence of such imprisonment as may be deemed a reasonable and moderate punishment for the particular offence. Of this the censors are the immediate judges, under the control of a jury, should they venture to abuse the authority by commitment for an unreasonable time. On convicting an offender, the censors are bound to make a record of their proceedings.* This should show the style of the court; that the defendant had appeared before them, or that he had been summoned; that the case had been heard; and that they had adjudged him guilty. It should also set forth the sentence of the court; after which, if the offender be condemned to imprisonment, a commitment must be made out, as an authority to their officer to deliver him to the gaoler, and to the gaoler to detain him in custody.

So the necessary circumstances be distinctly stated, no further formality is necessary to the validity of the record. It is not requisite to state that the witnesses were examined upon oath †, or what were the particular bad medicines, or the particular modes of malpractice, it being sufficient to state that he was accused and convicted of administering bad medicines to a particular person, or of malpractice in his treatment of a certain person. ‡ Nor is it necessary that the adjudication begin with the words, "therefore it is considered," &c., or any other particular phrase. §

But the sentence must be clear and distinct. If it be of fine and imprisonment, it must show whether the imprisonment be part of the sentence, and distinct from the fine, or whether it be merely until payment of the fine,

* P. xci. cxliv. † P. cxliv. ‡ Ibid. § P. cxliv.

or whether it be for a certain, and what time, in addition to the fine; and, if such be the intention, for a certain time, and further until the fine be paid.*

Although the judgment of the censors can no more be impeached than that of a court of law from which there is no appeal, yet inasmuch as the record may be defective, or they may have exceeded their jurisdiction, the Court of King's Bench, in the exercise of that controlling authority which it has over all inferior jurisdictions, for the purpose of restraining them within the exercise of their legal powers, will grant the writ of certiorari† to bring the record and commitment before it. Or, in the discharge of their duty in determining on the sufficiency of any cause on which a man is detained in prison, that Court, or either of the judges, may bring the commitment before it, by granting the writ of habeas corpus.‡

The Court will not, however, grant the writ of certiorari, or a rule to have a copy of the record before issue joined, for the purpose of aiding the party convicted in an action against the censors or their officers for false imprisonment under their sentence.§

When the record comes before the Court, it will examine it for the purpose of ascertaining whether it show a sufficient jurisdiction over the place, person, and offence; whether the person is adjudged guilty, after an opportunity of defending himself; and whether the sentence is such as the censors have authority to pronounce; and whether that is distinctly set forth: but it will not admit any evidence to contradict or impugn the correctness of the statements appearing on the face of the record.

No writ of error lies to the censors, for they are not a subordinate court, and their mode of proceeding is different from that of the courts of common law.‖ Nor can an action be maintained against them for false imprison-

* P. cxxxiv. † Pp. cxliv. cxlviii. ‡ P. cxxxiii. et seq.
§ P. cxxxvii. cxlv. ‖ Pp. cxliv. cxlviii.

ment in any case within their jurisdiction, although they have erred in their judgment in finding the party's practice or medicines bad: for in this respect they are judges accountable only for the integrity, and not for the correctness, of their decisions; and the circumstance of there being no appeal proves only that the legislature reposed in them a greater degree of confidence, and by no means subjects their judgments, by any inference, to the revision of the courts of common law*: but if they exceed their jurisdiction they are liable to an action for damages, according to the extent of the injury the party may have sustained through their illegal proceedings.†

During a short period a right of appeal existed in some of the cases subjected to the judgment of the censors, but the statute by which it was given was temporary, and has long since expired.‡

It has been distinctly held, that a pardon of the offence before judgment, whether by a general or a particular pardon, precludes the censors from proceeding further in the case, although a moiety of the fines is given to the college. For the royal prerogative of pardon cannot be diminished by a grant of fine, and, when exercised, rescinds the right of the grantee to recover such penalties as would have been released, had the franchise remained in the crown.§

By statute 32 Hen. 8.‖ the censors¶ are empowered, as often as they shall think convenient, to enter the house of any apothecary within the city of London only, to search and see his wares, drugs, and stuffs; and calling to them the wardens of the mystery of the apothecaries, or one of them, to cause to be burnt, or otherwise destroyed, all such wares, drugs, and stuffs as the censors shall find defective, corrupted, and not meet or convenient to be ministered in any medicines for the health of man's body.

Any person resisting this search is subjected to a

* Pp. cxxxviii. et seq.
† Ib. et lxxx. et seq.
‡ Vide 10 Geo. 1. p. xxviii.
§ Pp. cxxxiv. et seq.
‖ P. xiv.
¶ Ante, p. 33.

penalty of 5*l.*, half to the king, and half to the common informer; and the persons elected censors are subjected to a penalty of 2*l.* each, if they refuse to be sworn, or afterwards neglect to make such search and view, once in the year, at such time as they may think convenient.

By statute 1 Mar.* it is provided (§ 5.) that the wardens of the grocers, or one of them, may go with the physicians on this search; but that if he delay attending forthwith, on notice by the censors, the censors may execute the search and view, and the due punishment of the poticaries for their evil and faulty stuff, without the assistance of the said wardens.

The penalty on resisting the search is raised to 10*l.* All magistrates within the precinct of London are, by the 6th section, required to aid the college and its officers in the execution of their authority under 14 Hen. 8., 32 Hen. 8., and this act, upon pain to run into contempt of her majesty.

The charters of James I.† and Charles II.‡ proposed to introduce more specific regulations for the exercise of this authority, and to enlarge the powers of the censors in this respect; and the legislature afterwards § particularised their powers, and gave the apothecaries an appeal from their decision to a corporate meeting of the president and fellows, prescribing a regular mode of proceeding. The latter statute recites the statutes 14 & 32 Hen. 8. and 1 Mary, but takes no notice of the charters, which were, in fact, insufficient to give such authority; and being itself temporary, and having long since expired, the three former statutes are to be referred to, as though these charters, and the statute of George I., had never existed.

This authority of the censors is expressly mentioned and saved by the charter of James ‖, by which the apothecaries' company was instituted. And the statute 55 Geo. 3. c. 194. § 29, provides ¶, that nothing therein

* P. xvi. † Pp. xix. xx. ‡ Pp. xxv. xxvi.
§ 10 Geo. 1. c. 20 Vide pp. xxviii. xxix. xxx.
‖ P. ccxxxiv. ¶ P. ccxlviii.

contained shall lessen, prejudice, defeat, or interfere with any of the rights, authorities, privileges, or immunities of the college of physicians.

The censors at first set about the work of correction with so much zeal, that they exposed themselves to difficulties, and to defeat in many actions against them. They seemed to fancy that they could, by their bye-laws, impose a greater punishment than the legislature had appointed on those who practised without their licence, although not even accused of malpractice, by construing a refusal to submit to an examination into a contempt of their authority. In this they were inadvertently supported by an opinion of several of the judges, mentioned in a former page*; until, after a long contest with Dr. Bonham, they found the decision of the judges, at Serjeants' Inn, decidedly against them.† They afterwards less frequently interfered, in this manner, with the unlicensed practitioners, but waged war upon the apothecaries, sorcerers, seventh sons, and witches; sometimes taking into their own hands the office of fining in the penalty of *5l.* for practising without their licence. They next entered upon an epistolary warfare with bishops and statesmen, whose valets and barbers had assumed to practise physic under their masters' authority, and in defiance of the college prerogative; and occasionally undertook to punish malpractice in medicine, either by administering or vending it, although death had been the consequence of the offence: but they subsequently relinquished this enquiry, when the death was an immediate consequence, as being a crime requiring severer punishment than they were authorised to inflict. They soon after made an attack upon the surgeons of the college, who had ventured to prescribe or administer medicines for the syphilis, or in aid of their surgical operations. Their proeeedings are recorded at length by Dr. Goodall, who has favoured us with a detailed

* P. *55.* † Pp. lxxx. et seq.

account of the protracted prosecution of a pretended seventh son by the king's serjeant surgeon. This important criminal's guilt appeared to consist rather in the disparagement of the royal science of sorcery, in touching for the king's evil, and in puzzling the learned college to discover a distinction between the divine endowments of a king and of a seventh son, than in any mischief arising from his simple imposture; and being unable to convict him of malpractice, they convicted him of a sort of high treason and false assumption; leaving the world to believe that they acknowledged the miraculous achievements of seventh sons, as well as of our monarchs. The learned doctor's compilation may afford some amusement to the cynic, but very dangerous precedents for the censors in the execution of their judicial office. Alarmed at the difficulties encountered by their predecessors through their gross misconstruction and abuse of the power entrusted to them, the censors have, for a long time, almost wholly neglected the discharge of that duty which the law has imposed upon them in the correction of the malpractices of quacks and empirics. But they still retain the authority, and in the present state of the metropolis they ought to resume the exercise of it; and they may, in the discharge of their duties with impartiality and moderation, confidently rely upon the succour of the courts at Westminster. A court of justice cannot become obsolete by the neglect of its judges; the present censors may exercise these powers as fully as if they had been daily exercised by their predecessors from the time of Henry VIII. Not only may they revive their jurisdiction, but they are bound to revive it; insomuch that should they reject a charge of malpractice preferred by any person against a practitioner of physic in the precinct of London, the court of King's Bench would, by mandamus, compel them to convene, and to hear and decide upon the accusation.*

* R. v. Havering Atte Bower. 5 B. A. 691. 2 D. R. 176.

Punished by the college of surgeons.

The charter 1 Ed. 4.* directs that the governors and community of the barbers' company may make bye-laws for the wholesome government, oversight, and correction of the mysteries of barbery and surgery; and afterwards declares, that the governors shall have the oversight, scrutiny, government, and correction of all freemen of the company, and foreigners, using the mystery of surgery within London and its suburbs, and the punishment of them for their defaults in not well practising and using that mystery; and the oversight and scrutiny of all their instruments, plaisters, medicines, and receipts. So that the punishment of the delinquents might be by fines, amerciaments, and imprisonment of their bodies, and in other reasonable and fit manner.

The statute 32 Hen. 8.†, after confirming former privileges (§ 1.) granted that the united company and their successors should have the search, oversight, punishment, and correction, as well of freemen as of foreigners, for such offences as they, or any of them, should commit or do against the good order of barbery or surgery; as afore that time, among the mystery and company of barbers of London, had been used and accustomed, according to the good and politic rules and ordinances by them made, and approved by, &c.: and by § 5.‡ declared that the four masters, and every of them, should have full power and authority to have the oversight, search, punishment, and correction of all such defaults and inconveniences as should be found among the said company using barbery and surgery, as well of freemen as foreigners, aliens, or strangers, within the city of London, suburbs, and one mile around the city. And further provided, that if any person using any barbery or surgery should offend in any of the articles aforesaid, he should forfeit 5*l.*, half to the king, and half to the common informer.

The charter 15 Car. 1.§ proposed to subject to the

* P. clxviii. † P. clxxiii. ‡ P. clxxv.
§ Pp. clxxix. clxxxi.

superintendence of the college all persons (except physicians) professing and exercising the mystery of surgery within London and seven miles around, and to extend over them the power of fining and imprisoning for offences; and to give the company power to obliterate and destroy all bills and advertisements of empirics.*

The statute 18 Geo. 2.† affirmed all the powers and authorities which the surgeons' company had under charter 1 Ed. 4., stat. 32 Hen. 8., and charter 15 Car. 1., in as full, ample, and beneficial manner, to all intents and purposes, as if the same had in and by that act been expressly repeated and re-enacted.

Lastly, the charter 40 Geo. 3. confirms to the college of surgeons all the former privileges of the company.‡ Although the charters were in these respects void, the legislature has, by the direct reference made to them in this last statute, and the mode in which it has confirmed them, that is, as though incorporated in and erected by that statute, rendered them a part of the law of the land from the year 1745. By this means all the powers relating to the regulation of the practice of surgery by bye-law, which have been from time to time granted to the incorporated surgeons, are now vested in the London college of surgeons; and all such powers relating to the correction of their malpractice are now vested in the president and two vice-presidents. And what has been said as to the mode in which the censors of the college of physicians ought to act in the correction of malpractice in physic, is equally applicable to the proceedings of the president and vice-presidents of the college of surgeons, in the correction of the malpractice of all surgeons practising for their own lucre or profit within London and seven miles around, whether they are or are not members of the college, and of the malpractice of the members of the college in any part of the kingdom.§

And the observations made on the power and duty

* P. clxxxiii. † P. clxxxvi.
‡ P. clxxxix § P. clxxix.

of the censors in reviving their dormant authority is equally applicable to the governors of the college of surgeons, although they may never have undertaken to act as a court of justice.

Punished by the apothecaries company.

The powers of correcting malpractice given to the company of apothecaries by the charter of king James, are repealed by statute 55 Geo. 3. c. 194.*, which empowers any two or more members of this society, of ten years' standing, nominated and assigned by the master and wardens, at any seasonable time, and so often in the day-time as the master and wardens shall deem expedient, to enter the shop of any person whatever practising as an apothecary in any part of England and Wales, and any two or more members of five years' standing, so assigned, so to enter any apothecary's shop in any part of England and Wales situate thirty miles from London, and to search, survey, prove, and determine if the medicines, simple or compound wares, drugs, or any thing or things whatsoever therein contained, and belonging to the art or mystery of apothecaries, be wholesome, meet, and fit for the cure, health, and ease of his majesty's subjects; and to burn, or otherwise destroy, all and every such medicines, &c. which they shall find false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious, or hurtful. And they are required to report to the master, wardens, and assistants, the names of the persons in whose possession they find the same.

This statute empowers the master, wardens, and assistants, to impose and levy on every person whose name is so reported to them, for the first offence a fine of 5*l.*, for the second a fine of 10*l.*, and for every subsequent offence a fine of 20*l.*

Doubts soon arose as to the power of the company in carrying this authority into effect, as the act did not provide a form of appointing such examiners. For the removing of these doubts, another act† was obtained by them in the sixth year of the present reign; but that

* Pp. ccxxxii. et seq., et ccxxxvi. et seq. † Pp. ccl. et ccli.

having now expired, they are obliged to rely exclusively upon the former act.

Doubts may certainly be entertained concerning the mode of appointment, and the directions to be given by the master and wardens, for which no adequate provisions were made by either of these acts. There may be two forms of appointment; one to members of ten years' standing, to search any shop in England and Wales; and the other to members of five years' standing, empowering them to search any shop in England or Wales, except within thirty miles of London. The language of the appointment should follow that of the 3d section of 55 Geo. 3. It should appear that the parties appointed are of the standing required by the statute; and the signatures of the master and wardens should be attached to the appointment, as well as the corporate seal.

The principal difficulty, however, arises from the words "as often as to the said master and wardens it shall seem expedient;" which seem to imply the necessity of a specific direction from these officers, not only as to the shop to be searched, but also as to the time of each search to be made in it. This difficulty was not removed by statute 6 Geo. 4.; and the courts are in the habit of construing with great strictness every authority of this description.

CHAP. V.

CIVIL RESPONSIBILITY OF MEDICAL PRACTITIONERS.

SECTION I.

Want of Skill or Attention.

A PHYSICIAN, surgeon, apothecary, and every other person professing to practise as a curer of wounds or diseases, is liable to make compensation in pecuniary damages (as far as such can be deemed a compensation) to any person who may become his patient, for every injury that may arise either through his want of skill or his want of attention.

This however is a general proposition, and although subject to no exception, requires some explanation. Want of skill does not mean the want of the greatest possible medical talent or attainments; still less does it signify the having erred in opinion as to the disease or the mode of treatment adopted; but the want of that general and ordinary knowledge of the profession which the law expects from every man who ventures to proclaim himself a member of it, and thereby to induce that degree of confidence which the public is likely to repose in one who assumes that character; or a total want of professional skill and knowledge in the particular operation or complaint which he has undertaken to cure.

Nor does the want of attention imply a want of the utmost care and attention which may accidentally become necessary by reason of any change in circumstances, or in the character of the complaint, which might not have been reasonably expected; but a want of that attention which a professional man of ordinary discretion and knowledge might be reasonably expected to show, ac-

cording to the nature and state of the disease or wound, at such times as he has had an opportunity of observing it.

Medical experiments will form the subject of a separate section; in which will be considered the liabilities which may be incurred from that want of skill and attention which may be reasonably inferred from imprudently adventuring upon them.

The physician is responsible for his want of skill, as well as the surgeon or apothecary; although the contrary has been surmised, from a comparison frequently instituted between the characters, in this respect, of the physician and barrister.

It has been said that his fee is honorary, and therefore he is not responsible; and that his profession is to judge of the disease and the remedy, and that the law holds no man responsible for an error in judgment, and therefore he is not responsible.

But both these premises are erroneous. Even admitting that his fee is honorary, no man would pretend that there is not, between a physician and his patient, as complete a contract for mutual advantage as between any other bailor and bailee for hire; and indeed the fee of the physician is almost always received before he begins to perform his part of the contract, except when he reposes that confidence in his patient which removes all pretence of his being a practitioner without a sufficient right to receive a remuneration. But even admitting that his undertaking to cure is without any compensation, it is not what the law calls nudum pactus, which a man is not bound to fulfil; for his open profession of skill and knowledge in the faculty, and of all other acquirements essential to the character of a good physician, has induced a confidence in him, by accepting which he incurs a legal responsibility for every injury arising from his deficiency in those respects. The proposition, that the law holds no man liable for error in judgment, is equally incorrect: it has, indeed, been occasionally laid

down to this extent, but must be restrained to the subject in relation to which it was advanced; that is, to persons acting in a judicial capacity, or persons justified by law in forming opinion on the subject: but to persons acting in a private occupation the doctrine will not apply; for the responsibility is not founded on the incorrectness of the physician's opinion, but on his undertaking that on which he is incompetent to form any well-founded opinion. And with regard to the comparison to barristers, it merely suggests a question, whether barristers are themselves altogether so irresponsible as they are generally undertood to be. In the case in which the comparison was made, there is no doubt that another tribunal has considered barristers responsible; and the plaintiff was not nonsuit on the ground of the defendant not being liable, but because he had mistaken his remedy.*

The circumstance of there not being any case in point, does not invalidate the principle of the physician's liability; it shows only that, owing either to the death of the only person who could maintain the action, by the unskilful treatment, perhaps, of the physician, or the difficulty of producing the necessary evidence, which is obviously very great, or the uncertainty of medical practice, or some other such reasons, there has rarely occurred an opportunity of trying the point. On the other hand, the general tenor of the books is that such an action may be supported.

There are few cases in which want of attention can be attributed to a physician, as he is usually called upon on each distinct occasion when his presence and aid are desired, and his remuneration is according to the frequency of his visits. But there is no doubt, that were he to undertake the exclusive cure of his patient, he would be equally bound with the surgeon and apothecary to watch the progress of the disease, and to attend its various stages.

The surgeon and apothecary have been universally

* Pp. cliii. cliv. et ante, p. 9. note.

held responsible for the injuries arising from the want of skill and attention *: and they who take upon them the practice of physic or surgery without licence, cannot set up the illegality of their practice as a defence to such an action, in which it is an ingredient rather of aggravation than of mitigation; at least, unless the patient was aware of his not being duly qualified.

The surgeon or apothecary may protect himself by showing that he was engaged in a capacity subordinate to the physician †, if his unskilful practice were in strict uniformity with the directions of a legal physician, but not otherwise; unless, perhaps, the physician was appointed on the particular and express application of the patient, and with a full knowledge of his not being qualified. But to an action founded on want of attention, this is no defence.

The action is personal, and can be brought only by a party injured. ‡ It is a special action on the case: and although it may embrace both grounds, that is, want of skill or professional knowledge, and also want of attention, yet if it be founded on one ground alone, the plaintiff cannot recover unless that is proved; or if the evidence be directed to one alone, and the case rested on that by the judge and counsel, he cannot set aside a verdict for the defendant, although it appear that the result might have been different if it had been submitted to them on the other ground. §

It is not necessary to set forth in the declaration the particular defect in skill; it is sufficient to allege generally that he administered physic unskilfully, &c. ‖

A private person undertaking the cure of a disease, when the aid of a regular practitioner cannot be obtained, and without a view to profit, is bound to act according to the best of his knowledge; but cannot be responsible for want of skill, unless he has induced the patient to put himself under his care by pretending that

* Pp. ccix. ccxvii. † P. ccix. ‡ P. cvii.
§ Pp. ccx. et seq. ‖ P. cxlvii.

he is skilful in the faculty: but he is so far liable for want of attention, that he will be held responsible in damages for any very gross negligence while the party is in his hands.*

It is proper to observe that the circumstance of the defendant in such an action being a licentiate or member of the college of physicians or surgeons, or of the apothecaries' company, is by no means conclusive of his being possessed of sufficient skill and professional knowledge; for the examination he has undergone was not instituted in expectation of ascertaining this fact in relation to every particular complaint, but for the purpose of providing the public with professors possessing that general knowledge which may offer a reasonable guarantee for their securely confiding their health to their superintendence. This circumstance affords, however, a presumption in their favour, which will of course influence the minds of the jury in considering on the evidence produced to show the want of skill and knowledge.

Section II.

Experiments in Medicine and Surgery.

By experiments we are not to be understood as speaking of the wild and dangerous practices of rash and ignorant practitioners, which fall properly under the head of want of skill and knowledge; but of the deliberate acts of men of considerable knowledge and undoubted talent, differing from those prescribed by the ordinary rules of practice, but which they have good reason, from a knowlege of the human system and of the particular disease, —and if the experiment be medical, of the nature of the medicine,—to believe will be attended with benefit to the patient, although the novelty of the undertaking does not leave the result altogether free from doubt.

* Coggs v. Bernard, 2 Ld. Raym. 909. Jones on Bailments, 57. et seq. et p. cliv. ccxxii. et seq.

When an experiment of this kind is performed with the consent of the party subjected to it, after he has been informed that it is an experiment, the practitioner is answerable neither in damages to the individual, nor on a criminal proceeding; although the result be contrary to expectation, and attended with an injury which has not generally attended the ordinary mode of practice. But if the practitioner performs his experiment without giving such information to, and obtaining the consent of, his patient, he is liable to compensate in damages any injury which may arise from his adopting a new mode of treatment.*

* Vide pp. ccxv. et seq. ccxxv. clvii.

CHAP. VI.

REMUNERATION OF MEDICAL PRACTITIONERS.

Every regular practitioner is entitled to a fair remuneration for his services to his patients, according to his situation in life, and the expense and exertion by which he has rendered himself competent to his profession. And a medical man of great eminence may be considered reasonably entitled to a larger recompence than one who has not equal practice, after it has become publicly understood that he expects a larger fee; inasmuch as the party applying to him must be taken to have employed him with a knowledge of this circumstance.*

Section I.

Physicians.

It has been recently determined that the fee of a physician is honorary, and that it cannot be recovered by an action at law†; and that every person professing to act as a physician is precluded from assuming a different character, as that of a surgeon or apothecary, for the purpose of recovering his fees, although he may, in fact, be a surgeon or apothecary, or a person who had no right to practise as a physician.‡ It has been likewise determined that a custom in the defendant's neighbourhood to pay physicians at a certain rate is immaterial, and gives them no greater right to bring the action than in places where no such custom is known.§

It may not, however, be uninteresting to observe the state of this question previous to the decision of Chorley

* Vide p. ccvii.
† Vide p. cli.
‡ Vide p. ciii.
§ Vide p. cli.

against Bolcot.* Many of the physicians at an early period were monks: they could not recover their fees, or any remuneration, as they were unable to bring any action or possess any property, for they were, in the language of the law, *civiliter mortui;* and the canon† prohibiting their practice, precluded their superior from instituting any suit in their behalf, or on behalf of the house to which they may have belonged. Others were the attendants of the nobles, or retained by the religious houses, on a certain pension, on account of which they were under an engagement to attend the vassals of the former, and the whole fraternity of the latter, without receiving any extraordinary remuneration.‡ The rest of the class were, for the most part, likely to follow the example of their brethren, who, having no right to recover a remuneration, often sought a present in hand; and the few who would disdain that mode of receiving the fee, would equally disdain the adopting of any remedy which the law might have offered. These circumstances, together with that of there being very few early nisi prius reports, and the cases being of too simple a nature, and too unimportant in amount, to be made the subject of reconsideration in the superior courts, appear sufficiently to account for the want of records of such actions in early times. But the books are by no means silent on the subject, and up to a comparatively recent period they concur in supporting the right of the physician to maintain an action for his fees.§ In a very early case it was taken as granted, that a physician might recover a pension for his professional services‖; the only question discussed being, Whether he was or was not bound to travel to his patient when complaining of illness? And all the statutes and cases relating to the practice of physic proceed on the clearest assumption that physicians were persons practising for profit; and that the only persons liable to the penalty on practising without

* Vide p. cli. † Ante, p. 7. ‡ Ante, pp. 9 n.†, et p. 14. n.†.
§ Pp. cvii. cviii. ‖ Ante, p. 9 n.†.

licence were such as practised for lucre and gain. It is rather strange, therefore, that the whole argument in Chorley v. Bolcot should have been rested on a quotation from Tacitus, and that the court should have considered a refutation of that authority a sufficient reason for deciding the contrary.*

Section II.

Surgeons.

A SURGEON is entitled to recover a reasonable remuneration for his care, attendances, skill, labour, medicines, and applications in surgical cases.

It has not been required of a surgeon to prove that he is legally entitled to practise †, the defendant's having employed the plaintiff in that capacity has been thought sufficient to enable him to support the action, unless the want of qualification is shown. It cannot, however, be necessary to plead this objection specially; for, inasmuch as it is an essential part of the contract that the plaintiff should possess the character in which alone he is entitled to recover, the defendant may certainly show, if he can, that he has not been admitted either by the college of surgeons, or by the ordinary of the diocese. But, inasmuch as this would be attended with great difficulty, it is far more prudent to take the objection in pleading, which, as it is a negative averment, would impose on the plaintiff the necessity of proving his qualification. ‡

Indeed, it is by no means clear that a plaintiff is relieved from the necessity of proving this fact on a plea of the general issue; and it has been usual for him to give evidence of his being possessed of the legal qualification §: and in the case of Gremaire against Bois Valon ‖ there was a circumstance which relieved him from all difficulty on the subject, the defendant having entered into a special contract to pay a certain sum for the cure.

* P. cli. † P. ccvi. et seq. et ccxx. ‡ Pp. ccvi. ccxx.
§ P. ccxx. ‖ P. ccvi.

It has been held, that the right to recover for attendances is released by the surgeon if he render them in the character of a physician, or put them on the footing of a physician's fees, either by prescribing as a physician, or assuming to be of the degree of doctor in medicine *, or by sending in his account with blanks opposite to the statement of his services †: for in the former case he has relinquished the character of a surgeon, and assuming to be a physician, the court will not allow him to put off that assumed character, merely to entitle himself to that remedy which he has relinquished by his illegal act, and his affectation of dignity; and in the latter, having left the amount of the reward to the discretion and honour of the patient, he must content himself with what he may think proper to pay. But he is, in such case, entitled to recover any amount which the patient may have afterwards promised to pay, or have paid into court, inasmuch as either of these acts is an admission that so much was due. ‡

The reasonableness of the charge is a question for the jury, who will assess it with a due regard to the situation in life, the skill, and eminence of the plaintiff; the nature of the complaint, and the degree of attention and labour bestowed; and of course to any understanding which the defendant may have had of the ratio of the plaintiff's general charges, inasmuch as this circumstance in some degree assimilates the claim to one arising out of special contract. § But they will, at the same time, correct any exorbitant demand, however usual it may have been for surgeons to insist upon it ‖; and will not make the number of attendances, unless rendered at the defendant's particular request, an absolute criterion as to the amount due, but will consider whether they appear to have been rendered with a view to the recompense alone, or to the benefit of the patient. ¶

* P. clii. † P. ccvii. ‡ Ibid.
§ Pp. ccvii. et ccix. ‖ P. ccvii. ¶ P. ccix.

The demand of a surgeon is founded on his skill and attention: if, therefore, it appear that either of these qualifications was wholly wanting, he must be nonsuit, although there is no objection taken upon the record; for he has failed in making out the consideration on which alone he is entitled to sue. But the defendant cannot produce evidence to question the general capacity of the plaintiff; it must be confined to the impropriety of his treatment of the particular case. If the plaintiff fail on this ground, he is not entitled to recover a compensation for the medicines administered: for such have been, at best, wasted through his own ignorance or neglect in the misapplication of them; and of course the defendant cannot be held responsible for such as have caused him an injury, or been rendered necessary through the imprudence of the surgeon.

The surgeon is entitled to a compensation for his medicines, as well as for his skill and attention, when such medicines have been applied in cases within his proper province.* But if he infringe upon the practice of the physician or apothecary, his conduct being illegal, he has, of course, no remedy for the recovery of any remuneration for his service.

Section III.

Apothecaries.

An apothecary has the same right to, and remedy for the recovery of, his fees as a surgeon, with this exception, that it is declared by 55 Geo. 3. c. 194. s. 21.†, that no apothecary shall be allowed to recover any charges claimed by him in any court of law unless he shall prove on the trial that he was in practice as an apothecary *prior to* or *on* the first of August 1815, or that he has obtained a certificate to practise as an apothecary

* Pp. 57.—ccix.

† P. ccxlvi. See also Blogg v. Pinkers, p. cclxix.

from the said master, wardens, and society of apothecaries.

What is practice as an apothecary has been already explained *; but it is proper to observe, that there is a difference between the proof required to entitle one not admitted by the company to recover on the ground of exemption under this statute, and that which is rendered necessary on a defence to an action for the penalty imposed by it: as in the latter case it is requisite to show that the apothecary was in practice *on* the first of August 1815†, whereas in the former the statute requires merely evidence of his having been in practice *on* or *prior to* that day. ‡

The statute 6 Geo. 4. § 7. introduced a difference in the mode of proving the certificate on the trial of an action by an apothecary for his bill; but as that act was temporary, and has now expired, it is proper for the plaintiff to adopt the mode in use before the time of its passing. It is necessary, for this purpose, merely to produce the original certificate granted to the plaintiff, and to give reasonable evidence of its being genuine—as by showing that it is in the usual form of such certificate, and proving the signature of one or more of the persons whose names are attached to it, purporting to be the names of the examiners; or perhaps by proving the signature of the secretary only; and that the person whose signature was proved was an examiner, or the secretary, which may be done by any person who has seen such a certificate granted, and the person whose signature is proved acting as examiner or secretary: for the legality of the appointment of such officers cannot be brought in question in such a proceeding, it being sufficient to show that they were officers *de facto*. It is wholly unnecessary to prove the signatures of the whole, or even of a majority of the examiners, or of a majority of the examiners present. So any other evidence, from which a jury ought

* P. 72. et cclxxv. et seq. † P. 72.
‡ Sup. et p. cclxviii. § P. cclv.

to infer that the certificate is genuine, would be sufficient, unless impeached by evidence to the contrary.* But it may be doubtful whether proof that the seal attached is the common seal of the corporation is now sufficient for this purpose†; because that is the seal of the general body, and not of the court of examiners acting separately in the discharge of a peculiar office; and as the general body cannot act in the examination, so it can neither ratify nor verify the act of the select class.

It is sufficient to prove the certificate, without showing that the plaintiff had complied with the requisitions entitling him to obtain it, for the certificate is evidence of all the facts necessary to authorise the examiners to grant it‡: and as the statute merely requires proof of this particular instrument, it may be doubtful whether evidence can be admitted to show that it was improperly granted.§

An opïnion for a long time prevailed, that an apothecary could only charge a reasonable price for his medicines, and that he could not claim any compensation for his skill and attention. This, perhaps, originated in the form in which the case of the College of Physicians against Rose‖ was stated on the special verdict; and apothecaries, having no legislative sanction for their practice, may, before the passing of the act 55 Geo. 3., have thought it prudent to confine themselves within the strict limits of that case, whence grew up the mode of including a compensation for their labour in the charge for their medicines, a practice equally unsatisfactory to the apothecary and his patient. But although it may be still doubtful whether an apothecary can make any charge for his prescription or advice, on the ground of skill and knowledge of his patient's case, as that is considered the peculiar province of the physician,—and, indeed, to

* P. cclxx. et seq.. † Pp. cclv. cclxxiv. ‡ P. cclxxiii.
§ P. ccxlvi. ‖ P. xciii. et seq.

this extent alone did the principle of the case of the Physicians against Rose seem to preclude him,—there can no longer remain any doubt as to his right to make a reasonable charge as a compensation for the time and talent occupied, at the patient's desire, in attending upon him, as well to administer and apply the medicines prescribed or given, and in watching their effects and the progress of the complaint, as in compounding them according to the prescription of a physician. And although it has never been directly decided that an apothecary can make such charge, the cases plainly show what is the opinion of the judges upon the subject: for, in the case of Towne against Gresley*, it was merely said by the learned judge, that an apothecary could not charge both for medicine and attendance; his lordship seeming to think that such would be a double charge for the same thing, inasmuch as the usual rate of charging for medicines includes an indirect charge for attendance. And in the case of Handey against Henson†, had the lord chief justice entertained any doubt as to the right of the apothecary to make a reasonable charge for attendances, he would have put the plaintiff to show that the charges for attendances were confined to such as were rendered in the character of a surgeon, and that they did not extend to his attendances in the character of an apothecary; or would, at least, have suggested that the defendant might have shown that the attendances were rendered in the latter capacity.

It may, therefore, be safely laid down that an apothecary may charge for attendances; but that if he do so, he must charge for his medicines at such a rate as to remunerate him merely for their intrinsic value, and his skill and trouble in compounding, and to exclude any compensation for his attending to apply or administer them.

The case of Handey v. Henson was tried before Lord Tenterden C. J., on the ninth of January last, and

* P. cclxxvii. † Infra.

is thus reported * : — "Assumpsit for medicine and medical attendance on the defendant and his family. Plea, general issue. The plaintiff, a surgeon and apothecary, had attended the defendant and his family, and had also supplied medicine to them in the year 1827. The plaintiff's bill amounted to 7*l.* 0*s.* 6*d.*; and in it there were charges for the medicine supplied, and also several charges of two shillings and sixpence each for attendances. The charges of the bill were all proved to be fair and reasonable. Lord Tenterden in summing up said, In this case, besides his charges for the medicine, the plaintiff has also charged half-a-crown each for several attendances, which seems to me to be very moderate. You will consider whether it is too much; and if you think it is not too much, you will by your verdict give the plaintiff the sum he claims. Verdict for 7*l.* 0*s.* 6*d.* including the charges for attendances."

* 4 Car. & Payne, 110.

CHAP. VII.

PROTECTION OF MEDICAL MEN.

SECTION I.

Character.

A REGULAR professional practitioner has not only the same legal protection against defamation and libel as a private person, but he is entitled to recover a compensation in pecuniary damages against any person who, either by words or writing, has maliciously imputed to him a want of qualification, attention, skill, or capacity, or any misconduct by which he is likely to be prejudiced in the profits of his profession, although it cannot be shown that he has actually sustained any injury or loss in consequence of such imputation; for the law will presume that injury must necessarily arise from the propagation of such calumny, although it may be impossible for the party calumniated to prove it by any direct evidence.

The law also very justly presumes that every unwarranted imputation of this kind is malicious; but inasmuch as a criminal party is not entitled to any compensation,—for he cannot sustain any legal damage from an assertion of the truth in stating his want of qualification, or any other essential deficiency in professional character,—although presuming every man innocent until his guilt is clearly proved, it will not require the plaintiff in an action for libel or slander to prove the falsehood of the charge against him,—it will allow the defendant to prove the truth of the imputation which is charged to be libellous or slanderous, provided that he has duly given notice by placing such charge upon the record, that the plaintiff may have an opportunity of producing his evi-

dence to refute or explain it. And the defendant must be prepared to show that the plaintiff is deficient in the very point of character in which he had before published his deficiency; for proof that A., being a regular physician, is deficient in point of professional skill, will not justify B. in asserting that A. is a quack, which implies a want of legal qualification. If, however, the plaintiff unnecessarily take upon himself, by a special averment, to prove that he does not rest under the imputation contained in the libel or slander, he will be bound to prove his averment, as though it had been put in issue by the defendant's plea; as, if the plaintiff allege that, he being a doctor of physic, the defendant maliciously asserted that he was a quack, the plaintiff must prove that he had been admitted by some recognised university to the degree of doctor of physic. * So, if the plaintiff allege that the defendant libelled him in his character of a surgeon or apothecary, he must prove that he was legally entitled to practise in such character, unless the libel not only purport to be of the plaintiff, but state him to be a surgeon or apothecary. †

Another ground of defence against an action for libel or slander is, that the imputation was not malicious; and this is admissible as well on an indictment as on a civil proceeding. For though the law, to prevent the excitement and disturbances arising from defamatory imputations, however true, will not in general admit the truth of the charge to be pleaded to an indictment which is supposed to be the prosecution of the king, and founded upon the necessity of securing the quiet and peace of the nation, it will permit the defendant even on an indictment to produce any evidence tending to show that the imputation was not in legal acceptation malicious.

If the defendant can satisfy the jury that the alleged libel or slander was not malicious, he is on a criminal prosecution entitled to an acquittal, and in a civil action

* P. clviii. † P. cclxxviii.

to a verdict, although he do not even attempt to make out the truth of his charge against the plaintiff. Malice, as before observed, will be always implied until the defendant has shown that he was justified in making the observation: for no one has a right to calumniate another in ordinary conversation, far less to publish calumnies in writing without any specific object; and if that be not proved to be such as to warrant the allegation, the necessary inference is that it was to injure the person calumniated.

On this ground, confidential communications * are not slanderous: if therefore it appear that the calumny was contained in a letter written or words spoken in confidence to a person who had consulted the defendant with relation to an intention to apply to the plaintiff professionally, or to a person so related to or connected with the defendant as to justify his dissuading him from consulting the plaintiff as a professional man, the defendant having reason to suppose that it was his intention to do so, it is necessary for him merely to show that the imputations contained in the libel were such as he conscientiously believed to be just, and such as a man in the exercise of a reasonable degree of prudence would be likely to use for that purpose. But even a confidential communication with this view would be slanderous, were the author to make it the vehicle of calumnies † so far irrelevant to the subject as to induce the jury to believe that it was partly dictated by a malevolent intention to injure the plaintiff: for a confidential communication defamatory of another is legal only to the extent in which it is justified by an intention to benefit the person to whom it is made; and if abused for the purpose of injuring the person calumniated, is

* M'Dougall v. Claridge, 1 Camp. 267. Dunman v. Bigg, 1 Camp. 269. n. Pattison v. Jones, 3 Car. & Payne, 383.

† Hewer v. Dowson, Bull. N. P. 8. Brommage v. Prosser, 4 B. & C. 247. 6 Dow. & Ryl. 296. Blackburn v. Blackburn, 1 M. & R. 33. 63. 4 Bingh. 395. 3 Car. & Payne, 146.

more severely to be punished than public defamation, inasmuch as it deprives the accused of the opportunity of being heard in his defence, which is afforded him by making the charge public.

On the same ground, fair criticism, however severe* or calumnious, is not punishable as malevolent slander: but criticism must be confined to its proper subjects, public acts and public writings. For although every person who undertakes a public office, or to make a public exhibition of his performances or publish his writings, necessarily subjects his conduct in office, his performances and writings, to the opinion of the public, he does not by so doing subject his private conduct to the enquiry or observations of others†; and although the critic is not bound to substantiate the correctness of his observations, he is equally liable with others to punishment, and to make reparation for any injury caused by an abuse of his privilege, in either unfairly stating the facts which he pretends to criticise, or introducing private character as the subject of improper remarks.

On this subject, in relation to medical men, there have been three cases recently before the public.

The defendant‡ being the editor of a periodical work, had published of the plaintiff, a doctor of physic, and the editor of another periodical publication, some observations tending to excite ridicule, and charged to be libellous. It was urged on his behalf that the libel attacked the plaintiff only as the editor of a periodical work, on which Lord Tenterden in summing up said, "It has been stated on the part of the defendant, that the matter contained in this publication relates to the plaintiff only as an author; but still there is no doubt that a man who is an author has a right to have

* Carr v. Hood, 1 Camp. 355. n. Soane v. Knight, 1 Moody & Mal. 74. R. v. Creevy, 1 Maul. & Selw. 282. Macleod v. Wakeley, infra.

† Dunne v. Anderson, post, p. 125. R. v. Woodfall, Lofft, 781. 5 Bur. 2666. Tabart v. Tipper, 1 Camp. 350.

‡ Macleod v. Wakeley, 3 Car. & Payne, 311.

his character protected just the same as if he acted in any other capacity. However, notwithstanding that, whatever is fair and can be reasonably said of the works of authors, or of themselves as connected with their works, is not actionable, unless it appear that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author, and then it will be libel. That there is in this publication a great deal of ridicule must be admitted by every one; and I think that there appears also to be some rancour: still, if you think that what is said here was fairly called for by what the plaintiff had done as the editor of another publication, the defendant is entitled to your verdict; but if you should think the remarks were not fairly called for, you will find for the plaintiff." Verdict for the plaintiff.

The same defendant*, in the same work, published an account of an operation of lithotomy performed by the plaintiff, who was the surgeon of Guy's hospital: the proceedings were exhibited in a manner calculated to cast ridicule upon the plaintiff, and accompanied with charges that the operation was conducted very unskilfully, and in such a manner as to protract unnecessarily the sufferings, and eventually to cause the death of the patient. It was also stated that the plaintiff was an unfit person to be the surgeon of that hospital, and that he owed his appointment to the corrupt motives on which it was said that the institution was regulated. The defendant did not plead the general issue, but, by several pleas, affirmed the truth of all the charges contained in the alleged libel. On this ground it was determined that the defendant was entitled to begin; the affirmation of the allegation that the operation was unskilfully performed resting, as well as the affirmative of all the other issues, upon him. It does not appear, from either of these reports, that the Chief Justice made any remark

* Cooper v. Wakeley, Moody & Mal. 248. 3 Car. & Payne, 474.

upon the form in which the libel appeared, or on the situation which the plaintiff held, but he left it to the jury to determine whether the defendant had made out the truth of his pleas. Verdict for the plaintiff.

The plaintiff*, alleging that he had been, and still was, a surgeon, and member of the college of surgeons, and that he practised as such, declared on a libel published by the defendant against him as a surgeon, and the proprietor of an establishment called the Athenée, or Royal Institute. The alleged libel was contained in a notice on a petition presented to parliament on behalf of the plaintiff, published by the defendant, the editor, in a periodical work, the "Cottage Physician and Family Adviser." The defendant pleaded the general issue. The publication of the alleged libel was proved; and it was also proved that the plaintiff was a member of the college by the production of his diploma, and that he was the proprietor of the Athenée, where lectures on medicine were occasionally given; and that he had practised medicine: but it did not appear that he practised then, or that he had lately practised as a surgeon. No evidence was produced for the defendant; but it was urged on his behalf, that as the plaintiff had intruded himself upon the public by setting up the Athenée, and by his petition to parliament, the defendant had a right to comment on the contents of such petition. Best C. J., was strongly inclined to think that the defendant's publication was a fair comment; and told the jury, that if its tendency were to convey a reflection on the plaintiff in his private practice, or to impute to him ignorance in his character of a surgeon, it would be a libel; but that if it only imputed to him ignorance in the science of chemistry, it might not interfere with his general reputation as a surgeon: and as the declaration merely charged the defendant with libelling the plaintiff, and imputing to him ignorance, in his profession of a surgeon,

* Dunne v. Anderson, 10 Moore, 407. 3 Bingh. 88.

the action could not be maintained; and that if the publication complained of were a libel, it was greatly aggravated by the defendant's conduct at the time of plaintiff's remonstrance (*i.e.* in continuing to sell the paper containing it after a remonstrance). That a defendant could not justify bringing the character of a private individual before the public; nor could any one be warranted in attacking another for ignorance in his profession, unless he could show the truth of what he advanced. That the question for their consideration was, whether the defendant had imputed to the plaintiff ignorance beyond that which could be fairly collected from the contents of his petition? That if the defendant had come forward to impute ignorance to the plaintiff in his profession of a surgeon without any ostensible reason for so doing, the plaintiff would be entitled to damages; particularly, as the defendant refused to discontinue the publication, or to give up when requested the name of the author of the alleged libel: but that if, professing to instruct and inform the world, the plaintiff clearly demonstrated an utter incompetency for the task he had thought proper to impose on himself, the defendant had committed no offence in warning the public against the incapacity and ignorance of such a self-constituted mentor; for that when a man obtruded himself upon the public by proposing measures affecting the interest of the community at large, his speculations were proper and legitimate objects of observation and temperate criticism." The jury found a verdict for the defendant. The court, on an application for a new trial, without expressing any decided opinion on the merits of the case, observed, that under all circumstances the best course to be adopted was to send it down to be re-tried; the costs of the first to abide the event of the second trial; and intimated as a reason for so doing, that the plaintiff having brought a similar action against the printer of the libel in question, it might tend to the prejudice of one of the parties if the court expressed a

final opinion on that occasion. The Court made the rule absolute for a new trial.

On the second trial * it did not appear in what manner the petition had got before the public, or how it had come to the hands of the defendant or the author of the libel; the defendant failing in an attempt to show that the plaintiff had published it. The plaintiff was proved to be a surgeon by a diploma dated twenty years before, and no instance of actual practice was shown. The nature and object of the plaintiff's establishment called the Athenée were not precisely explained, his case being that it was an institution for useful purposes of a medical and surgical nature; the defendant's, that it was a mere quack establishment, and that the alleged libel was a justifiable comment on a matter fairly before the public and relating to objects of public interest. Best C. J. in summing up said, "It appears that the petition, on which the publication complained of professes to be a comment, has by some means or other found its way before the public. How it was published, or by whose means, does not distinctly appear. With respect to literary publications, the law is clearly and ably laid down by Lord Ellenborough in Carr v. Hood.† Such publications challenge criticism; and any one of the public has a right to make such animadversions on them as the intrinsic merit of the works may warrant. However severe those animadversions may be, the author has no right to complain unless his private character be maliciously vilified. But you are not to infer that a petition presented to either branch of the legislature, and not published, stands on the same footing: the right to petition and to offer suggestions to the legislature is highly valuable, and belongs to every subject of this kingdom; but it behoves a person exercising such right to take care that he is competent to the task he undertakes, for if he offers a petition on a public

* Ryan & Moody, 287. † 1 Camp. 355. n.

measure, and that petition gets before the public, any one of the public has a right to comment on it, and to show that the measures proposed are absurd and impolitic. The mischief would be great and extensive to hold, that a person likely to be affected by those measures could not be allowed to show them to be inexpedient and injurious. It would be inconsistent with free discussion to say that comments made with such a view are libellous. But the person making such comments has no right to attack the private character of the petitioner; he must confine himself to the consideration of the public measures, and not maliciously vilify the individual. If his observations are calculated to inform the public, and not to attack the individual, they are justifiable." After commenting on parts of the paper which alluded to the private character of the plaintiff as a surgeon and individual, his lordship left it to the jury to say whether the publication was or was not a fair and proper comment on the petition, or whether its object was to injure the private character of the plaintiff. Verdict for the plaintiff, damages one farthing.

Equally justified are also charges fairly preferred against a professional man before a proper tribunal, as a court of justice, the court of censors, the college of surgeons, or the proper officers of the apothecaries' company, in the cases cognizable by such court or officers; and of course the proceedings and judgment of such court cannot be considered slanderous. But even if a party be not punishable as a calumniator in respect of such charges falsely, or without reasonable cause preferred with a view to the circulating of scandalous imputations, he is liable to be sued for damages in an action for a malicious prosecution.

Section II.

Writings, Lectures, &c.

The same protection against piracy is afforded to professional as to other writings, by courts of equity, and the same remedy in courts of law. The subject of copyright is not peculiarly within the object of this treatise, and is too extensive to be discussed at length within the limits assigned to it; for which reason it is thought sufficient to make a few general observations on the rights of medical men as authors.

Copyright at common law.

Whether the common law gave an author any exclusive right of multiplying copies of a literary composition, was a question long agitated in the courts of equity as well as in the courts of law. The good sense of almost all the judges was in favour of his right, as affording him the fair recompense for his industry and talent; and they considered it inconsistent with every sentiment of honour and honesty, that another should, by the purchase of a copy, entitle himself to participate in the profits of one who had so justly earned them. Yet the affected liberality of a few proposed to place the labours of literary men on a different ground from those of all others; and pretending that fame was their only meet reward, they disclaimed, on behalf of authors, all property in their performances; assuming that the mere act of publication was a dedicating of their talent and labour to the use of the public, of whom every individual thereby acquired a right to enrich himself, at the author's loss, by the multiplication of copies.

The second point of dispute was, admitting that the author had the exclusive right of publishing his performances, whether that was a perpetual and hereditary right, or whether it determined on his death, or at any other certain period?

The right of the author and his assignee to the ex-

clusive multiplication of copies of works published by him, has been established as a common-law right. Yet it was not only deemed necessary to confirm it by act of parliament, but the legislature has thought proper to limit its duration.

Legislative provisions.

By stat. 8 Ann. c. 19. s. 1., it is provided, that the author of any book that should be afterwards composed, and his assignee, should have the sole liberty of printing and reprinting it for the term of fourteen years, to commence from the day of first publishing it, and no longer. And that any person who should print or import any such book without the author's consent in writing, or knowing such book to be so printed or imported, should sell, publish, or expose to sale such book, should forfeit it to the proprietor of the copy, and forfeit also one penny for every sheet of such book found in his custody. And the eleventh section of the same act declared, that, after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies should return to the authors thereof, if they should be then living, for another term of fourteen years.

The act 41 Geo. 3. c. 107., after re-enacting the provisions as to the right of the author and his assignee, raised the penalty to threepence per sheet, and gave the proprietor of the copyright an action on the case, for such damages as a jury should consider sufficient, together with double costs of suit.

And, finally, 54 Geo. 3. c. 156. provided, that, from the passing of that act, the author of any book composed, and not then printed and published, or which should afterwards be composed, and printed, and published, and his assignee and assigns should have the sole liberty of printing and reprinting such book for the full term of twenty-eight years, to commence from the day of first publishing of the same; and also, if the author should be living at the end of that period, for the residue of his natural life. This act also contains provisions for

the author's protection, similar to those contained in the act last mentioned.

Protection in equity.

It having been found, however, that an action for damages is by no means an adequate remedy for the author, a court of equity will render him its assistance, either in aid of an action at law, by compelling the piratical publisher to furnish an account of the books published and sold by him, with their prices, and the profits derived from the sale; or proceeding still further, will, when the plaintiff's title to the copy is clear, either enjoin a bookseller and his assistants from further proceeding in the publication of copies not yet issued, or after publication restrain him from selling more copies, and compel him to give an account of such as he has already disposed of. The evidence requisite to support such an application, and the degree of negligence in the author which will induce a court of equity to withhold its aid, as well as the various equities arising from the conduct of the parties, are not the legitimate subjects of this work: nor is it necessary in this place to enquire how the title of the author may stand affected, or his remedy be precluded in a court of law. It is right, however, to observe, that these statutes apply only to books printed and published.

Works not printed by the author.

It being the opinion of nine of the judges against three, in the case of Millar v. Taylor*, that an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and that he might bring an action against any one who printed, published, and sold the same without his consent; and of eight of the judges, that the law did not take away that right upon his printing and publishing it; a court of law will entertain an action, and a court of equity will afford its relief by injunction and account against the person who ventures to publish any literary composition without the consent of the author, although

* 4 Bur. 2417.

the author may have published it in a different mode from that of printing, as in lectures, or by recitation; or even in publishing the lectures or recitations of the author which have never been reduced to writing: for they are as much his composition and property as a book which has been issued in print *, although great difficulty might occur in proving the piracy. It were absurd to suggest, even on the technical construction admitted in a court of law, that medical writings and lectures are not literary compositions.

Injurious works.

But the law, considering that no work of an evil tendency can be of any value, denies its author the right of copy in it; and, of course, he cannot obtain the aid either of the courts of law or of equity. On this ground, if the Chancellor entertain a reasonable doubt whether the composition may be prejudicial to the general interests of society, he will refuse an injunction until the contrary has been established in a court of law; and Lord Eldon, for this reason, declined interfering for the purpose of restraining the piratical publication of a medical work of great talent, until the plaintiff should have established his right by a verdict; doubting whether many arguments contained in it did not tend to disprove the Scriptures, and the existence of a future state of reward and punishment. †

* Abernethy v. Hutchinson, Dec. 1824, and June 1825. Law Journal, vol. iii. Cases in Chancery, p. 209—219.

† Lawrence v. Smith, 1 Jac. 471. Petersdorff's Abr. Copyright, 559.

CHAP. VIII.

PRIVILEGES OF MEDICAL MEN.

SECTION I.

In respect of Insane Persons.

Certificate of insanity.

No person*, except a parish pauper†, can be admitted into any house kept for the reception of insane persons in England, without a certificate, bearing date not more than fourteen days before such admission, and signed by two medical practitioners, each of whom must be a physician, surgeon, or apothecary ‡, unless any special circumstances have prevented the patient being separately visited by two such practitioners, in which case he may be admitted on the certificate of one such practitioner; but such certificate must be signed by some other medical practitioner within seven days after the patient's admission. §

Form of certificate.

The certificate must state that the patient is a proper person to be confined, the day on which he was examined, the christian and surname, and place of abode of the person who directed or authorised such examination, and the relationship or other circumstance of connection between such person and the patient; together with the name, age, place of residence, and former occupation of the patient, and the asylum, if any, in which he may have been previously confined. It must also state whether the patient has been found lunatic or of unsound mind, under a commission issued by the

* 9 Geo. 4. c. 41. s. 29.

† Vide 9 Geo. 4. c. 40. ss. 36. 38. 40. 52., et 9 Geo. 4. c. 41. s. 31.

‡ 9 Geo. 4. c. 41. s. 30. § Ibid.

Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal; or if any of such particulars cannot be inserted, the special circumstances preventing such insertion must be stated. And if the certificate be signed by only one medical practitioner, the special circumstances which prevented the patient's being separately examined by two medical practitioners must be set forth in the certificate. *

False certificate, &c.

Any person who knowingly, and with intention to deceive, signs any such certificate, untruly setting forth any of these particulars, and any physician, surgeon, or apothecary who signs or gives any such certificate, without having separately visited and personally examined the patient, is guilty of a misdemeanor†; as is every person receiving a patient into such house without the proper certificate.‡ So it seems is any physician, surgeon, or apothecary signing any certificate for the admission of a patient to a house of which he is the sole or part proprietor, or the regular professional attendant.§

Medical attendants of mad-houses.

Every such house must have a resident physician, surgeon, or apothecary, if it contain one hundred patients; and if it do not contain so many, it must be visited twice every week by a physician, surgeon, or apothecary; unless it is kept by a physician, surgeon, or apothecary. And such medical man must report to the keeper the condition of the house and state of the patients' health, and must once every week enter and sign the same‖ in the book of entries required to be kept in such house, in a certain form prescribed by this act.¶

Certificate for private confinement;

or confinement in any hospital.

A similar certificate is rendered necessary for the committing of any insane person to the care of a private person not keeping such house, unless he be the relative or committee of the patient **; and also for the admission of such patient into any public hospital, asy-

* 9 Geo. 4. c. 41. s. 30.
† Ibid.
‡ Ibid. s. 29.
§ Ibid. s. 30.
‖ Ibid. s. 35.
¶ Ibid. sch. B.
** Ibid. s. 40.

lum or other charitable institution, although these establishments are not generally within this act *, except Bethlehem hospital, the military and naval hospitals, and the lunatic asylums established under 48 Geo. 3. c. 96., or 9 Geo. 4. c. 40. Exceptions.

This act requires that some of the commissioners and visitors should be medical men, and prescribes to them certain duties in these characters.† It is, however, limited in its duration to three years from 1st August 1828, and from thence to the end of the next session of parliament. ‡ Commissioners and visitors.

Section II.

In respect of Employment.

Various statutes require the employment of medical men for the purpose of examining the health and capacity of persons to be employed for public purposes, and in the inspection of public institutions, in most cases prescribing a reasonable remuneration. § In these cases none can be employed except the members and licentiates of the colleges, universities, and hall, recognised by the law of England. Provisions of a similar, and in some respects of a more exclusive, nature have been established by the founders and governing parties of many public hospitals and like institutions. For public purposes.

It has been enacted, that no ship, carrying fifty persons including her crew, should sail from any place in the United Kingdom unless provided with a surgeon who has produced, to the officer of the customs required to give the clearance or sufferance, a certificate of his Surgeons of vessels.

* 9 Geo. 4. c. 41. s. 51.

† Ibid. ss. 2, 3. 9. 11. 17, 18. 20. 22, 23, 24. 34. 37, 38, 39.

‡ Ibid. s. 54.

§ Vide 43 Geo. 3. c. 90. s. 52., et 53 Geo. 3. c. 65. s. 8. as to militiamen; 4 Geo. 4. c. 64. s. 33., et 4 Geo. 4. c. 69. s. 37., as to prisons; 6 Geo. 4. c. 80. s. 134. et seq., 30 Geo. 3. c. 49. s. 1, 2., as to workhouses.

having passed his examination at Surgeons' Hall in London, or at the Royal College of Surgeons of Edinburgh or Dublin.* Such surgeon must have a medicine chest, properly stored with medicines, in proportion to the number of persons on board the vessel, of the kind and according to the assortment generally used and made for such voyages on board his majesty's ships of war. And he must, before the vessel can be allowed to be cleared out, specify upon oath before the collector or comptroller, or other chief officer of the customs of the place from whence the vessel is cleared out, the contents of the medicine chest, and make oath that the medicines are of good and proper quality to the best of his knowledge and belief, under a penalty of 50*l.* †

Medicine chest.

Bond to keep journal,

The surgeon must also give a bond to the king before such officer of the customs, in the sum of 100*l.*, that he will keep a regular and true journal, containing an account of the greatest number of persons which shall have been on board such vessel at the time of her departure, and at any time during her voyage, and until her arrival at the port of her destination; and of the provisions and water on board, and of the delivery of the daily allowances thereof, in the manner by that act directed; and of the airing of the bedding and fumigating of the vessel; and of the deaths of any of the passengers or crew, and of the cause thereof, during the voyage, from the vessel's first departure to her arrival at her port of destination. And he is required to deliver such journal to such collector or other officer, at the first port of the United Kingdom where such vessel shall arrive after returning from such port of destination; and to make oath to the truth of his journal to such officer, under the penalty of 100*l.* for every offence in any of these respects. ‡

and deliver it.

Copies.

The officer of customs must furnish the surgeon with a copy of the oaths and journal, attested as true copies under the hand of such officer. §

* 43 Geo. 3. c. 56. s. 7. † Ibid. s. 8. ‡ Ibid. s. 10. § Ibid.

Arrangement of ship.

The bedding of each passenger must be aired by exposure upon the deck, when the weather will permit, once a day during the voyage, and the vessel must be fumigated with vinegar at least twice every week, under the penalty of 20*l.* for every neglect. *

Selling spirits as medicines.

Physicians, surgeons, apothecaries, and chemists selling spirituous liquors merely as medicines are not within the operation of the excise laws. †

Section III.

Exemption from serving on Juries.

Physicians.

By the charter and statute 14 Henry 8. ‡ the president and every one of the College of Physicians, practising physic, was exempted from being summoned or serving upon any assize, jury, inquest, inquisition, attaint, or other recognition within London and its suburbs, before the mayor, sheriff, or coroners, or any their officers, although such jury, inquisition, or recognition should be on writ of right; and this exemption has been confirmed by statute 6 Geo. 4. §, which exempts all members and licentiates of the college of London, actually practising, from being returned, and from serving upon any juries or inquests whatsoever, and from being inserted in the lists of jurors. This exemption, it may be observed, does not extend to the medical graduates of the universities, although it includes the country licentiates of the college, and exempts all its physicians from this duty, as well in other counties as in London.

Surgeons.

The united company of Barber Surgeons obtained a similar exemption in the thirty-second year of the reign of Henry the Eighth ‖, which was confirmed to the dismembered company of Surgeons by the statute 18 Geo. 2.; and the exemption by 6 Geo. 4. confirmed to the College of Physicians, was extended to all practising surgeons,

* 43 Geo. 3. c. 56. s. 9.

† Stat. 9 Geo. 2. c. 23. s. 12. and 16 Geo. 2. c. 8. s. 12.

‡ P. x. § P. xxxi. ‖ P. clxxiii.

being members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin. *

It is necessary, therefore, to observe, that the exemption cannot be construed to extend to any surgeons who are not members of one of these colleges.

Apothecaries. The apothecaries of the society of London, while actually practising within seven miles of that city, were, by 6 & 7. W. 3. c. 4. †, exempted from being put upon any juries or inquests; and the same exemption was extended to all persons ‡ while actually practising as apothecaries, in any other part of the kingdom of England, Wales, or Berwick upon Tweed, who had served an apprenticeship for seven years, according to 5 Eliz. c. 4. And, by 6 Geo. 4. §, the exemption from juries given to the physicians is also conferred upon all apothecaries certificated by the court of examiners of the Apothecaries' Company, actually practising, but to no others; so that apothecaries entitled to practise on account of having been in practice on the 1st August, 1815, are not exempt unless they had served an apprenticeship of seven years.

Section IV.

Exemption from serving Offices.

Physicians. In the thirty-second year of the reign of Henry the Eighth the president, fellows, and commons of the College of Physicians obtained an exemption ‖ from watch, ward, constablewick, and the other offices of the city of London and the suburbs of the same and every part thereof.

It is observable that the preamble of this act recites the inconvenience arising to the nobility and others, by reason that the physicians were many times compelled, as well within the city of London and suburbs of the same as in other towns and villages, to keep watch and ward,

* P. xxxi. † P. ccxxxiv. ‡ P. ccxxxv.
§ P. xxxi. ‖ P. xiii.

and be chosen to the office of constable and other offices; yet the exemption is confined to watch, ward, and offices in that city and its suburbs: so that no provision is made as to their liability to serve such offices in other places. Nor less remarkable is it that the court should have introduced the following distinction: it has been said that physicians are not liable to serve the office of constable in other parts of the kingdom in which they may happen to reside, unless there is a special custom in the vill for each householder to serve that office in turn according to the situation of his house, or unless there are not sufficient other proper persons to execute it, in either of which cases it has been held that the physician is bound, in his turn, to undertake the office*; for it is said that there is not that general privilege of exemption for physicians which the surgeons are thought to enjoy.

Surgeons.

The surgeons, in the fifth year of the reign of Henry the Eighth†, obtained an exemption from constableship, watch, ward, and all manner of office bearing any armour, and also from all inquests and juries within the city of London; and it was declared that the act should extend to barber surgeons, so they exceeded not at one time the number of twelve persons. From the whole of this act it is evident that these twelve gentlemen were the only persons to whom the privilege was granted; for they are the only petitioners, and the enactment is, that the suppliants be discharged of these offices. The same exemption is granted to the incorporation of barbers and surgeons, without limitation as to place or number, by statute 32 Hen. 8.‡, by which the two bodies were united: and, as the subsequent statutes and charters can in this respect be construed merely as confirmatory, on this act must the surgeons' claim to exemption be rested. The consequence is, that all surgeons, members of the college of London, are exempt from the office of constable, and from watch and ward; but the exemption

* Pp. clxiii. clxiv. † P. clxx. ‡ P. clxxiii.

of other surgeons, if they have any, must be sustained on other grounds. It has been incidentally said, that they have a special custom for their discharge; but I know not on whose authority, unless it be that of the sacred company of Barber Surgeons*, for the judges have merely observed that the surgeons may have such custom †, and Hawkins only states that they are said to have such a custom.‡ The barber surgeons have indeed set it forth in a most dignified manner, as may be seen in another part of this work, but at an unfortunate moment, when they were most humble suitors for a grant of that very privilege to themselves.§

Apothecaries.

Every person exercising the art of an apothecary within London and seven miles thereof, being free of the society of apothecaries of London, and duly examined and approved, for so long as he uses that art, and no longer, is exempted from the offices of constable, scavenger, and overseer of the poor, and all other parish, ward, and leet offices, by statute 6 & 7 W. 3. c. 4.‖ And the same act¶ gives a similar exemption to every person using the said art in any other part of England, Wales, and Berwick upon Tweed, who has served in the said art as an apprentice by the space of seven years, according to 5 Eliz. c. 4. But no exemption of this kind is contained in 55 Geo. 3. c. 194.; so that the only persons so privileged, are the freemen of that company, actually practising within seven miles of London, and such of the apothecaries in practice before the 1st of August 1815, as had served an apprenticeship of seven years, as long as they practise elsewhere than within seven miles of London, the privilege not extending to the other licentiates of the college, unless, indeed, they have served an apprenticeship of seven years, and practise elsewhere than within seven miles of the metropolis.

* P. clxx. † P. clxiv. ‡ Ibid.
§ P. clxx. ‖ P. ccxxxiv. ¶ P. ccxxxv.

Section V.

Exemption from bearing Arms.

Physicians.

By statute 32 Hen. 8., the physicians are exempted from watch and ward; but nothing was said about their liability to serve against a foreign foe. The Æsculapidæ of the sixteenth century were by no means emulous of the military renown of Machaon and Podalirius; and complaining bitterly of the lord mayor's requisition to stand harnessed and weaponed, obtained the royal mandate to the city chieftain to dispense with their martial achievements. From time to time they sent their orators to plead before the mayor and recorder, and Dr. Goodall says* that they constantly bore away the palm of eloquence. The affair afterwards took a more serious turn; and many were the opinions obtained, both from counsel and judges, on the effect of the clause in the charter of Charles the Second†, which had been in all other respects abandoned. At length the question was brought under the consideration of the Court of King's Bench‡, the officer of the Lord Pawlett having distrained the silver tankard of Sir Hans Sloane, then president of the college. This case was never determined, the judges desiring that it should be brought before them in another form; but the opinion expressed by them was, that the physicians were liable to contribute in money, although they might probably be exempted from personal service.

And surgeons and apothecaries.

Neither physicians, surgeons, nor apothecaries are included among the persons exempted by the late acts relating to the militia.§ But the statute 32 Henry 8. seems to have exempted all surgeons of the company, at least, from personal service.‖

* Goodall's Col. of Phy. pp. 282—288. 379, 380.

† Vide p. xxviii. ‡ 8 Modern Rep. 11—19.

§ Vide 42 Geo. 3. c. 90. s. 43. ‖ P. clxxiii.

CHAP. IX.

CONTAGIOUS DISEASES AND INJURIES TO THE PUBLIC HEALTH.

Nuisance.

THE doing of any act by which the health of the public might be endangered, whether by the propagation of an infectious disease, or by erecting any establishment which might corrupt the air by noxious exhalations, was a great misdemeanour at common law.

To propagate disease.

Three diseases were regarded with the utmost terror: the plague, the syphilis, and the leprosy; and the strictest precautions were taken to prevent the propagation of them, especially of the former.

Plague.

The first statute relating to the plague is that of 2 Jac. 1. c. 31., which provided that every town should raise, by taxation among the inhabitants, a sufficient fund to support the poor people within it infected with this disease. It also empowered the chief officers to appoint watchmen to keep the streets, and to compel all persons infected to remain within their houses; and indemnified them from liability on account of any injuries which they might cause by using force for this purpose. It declared also, that all persons going abroad with any infectious sore upon them, should be punished as felons; and all other infected persons going abroad, as rogues and vagabonds. This was a temporary act; but similar regulations were afterwards incorporated into several acts relating to quarantine. These laws, in relation to vessels of which the crew or cargo is suspected to convey infection, originating in the time of Anne*, were, in the sixth year of the present reign, embodied in one statute †, which omits these restrictions, and repeals all former acts relating to quarantine. But

* 9 Anne, c. 2. † 6 Geo. 4. c. 78.

as this act has no particular relation to the medical profession, any further observation upon it in this place would be irrelevant.

Syphilis. Leprosy. Small-pox.

It was at one time generally believed that the syphilis was so contagious as to render the mere presence of an infected person dangerous to others; and the leprosy was so much dreaded, that persons subject to it, who had an open sore upon them*, were removed from all society through fear of infection.

The liability of the medical man would have arisen from any act or neglect of his which might have had a tendency to extend the infection; and, on this principle, it seems to be now considered as settled, that a medical practitioner exposes himself to fine and imprisonment by inoculating with the virus of the small-pox: yet it is apprehended that this opinion is erroneous, though the judges have abstained from giving a direct decision on the point in each of the cases which have come before them.

In the first case on this subject, the judges merely refused to quash the indictment, leaving the question, whether the keeping a house for inoculating for the small-pox was a nuisance, to be tried in its ordinary course.† In the year 1752 an application was made to the Lord Chancellor for an injunction to prevent the building of a house to inoculate for the small-pox in Cold Bath Fields: but this application was refused, on the ground that it was not settled that a house for the reception of inoculated patients was a nuisance; and it was said that there had lately been an acquittal on an indictment at that time tried at Rye, in the county of Sussex; and that the fears of mankind, though reasonable ones, would not constitute a nuisance.‡ In a subsequent case‖, the defendant, an apothecary, having been convicted on an indictment which alleged that he had unlawfully and injuriously inoculated, &c. and

* F. N. B. 234.
† R. v. Sutton, 4 Burr. 2116.
‡ 3 Atkyns, 750.
‖ R. v. Burnett, 4 Maule & Selwyn, 271.

afterwards unlawfully and injuriously caused the infected person to be carried along a public street, &c. Lord Ellenborough, after conviction, said, that inasmuch as to make out the allegation that the person was unlawfully and injuriously inoculated, &c. it must have been shown that what was done was, in the manner of doing it, incautious, and likely to affect the health of others, so that all legal cause of excuse was precluded; and that, although inoculation for the small-pox might be practised lawfully and innocently, yet it must be under such guards as not to endanger the public health by communicating that infectious disease. Dampier J. said, on the same occasion, that the charge amounted to this: that the defendant, after inoculating the children, unlawfully exposed them, while infected, in the public street, to the danger of the public health. Le Blanc J., in passing sentence, observed, that the introduction of vaccination did not render the practice of inoculation for the small-pox unlawful; but that it was at all times unlawful, and an indictable offence, to expose persons infected with contagious disorders, and therefore liable to communicate them to the public, in a place of public resort.

The indictment, in another case*, merely charged the defendant with unlawfully and injuriously, &c. carrying a child, infected with a contagious infection and dangerous disease called the small-pox, along a public way†, near dwelling-houses, &c., to the great danger of infecting persons there passing, &c. The defendant suffered judgment by default.

In moving in arrest of judgment, it was objected that the indictment was of first impression: that it did not appear how the child became infected; that it might

* R. v. Vantandillio, 4 Maule & Selw. p. 73.

† It was stated by affidavit in support of the prosecution, that it was in a very narrow passage with only one outlet. That there was a school kept there, and that two of the children had caught the disorder and died.

have caught the disease; in which case it would not have been illegal for the mother to carry it through the street, in order to procure medical advice. That the indictment ought to have shown the act to have been unlawful, and to have alleged that there was at the time some sore upon the child in analogy to the form of the writ for removing a leper.

Lord Ellenborough C. J. — If there had been such necessity, it might have been given in evidence as matter of defence; and as the indictment alleged it to be done unlawfully and injuriously, it precluded the presumption of any such necessity.

Le Blanc J. in passing sentence. — Although the court has not found upon its records any prosecution for this specific offence, there can be no doubt that if a person unlawfully, injuriously, and with full knowledge of the fact, exposes in a public highway a person infected with a contagious disorder, it is a common nuisance to all the subjects, and indictable as such. The court does not pronounce that every person who inoculates for this disease is guilty of an offence, provided that it is done in a proper manner, and the patient is kept from the society of others, so as not to endanger a communication of the disease. But no person, having a disorder of this description upon him, ought to be publicly exposed, to the endangering of the health and lives of the rest of the subjects.*

It was observed by counsel, in the course of the argument of this case, that a bill introduced into parliament during the then last session, for the purpose of subjecting persons inoculating for the small-pox to punishment, had been rejected upon the ground then suggested by the law officers, that it would restrain the common law proceeding.

Perhaps, the advocates for punishing the practice of

* See also Hale, P. C. 432.

inoculation as an offence, on the pretence that it tends to the propagation of disease, are not aware that their argument would also go to convict those who resort to vaccination; for that tends equally to the propagation of a disease, although seldom, if ever, attended with any great danger. The only rational mode of treating the one and the other is by considering both of them experiments in the medical science, originally obnoxious to punishment according to the degree of danger arising from the attempt. Considerable advantages having been found to result from the practice of inoculation, the vaccinator exposed himself to the risk of punishment, by abandoning a practice which had been found efficacious to so great an extent, before the superiority of the new practice had been established upon reasonable experience. And as soon as it shall be universally ascertained, that the patient is, on due observation of all the remote as well as the immediate consequences of the adopting of vaccination, exposed to less danger than by recurring to the former practice, any medical man, who shall be found so regardless of his patient's health as to obstinately persevere in the use of the more dangerous experiment, will, without doubt, render himself liable to punishment on an indictment, as guilty of an offence at common law, in endangering the life of another; though not on the ground of propagating an infectious disease, as the real object is to counteract it. But as long as such difference of opinion shall continue to prevail, as to justify a man of reasonable skill in his profession in preferring either course, he cannot be rendered responsible for the results of his experiments, although the opinion of the majority of his professional brethren may be decidedly against him; for he acts on the application of his patient, and is therefore neither responsible to him nor to the public for an error in that opinion which he has by study and attention prepared himself to form.

It is perfectly clear, however, that any unnecessary exposure of persons infected with the small-pox is a nuisance punishable at common law, whether such persons became infected by communication with others, or their disease originated in inoculation.

CHAP. X.

ON DISSECTION.

The operation.

In the dark era of our history to which the wisdom of the common law is assigned, the fact of possessing any part of the human frame, and being detected in the study of its construction, was conclusive evidence of the unfortunate student's guilt on a charge of sorcery or magic. The common-law judges appear to have been sometimes endowed with sufficient good sense to discountenance accusations so vague and inconclusive *; but the clergy, the natural enemies of philosophy, were incessantly occupied in tracing the students to their retreats, and persecuted them with the ruthless zeal of bigots, under the pretence that their learning was derived from supernatural information, and subversive of the dominion of the Deity; because, perhaps, they had discernment enough to perceive that it was likely to subvert their own influence. Hence originated an opinion prevalent until within a comparatively recent period, that to cut or use the human corpse, even for the purpose of acquiring medical knowledge, was a misdemeanor at common law, and that it was equally punishable in the ecclesiastical courts.

A prejudice has prevailed in all nations against the violation of the human body after death. We may trace it from the tribunal of the Ægyptians, which awarded to the dead a place of sepulture according to the merits of their lives, through every nation of which the historian or the traveller has made mention. Even the Magians, who exposed their dead to be devoured by wild beasts; the Hindoos, who consigned them to the holy waters of the Ganges; and the Romans, who gave them to the

* Ante, p. 26. note.

flames,—held them alike sacred from laceration by human hands. The same prejudice, as well among more civilised as in barbarous nations, has induced the mutilation of the dead as a mode of gratifying the last yearnings of vengeance, or of carrying punishment beyond the limits of sensation. We observe it alike in the immortal lines of Homer, in the golden draught of Crassus, in the bloody trophies of the American Indians, and in the laws and statutes of this realm.*

The only boons yet offered to the science of physiology are the grants of the bodies of murderers and felons to the colleges of surgery and medicine — originating rather in the notion of exemplary punishment than in that of forwarding this most useful study.

The first grant of this kind was made by Henry the Eighth† to the college of surgeons, who were permitted to take annually four persons executed for felony, and to dissect the same. A similar grant was made by Queen Elizabeth‡ to the college of physicians, of the same number of bodies, which was by Charles the Second increased to six.§

By a statute passed in the reign of George the Second‖ the bodies of all murderers executed in London or Middlesex are to be immediately conveyed by the sheriff to the place appointed by the surgeons' company, and to be there delivered to their officer, on receiving a receipt for them. It is declared, that the company may dissect such bodies; that no murderer shall be buried before dissection; and that every person attempting the rescue of any such body shall be guilty of felony, and punishable with transportation for seven years.

The last charter granted to the company of surgeons gives directions as to their providing a place for such dissections.¶

* As in cases of treason and self-destruction.

† 32 Hen. 8. Vide p. clxxiv. Anno 1540.

‡ P. xvii. Anno 1565. § P. xxviii.

‖ 25 Geo. 2. c. 37. ¶ Vide p. cxcvii. et p. clxxxix.

All these charters, and the before-mentioned statute, have proceeded on the ground of the illegality of dissecting even murderers and felons, though for the purpose of studying, except under the direct sanction of the legislature or of the king. But there cannot now remain a doubt on the legality of dissections for such purposes, if conducted with decency and apart from the observation of others, who might be affronted by the sight of, or by the effluvia arising from, the pursuit of this important but disagreeable study.

But if the dissection be conducted in such a place or manner as to create disgust, uneasiness, or a corruption of the atmosphere, either by the exhibition of the subjects, the want of proper care or decency in removing and disposing of the remains, or by collecting a great quantity of offensive matter in a populous or confined neighbourhood, it is equally clear that the conductors are guilty of a nuisance at common law, and punishable by fine and imprisonment.

Obtaining bodies for dissection.

The means of obtaining subjects for dissection give rise to a different enquiry. It has been already observed that the provision made by the law for this purpose is very scanty.* Various endeavours have been made to obtain from the legislature the grant of a more ample supply. This has, however, been uniformly refused by the prejudices of mankind; and as long as our peers, philosophers, and representatives, deny their own remains to the necessities of science, they should not stain the honour of the senate, either by yielding to the knife the bodies of the defenceless, or making a sacrifice of these prejudices the price of public charity. To consign to the dissecting table the shipwrecked mariner, or the inmates of the public hospital, would render tenfold darker the superstitions of the former; and would exclude from the institutions which most highly grace our cities the miserable supplicants, who would disdain the charity which condescends to such ungenerous traffic.

* Ante, p. 149.

Until our enlightened senators can vanquish the general prejudice, and consent to resign themselves to the welfare of their survivors, they must not venture to dispose of the feelings of others, and to bequeath what they have never been authorised to bequeath — the bodies of their supposed constituents to the public use. While the clay of the nobleman is sacred from the knife, that of the beggar should be still more inviolate: for education is vain, if it cannot diminish the horror of dissolution; and the poor have a peculiar claim to quietude in their opinions, as it is the duty of their superiors to respect in them, sentiments, however erroneous, which they cannot extinguish in their own bosoms.

Unless men of influence will submit themselves to the common purpose for the advancement of science, general opinion will be strongly and justly opposed to the sacrifice of any class of society to the dissecting table; and the medical students must rest content with the bodies of felons, and the clandestine supply derived from the invasion of cemeteries; and, it is to be feared, sometimes obtained by more criminal means.

Perhaps the English law with regard to the disinterment of bodies far more nearly resembles the Spartan law of theft, than even the lawyer, on first notice, will be content to admit; that is, the crime is not in the act, but in being detected.

The occupation is unfortunately that in which none but the most degraded and desperate of characters will engage. The result of which is, that a certain degree of countenance is, by men of respectability, necessarily afforded to persons so abandoned in their sentiments and habits, so disgusting to all men of delicacy, so reckless of observing the law, from a consciousness of being already obnoxious to punishment, that society has but slender security against their providing by more criminal acts for the necessities to which they are often exposed from the vigilance of those who consider it a duty to interrupt them in their ordinary vocations.

The medical student will not, perhaps, read without some degree of interest an abridgment of the few enactments and reported cases relative to this subject, which will afford a history of legal opinions upon it, and show, at the same time, that the law relating to it is by no means settled.

Henry the Eighth, the first Defender of the Faith, to signalise his zeal as well against the spiritual as the temporal opponents of his doctrines, concurred with his learned parliament in passing an act* against witchcraft, conjuration, and all manner of sorceries. Among the various provisions of that act, which seems from its precision to have been drawn by a person deeply studied in the occult sciences, is to be found one against the disinterment of the dead.

This act was, however, abrogated in the first year of Edward the Sixth by the general repeal of all acts of his father creating new felonies.† The repeal was reiterated by Queen Mary, in the very commencement of her reign.‡ But the illustrious Elizabeth again denounced death against all dealers in these unholy wares, charms, dead men's bones, and all sorts of sorceries.§

The enlightened James, among his first legislative measures, repealed the act of Elizabeth; not, however, on account of its superstitious tendency, but to make room for more specific regulations on the subject. By an act passed in the first or second year of his reign‖, it was provided that the act of Queen Elizabeth, of most famous memory, against conjurations, enchantments, and witchcrafts, should be repealed¶; and that for the better restraining the said offences, if any person should use, practise, or exercise any invocation or conjuration of any evil or wicked spirit, or should consult, covenant with, entertain, employ, *feed*, or reward any evil and wicked spirit to or for any intent or purpose, or take up any

* 33 Hen. 8. c. 8.
† 1 Ed. 6. c. 12. s. 4.
‡ 1 Mar. sess. 1. c. 1. s. 5.
§ 5 Eliz. c. 14.
‖ 2 (vulgo 1) Jac. 1. c. 12.
¶ Ib. s. 1.

dead man, woman, or child, out of his, her, or their grave, or any other place where the dead body rested; or the skin, bone, or any other part of any dead person, to be employed or used in any manner of witchcraft, sorcery, charm, or enchantment; or should use, practise, or exercise any manner of witchcraft, enchantment, charm, or sorcery, whereby any person should be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof; every such offender, his aiders, abettors, and counsellors, should suffer death as felons, and should lose the privilege and benefit of clergy and sanctuary.*

By the third clause of this act persons guilty of pettier witchcrafts and enchantments were sentenced to one year's imprisonment, and to be exhibited in the pillory once in each quarter of the year; and if again guilty of such offences, they are by the fourth clause declared guilty of felony. The fifth section thus provides for the dignity of noble sorcerers:—If the offender in any of the cases aforesaid shall happen to be a peer of this realm, then his trial therein to be had by his peers, as it is used in cases of felony or treason, and not otherwise.

This philosophical enactment continued to grace the statute book until the ninth year of the reign of George the Second†, when, although they repealed it as to the felony, our senators thought it necessary to re-enact the minor punishment against all pretenders in any occult or crafty science; but the re-enactment has no relation to the removal of bodies.

In the tenth or eleventh year of the reign of James the First one Haynes was indicted for digging up graves, but no charge was preferred against him in relation to the bodies, but only for stealing the winding sheets; he having returned the bodies to the sepulchre after divesting them of these habiliments.

It may be curious to observe the mode of argument by which Coke and the other judges at Serjeants' Inn,

* 2 (vulgo 1) Jac. 1. c. 12. s. 2. † 9 Geo. 2. c. 5.

to whom he referred the question on account of the rareness of the case, arrived at the doctrine of property in the shroud, in which subsequent lawyers have generally concurred*; though Hale seems to have entertained some doubt.†

My Lord Coke appears not to have been a little prejudiced on the subject, from two circumstances. His observations in his third Institute‡ have, as a marginal note, the words "furtum inauditum;" and at the conclusion of his report of the case he says, "The prisoner was severally indicted for taking each of the sheets: the first indictment was of petty larceny, for which he was whipped; he was also indicted for the felonious taking the three other sheets, for which he had his clergy, and so escaped the sentence of death, which he well deserved for this inhuman and barbarous felony."

The rareness of the question was as to the property of the winding sheet, on which the stealing depended. It has been generally admitted that it is not vested in the churchwardens. The court held, that it either passed to the personal representatives of the dead man, or, if it had been gratuitously furnished by a friend, that it remained in the donor. For, quoth they, the winding sheet must be the property of somebody; it cannot be the property of the dead body; it is therefore the property of his personal representatives. Or, in the second case, "a dead body being but a lump of earth, hath no capacity; also, it is no gift to the person, but bestowed on the body for the reverence towards it, to express the hope of resurrection; also, a man cannot relinquish the property he hath to his goods, unless they be vested in another."§

As to the body, it has been universally held to be the property of no one; and the earlier writers on the criminal law say nothing of the taking of it from the grave, except that it is not theft. And several pass over the

* 2 East, P. C. 652.
† 1 H. H. P. C. 515.
‡ 3 Inst. p. 110.
§ 12 Co. 113. a.

point, when their attention must have been directed towards it.* Mr. Justice Blackstone † says, "Though the heir has a property in the monuments and escutcheons of his ancestors, yet he has none in their bodies or ashes; nor can he bring any civil action against such as indecently at least, if not impiously, violate and disturb their remains when dead and buried. The parson, indeed, who has the freehold of the soil, may bring an action of trespass against such as dig and disturb it: and if any one, in taking up a dead body, steals the shroud or other apparel, it will be felony; for the property thereof remains in the executors, or whoever was at the charge of the funeral." And, in another place, the learned commentator ‡ again speaks of the offence of stealing the grave-cloths, but says not a word as to the criminality of removing the corpse itself in any part of his treatise.

It is, however, mentioned by East § as a great misdemeanor; and there have been several convictions of this as an offence at common law.

Lynn ‖ was convicted on a charge of entering a burying-ground, taking a coffin out of the earth, and taking and carrying away a dead body for the purpose of dissection. It was urged, that the offence was cognizable only by the ecclesiastical courts, as alleged by Coke ¶: but the court said, that common decency required that a stop should be put to the practice; that it was an offence cognizable in a criminal court, as being highly indecent, and *contra bonos mores*—at the bare idea alone of which nature revolted; that the purpose of taking up the body for dissection did not make it less an indictable offence; and that, as it had been the regular practice of the Old Bailey, in modern times, to try charges of this nature, many of which had induced punishment, the

* 3 Inst. 45. 110. 203. 1 H. H. P. C. 515. † 2 Com. 429.
‡ 4 Com. 236. § 2 East, P. C. 652.
‖ 2 Durnf. & East, 733. S.C. Leach, C. C. 497.
¶ 3 Inst. 203.

circumstance of no writ of error having been brought to reverse any of these judgments was a strong proof of the universal opinion of the profession upon the subject. They therefore refused to grant a rule to show cause why judgment should not be arrested, lest that alone might convey to the public an idea that they entertained a doubt respecting the crime alleged. But inasmuch as the defendant might have committed it merely through ignorance, no person having been punished in that court for this offence, they only fined him five marks.

Since this, several persons have been punished for disinterring bodies, and the war has been carried on with vigour against the Monkirs and Neckirs of the hospitals. One person was convicted of having sold the body of an executed person, entrusted to him to be buried, to a surgeon for dissection, dissection being no part of the sentence.*

Some persons seem to have thought it very important to quote on the subject a totally irrelevant passage from Cicero †; and to endeavour, in defiance of the philosophy they profess, to still further excite the prejudices of the vulgar, already so hostile to science and the health of the public.

While the statutes against sorcery remained in force, and the judges were imbued with a due degree of superstition, the presumption was so strong,—though no proof of so vague a charge could by possibility be adduced,—that bodies disinterred were removed for purposes of sorcery, that the resurrection-men, and the medical students as their counsellors and abettors, were in imminent jeopardy of suffering as felons, without benefit of clergy or of that sanctuary which they had profanely dared to violate. But they were relieved from this

* R. v. Cundick, 1 Dowl. & Ry. Mag. Ca. 356. N. P. R. 13. and the indictment there set forth, which is a most curious specimen of criminal pleading.

† 2 Bl. Com. 429. note by Mr. Christian. 1 Burn's Justice, 381. ed. Chetwynd.

danger long before the repeal of the act of James I., as convictions of witchcraft have grown less common since the time of Hale, and the judges of modern times, even if ready, with Blackstone and Addison, which may be reasonably doubted, to conclude that there had been such a thing as sorcery, have manifested a most decided disinclination to give credit to any particular modern instances of it. *

The notion of the disinterring of the dead being an offence at common law was so nearly connected with the idea of the bodies being used for the dark purposes of the necromancer, that it is impossible to find any distinct authority upon the abstract point in ancient legal records. The whole question must depend upon the proper answer to these enquiries; — Is it a violation of property? Is it a personal injury to any individual? or, Is it an injury to the public? Every lawyer who has mentioned the subject has admitted that there is no violation of property in respect of the corpse itself, which is necessary to constitute the removal an offence: and Blackstone has distinctly stated, that the only property violated is the grass and soil of the land wherein the body was interred, in respect of which the parson may bring his action of trespass; but the law has not provided any punishment as for an offence.

It is equally clear that it is not an injury to any person; for the shrewd lawyers of Coke's time determined that the body was no person, but a lump of earth; and the only injury which can give a right of action to — that is, which amounts to a violation of any legal right of — a relative or master, is such as may be said to recoil upon him, by causing him expense, labour, or loss of valuable service. The unpleasantness which may arise from an attack upon prejudices, however intimately blended with good feeling and delicacy of sentiment, is ranked by the law with that class of wrongs which are technically designated *damna absque injuria*.

* 4 Com. 61.

The judges in the case of Lynn *, in considering the act an offence, assumed to answer the third question; that is, to assert that it is an injury to the public; for, however contrary it may be to good manners, it is not an offence against the law, unless it be injurious to the welfare of society: and even admitting that every affront to common decency is an injury to society,—which may be too great a concession in case of acts, from which, though in some degree disgusting, society receives more than an equivalent advantage,—it by no means follows that the disinterment of bodies is an offence. We may sometimes detect, in the decision of the most upright judge, a prejudice, and thence a necessary partiality, of which he is himself utterly unconscious. And so in this case, the delicacy of sentiment in the judge—the most amiable of excuses for error—seems to have precipitated the decision.

There are many acts of necessity which should be concealed from the public; many acts which, openly done, would outrage common decency and tend to the degradation of society †, which may, however, be done with a proper degree of privacy, so as to neither injure nor offend. And among these the disinterment of the dead, for the purpose of advancing that knowledge which is absolutely necessary to the welfare of society, must undoubtedly be included. Not merely the comforts, but the whole happiness, the life, of man depend upon the acquisition of that knowledge, which can be derived only from the use of the last reluctant legacy of those who have preceded to the grave. Society is not injured, for it could hardly exist without such a sacrifice of fastidiousness; society is not insulted by the secret abstraction of the corpse from the vermin which crowd to pollute it; and they who so curiously seek the remains of those they hold dear, behind the veil of

* Ante, p. 155.

† R. v. Neville, Peake, 93. R. v. Cross, 2 Car. & Payne, 483.

science, would do well to pry for one moment into the secrets of the sepulchre.

The open ransacking of the habitations of the dead—the exposure of their mouldering inmates to the gaze of idle observation — the conveying of the decomposing remains through public streets, to the annoyance of the people in their health as well as their feelings,—is a nuisance punishable at common law. And in this kingdom it is to be hoped that the wanton rifling of the grave is an offence which never has and never will demand the interference of the law.

But they alone are guilty of a misdemeanor against morality and good manners,—they alone are the violators of every sentiment of delicacy and benevolence,—who insult the disconsolate relatives with the tale of the robbery and pursuit, and with the foul spectacle of dismemberment they may have at length discovered.

An offence, before unheard of, has lately originated in the price obtained for human bodies; and since the conviction of Burke for murder, with a view to the price given for his victims, a general, though it is to be hoped unnecessary, alarm has prevailed throughout this empire, which will not perhaps be entirely allayed until a greater facility of furnishing the schools shall have removed the inducement of again resorting to such horrible expedients.

It may be observed, in concluding this work, that any medical man, or other person, concealing the fact of a body having upon it such *indicia* of violence, or receiving a body under such circumstances, as to raise a reasonable suspicion that the person had been wilfully destroyed, is regarded by the law as an accomplice in the crime.

PART SECOND.

RECORDS.

FIRST DIVISION.

Physicians.

FIRST SUBDIVISION.

Statutes, Charters, &c.

Draft Act of Parliament. 9 H. 5.
Rot. 32 Hen. 6.
Canon.
19 Hen. 7. c. 7.
3 Hen. 8. c. 11.
14 & 15 Hen. 8. c. 5.
32 Hen. 8. c. 40.
1 Mary, sess. 2. c. 9.
Char. 24 Feb. 7 Eliz.
3 Jac. 1. c. 5.
10 Geo. 4. c. 7.
Char. 8 Oct. 15 Jac. 1.
—— 26 March. 15 Car. 2.
10 Geo. 1. c. 20.
6 Geo. 4. c. 50.
Ordinances.

Draught of Act of Parliament, 9 H. 5.

Petyts MSS. v. 33. p. 140.

Anno 1422. Who might practise physic.

No one shall use the mysterie of fysyk, unless he hath studied it in some university, and is at least a bachelor in that science. — The sheriff shall inquire whether any one practises in his county contrary to this regulation; and if any one so practise, he shall forfeit 40*l.* and be imprisoned.

And any woman who shall practise physic, shall incur the same penalty.

It is ordered in parliament, on this petition, That the Lords of the Privy Council shall make what regulations they shall think proper.

But it does not appear that this had the effect of an act of parliament.

Rot. 32 H. 6.

De Ministrando Medicinas circa Personam Regis.

A.D. 1454. 5 Rym. fœd. pt. 2. p. 55. Vid. 4 Inst. 251.

King's physicians and surgeons.

Rex dilectis sibi magistris Johanni Arundell, Johanni Faceby, et Willielmo Haccliffe medicis, magistro Roberto Warreyn et Johanni Marchall chirurgis, salutem.

Sciatis quòd, cùm nos adversâ valetudine ex visitatione divina corporaliter laboremus, a qua nos, cùm ei placuerit qui est omnium vera salus, liberari posse speramus; propterea, juxta consilium ecclesiastici consultoris, quia nolumus abhorrere medicinam quam pro subveniendis humanis languoribus creavit altissimus de ejus salutari subsidio ac de fidelitate scientia et circumspectione vestris plenius confidentes.

Assigned by consent of council.

De advisamento et assensu consilii nostri assignavimus vos, conjunctim et divisim, ad libere ministrandum et exequendum in et circa personam nostram.

Powers limited.

Imprimis, videlicet, quod licite valeatis moderare nobis dietam juxta discretiones vestras et casus exigentiam.

Et quòd in regimine medicinalium, libere nobis possitis ministrare electuaria, potiones, aquas, sirupos, confectiones, laxativas medicinas in quacunque forma nobis gratiori, et ut videbitur plus expedire, clisteria, suppositoria, caput purgia, gargarismata, balnea; vel universalia vel particularia epithemata, fomentationes, embrocationes, capitis rasuram, unctiones, emplastra, cerota, ventosas cum scarificatione vel sine, emoroidarum provocationes, modis quibus melius ingeniare poteritis, et juxta consilia peritorum medicorum qui in hôc casu scripserunt vel in posterum scribent.

Et ideo, vobis et cuilibet vestrum mandamus quòd circa premissa diligenter intendatis, et ea faciatis et exequamini in forma prædicta.

Damus autem universis et singulis fidelibus, et ligeis nostris quorum interest in hâc parte firmiter in mandatis, quod vobis, in executione premissorum pareant et intendant, ut est justum.

In cujus, &c.

Teste Rege apud Westmonasterium sexto die Aprilis.

Per breve de privato sigillo, et de data, &c.

Canon of the Council of Lateran.

Lindw. Prov. 330.

Wethershed. For as much as the soul is far more precious than the body, we do prohibit, under the pain of anathema, that no physician (*medicus*), for the health of the body, shall prescribe (*suadeat*) to a sick person any thing which may prove perilous to the soul. But when it happeneth that he is called to a sick person, he shall first of all effectually persuade them to send for the physicians of the soul; that after the sick person hath taken care for his spiritual medicament, he may with better effect proceed to the cure of his body. And the transgressors of this constitution shall not escape the punishment appointed by the council (which prohibits their entering the church until they have made satisfaction).

Physicians to call in priests.

---

19 H. 7. c. 7.

For making of Statutes by bodies incorporate.

No masters, wardens, and fellowships of crafts or mysteries, nor any of them, nor any rulers of guilds or fraternities, shall take upon them to make any acts or ordinances, ne to execute any acts or ordinances by them heretofore made in disheritance or diminution of the prerogative of the king nor of other, nor against the common profit of the people, but the same acts or ordinances be examined and approved by the Chancellor, Treasurer of England, or Chief Justices of either benches, or three of them, or before both of the Justices of Assize, in their circuit or progress in that

Anno 1503. By-laws;

none against common law, or the crown;

to be approved.

shire where such acts or ordinances be made, upon pain of forfeiture of 40*l.* for every time that they do contrary. And none of the same bodies corporate shall take upon them to make any acts or ordinances to restrain any person or persons to sue to the King's Highness, or to any of his courts, for due remedy to be had in their causes; ne put ne execute any penalty or punishment upon any of them for any such suit, to be made upon pain of forfeiture of 40*l.* for every time that they do the contrary.

None to restrain suits.

---

3 H. 8. c. 11.

An Act for the appointing of Physicians and Surgeons.

Anno 1511.

To the King our Sovereign Lord, and to all the lords spiritual and temporal, and commons in this present parliament assembled: 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 the which they partly use sorcery and witchcraft, partly apply such medicines unto the disease as be very noious and nothing meet therefore, to the high displeasure of God, great infamy of the faculty, and the grievous hurt, damage, and destruction of many of the King's liege people, most especially of them that cannot discern the uncunning from cunning. Be it, therefore, to the surety and comfort of all manner of people, by the authority of this present parliament enacted, That no person within the city of London, nor within seven miles of the same, take upon him to exercise or occupy as a physician or surgeon, except he be first examined, approved, and admitted by the bishop of London, or by the dean of Paul's, for the time being, calling to him or them four doctors of physic, and for surgery other expert persons in that faculty; and for the first examination such as they shall think convenient, and afterward alway four of them that have been so approved,

Physic and surgery,

exercised by ignorant persons,

using sorcery;

none to use in precinct of London,

till admitted by bishop, &c. physicians, surgeons.

upon the pain of forfeiture, for every month that they do occupy as physicians or surgeons not admitted nor examined after the tenour of this act, of *5l.*, to be employed the one half thereof to the use of our Sovereign Lord the King, and the other half thereof to any person that will sue for it by action of debt, in which no wager of law nor protection shall be allowed. Penalty, *5l.*

2. And over this, that no person out of the said city and precinct of seven miles of the same, except he have been (as is aforesaid approved in the same), take upon him to exercise and occupy as a physician or surgeon in any diocese within this realm, but if he be first examined and approved by the bishop of the same diocese, or he being out of the diocese, by his vicar-general; either of them calling to them such expert persons in the said faculties as their discretion shall think convenient, and giving their letters testimonials under their seal, to him that they shall so approve, upon like pain to them that occupy contrary to this act (as is above said) to be levied and employed after the form before expressed. None to use in country, until bishop, &c. approve; and give testimonials.

3. Provided alway, that this act, nor any thing therein contained, be prejudicial to the universities of Oxford and Cambridge, or either of them, or to any privileges granted to them. Rights of universities.

Memorandum. That surgeons be comprised in this act like as physicians, for like mischief of ignorant persons presuming to exercise surgery. Surgery.

---

14 & 15 H. 8. c. 5.

The Privileges and Authority of Physicians in London.

In the most humble wise shew unto your Highness, your true and faithful subjects and liegemen, John Chambre, Thomas Linacre, Ferdinandus de Victoria, your physicians, and Nicholas Halsewell, John Frances, and Robert Yaxley, and all other men of the same faculty within the city of London, and seven miles about, That where your Highness (by your most gracious letters patents, bearing date at Westminster the twenty-third day of September, in the tenth year of your most noble reign) for the commonwealth of this your realm, in due exercising and practising of the Anno 1522. Recites charter, 10 H. 8.

faculty of physic, and the good ministration of medicines to be had, hath incorporate and made of us, and of our company aforesaid, one body and perpetual commonalty or fellowship of the faculty of physic, and to have perpetual succession and common seal, and to choose yearly a president of the same fellowship and commonalty, to oversee, rule, and govern the said fellowship and commonalty, and all men of the said faculty, with divers other liberties and privileges by your Highness to us granted for the common wealth of this your realm, as in your said most gracious letters patents, more at large is specified and contained, the tenour whereof followeth in these words:

For certain reasons,

Henricus Dei gratiâ Rex Angliæ et Franciæ, et Dominus Hiberniæ, omnibus ad quos præsentes literæ pervenirint, salutem. Cum regii officii nostri munus arbitremur ditionis nostræ hominum felicitati omni ratione consulere; id autem vel imprimis fore, si improborum conatibus tempestive occurramus, apprime necessarium duximus improborum quoque hominum, qui medicinam magis avaritiæ suæ causâ, quàm ullius bonæ conscientiæ fiduciâ, profitebuntur, unde rudi et credulæ plebi plurima incommoda oriantur, audaciam compescere: Itaque partim bene institutarum civitatum in Italia, et aliis multis nationibus, exemplum imitati, partim gravium virorum doctorum Johannis Chambre, Thomæ Linacre, Ferdinandi de Victoria, medicorum nostrorum, Nicholai Halsewell, Johannis Francisci, et Rob. Yaxley, medicorum, ac præcipue reverendissimi in Christo patris, ac domini Dom. Thomæ tituli Sanctæ Ceciliæ trans Tiberim sacrosanctæ Romanæ ecclesiæ presbyteri cardinalis, Eborascensis archiepiscopi, et regni nostri Angliæ cancellarii charissimi, precibus inclinati, collegium perpetuum doctorum et gravium virorum, qui medicinam in urbe nostra Londino et suburbiis, intraque septem millia passuum ab ea urbe quaque versus publice exerceant, institui volumus atque imperamus: Quibus tum sui honoris, tum publicæ utilitatis nomine, curæ (ut speramus) erit, malitiosorum quorum meminimus inscientiam temeritatemque, tam exemplo gravitateque suis deterrere, quàm per leges nostras nuper editas, ac per constitutiones per idem collegium condendas, punire: Quæ quo facilius rite peragi possint, memoratis doctoribus Joan. Chambre, Thomæ Li-

nacre, Ferdinando de Victoria, medicis nostris, Nicholao Halsewell, Johanni Francisco, et Rob. Yaxley, medicis, concessimus, quòd ipsi, omnesque homines ejusdem facultatis de et in civitate prædicta, sint in re et nomine unum corpus et communitas perpetua sive collegium perpetuum; et quòd eadem communitas sive collegium singulis annis in perpetuum eligere possint et facere, de communitate illa aliquem providum virum, et in facultate medicinæ expertum, in præsidentem ejusdem collegii, sive communitatis, ad supervidend' recognoscend' et gubernand', pro illo anno, collegium sive communitatem præd' et omnes homines ejusdem facultatis, et negotia eorundem. Et quòd idem præsidens et collegium, sive communitas, habeant successionem perpetuam, et commune sigillum negotiis dict' communitatis et præsidentis in perpetuum serviturum. Et quod ipsi et successores sui in perpetuum sint personæ habiles et capaces ad perquirendum, et possidendum in feodo et perpetuitate terras et tenementa, redditus, et alias possessiones quascunque.

incorporating physicians of London.

President.

Common seal.

Power to purchase, &c.

Concessimus etiam eis et successoribus suis pro nobis et hæredibus nostris, quòd ipsi et successores sui possint prequirere sibi et successoribus suis, tam in dicta urbe quàm extra, terras et tenementa quæcunque annuum valorem duodecim librarum non excedent' statuto de alienatione ad manum mortuam non obstante. Et quòd ipsi per nomina præsidentis et collegii seu communitatis facultatis medicinæ Lond' placitari et implacitari possint coram quibuscunque judicibus in curiis et actionibus quibuscunque. Et quòd præd' præsidens et collegium, sive communitas, et eorum successores, congregationes licitas et honestas de seipsis ac stat' et ordinationes pro salubri gubernatione, supervisu, et correctione collegii seu communitatis præd', et omnium hominum eandem facultatem in dicta civitate, seu per septem milliaria in circuitu ejusdem civitatis exercen' secundum necessitatis exigentiam, quoties et quando opus fuerit, facere valeant licite et impune, sine impedimento nostri, hæredum, vel successorum nostrorum, justiciorum, escætorum, † *vilce*-comitum, et alior' ballivor' vel ministror' nostror' hæred' vel successor' nostror' quorumcunque. Concessimus etiam eisdem præsidenti et collegio, seu communitati, et successoribus suis, quòd nemo in dicta civitate, aut per septem milliaria in circuitu ejusdem, exerceat dictam

Not exceeding annual value of 12*l.*

Name.

Ordinances.

† *Sic.*

Licentiates alone may practice physic, within seven miles;

facultatem, nisi ad hoc per dict' præsidentem et communitatem, seu successores eorum, qui pro tempore fuerint, admissus sit per ejusdem præsidentis et collegii literas sigillo suo communi sigillatas, sub pœna centum solidorum pro quolibet mense, quo non admissus eandem facultatem exercuit, dimidium inde nobis et hæred' nostris, et dimidium dicto præsidenti et coll' applicandum.

penalty, 5*l*.

Four (censors) how elected;

Præterea volumus et concedimus pro nobis et successoribus nostris (quantum in nobis est), quòd per præsidentem et collegium præd' communitatis pro tempore existen' et eorum successores in perpetuum, quatuor singulis annis eligantur, qui habeant supervisum et scrutinium, correctionem et gubernat' omnium et singulor' dictæ civitatis medicorum utentium facultate medicinæ in eadem civitate, ac aliorum medicorum forinsecorum quorumcunque facultatem illam medicinæ aliquo modo frequentantium et utentium infra eandem civitatem et suburbia ejusdem, sive intra septem milliaria in circuitu ejusd' civitatis, ac punitionem eorund' pro delictis suis in non bene exequendo, faciendo, et utendo illa; necnon supervisum et scrutinium omnimodarum medicinarum, et earum reception' per dictos medicos, seu aliquem eorum hujusmodi, ligeis nostris pro eorum infirmatibus curandis et sanandis, dandis, imponendis, et utendis, quoties et quando opus fuerit pro commodo et utilitate eorundem ligeorum nostrorum, ita quòd punitio hujusmodi medicorum utentium dictâ facultate medicinæ, sic in præmissis dilinquent' per fines, amerciamenta, et imprisonamenta corpor' suor' et per alias vias rationab' et congruas exequatur.

have correction of physicians,

and of medicines;

may punish by fine and imprisonment.

President and college exempt,

Volumus etiam et concedimus pro nobis, hæredibus, et successoribus nostris (quantum in nobis est), quòd nec præsidens, nec aliquis de collegio præd' medicorum, nec successores sui, nec eorum aliquis exercens facultatem illam, quoquo modo in futur' infra civitatem nostram præd' et suburbia ejusdem, seu alibi, summoneantur aut ponantur, neque eorum aliquis summoneatur aut ponatur in aliquibus assisis, juratis, inquestis, inquisitionibus, attinctis, et aliis recognitionibus infra dictam civitatem, et suburbia ejusdem, imposterum, coram majore ac vicecom' seu coronatoribus dictæ civitatis nostræ pro tempore existen', capiendis, aut per aliquem officiarium seu ministrum suum, vel officiarios sive ministros suos summonend', licet eædem juratæ, in-

within precint of London,

from all juries, &c.

quisitiones, seu recognitiones, summon' fuerint super brevi vel brevibus nostris, vel hæredum nostrorum, de recto; sed quòd dicti magistri, sive gubernatores, ac communitas facultatis antedictæ et successores sui, et eorum quilibet dictam facultatem exercentes, versus nos heredes et successores nostros, ac versus majorem et vicecomites civitatis nostræ præd' pro tempore existen', et quoscumque officiarios et ministros suos, sint inde quieti et penitus exonerati in perpetuum per presentes.

Proviso quòd literæ nostræ seu aliquid in eis content' non cedent in prejudicium civitatis nostræ Lond' seu libertat' ejusd'. Et hoc absque fine seu feodo pro premissis, seu sigillat' presentium nobis facienda, solvenda, vel aliqualiter reddenda aliquo statuto, ordinatione, vel actu in contrarium ante hæc tempora facto, edito, ordinato, seu sic privoso† in aliquo, non obstante. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westmonasterium, 23 die Sept', an' reg' nostri 10. Privileges of city.

† *Sic.*

Per ipsum Regem,

Et de data præd' auctoritate parl'.

TUNSTALL.

And for as much that the making of the said corporation is meritorious and very good for the common wealth of this your realm, it is therefore expedient and necessary to provide, That no person of the said politic body and commonalty aforesaid be suffered to exercise and practise physic, but only those persons that be profound, sad, and discreet, groundedly learned and deeply studied in physic.

2. In consideration whereof, and for the further authorizing of the same letters patents, and also enlarging of further articles for the said commonwealth to be had and made: Pleaseth it your Highness, with the assent of your lords spiritual and temporal, and the commons, in this present parliament assembled, to enact, ordain, and stablish, That the said corporation of the same commonalty and fellowship of the faculty of physic aforesaid, and all and every grant, article, and other thing contained and specified in the said letters patent, be approved, granted, ratified, and confirmed in this present parliament, and clearly authorized and admitted by the same good, lawful, and available, to your said body corporate, and their successors for ever, in Charter confirmed in most ample manner:

as ample and large manner as may be taken, thought, and
eight elects, construed by the same: And that it please your Highness, with the assent of your said lords spiritual and temporal, and the commons, in this your present parliament assembled, further to enact, ordain, and establish, that the six persons beforesaid in your said most gracious letters patents named as principals and first-named of the said commonalty and fellowship, choosing to them two more of the said commonalty, from henceforward be called and cleaped
and president, Elects; and that the same elects yearly choose one of them to be president of the said commonalty, and as oft as any of the rooms and places of the same elects shall fortune to be void by death or otherwise, then the survivors
how elected: of the said elects, within thirty or forty days next after the death of them, or any of them, shall choose, name, and admit one or mo, as need shall require, of the most cunning and expert men of and in the said faculty in London, to
examined. supply the said room and number of eight persons; so that he or they that shall be so chosen be first by the said survivors strictly examined after a form devised by the said elects, and also by the same survivors approved.

3. And where that in dioceses of England out of London it is not light to find alway men able sufficiently to examine after the statute such as shall be admitted to exercise physic in them; that it may be enacted, in this present par-
Licentiates in country, liament, That no person from henceforth be suffered to exercise or practise in physic, through England, until such time as he be examined at London by the said president,
by whom. and three of the said elects; and to have from the said president or elects letters testimonials of their approving
Graduates of universities. and examination, except he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form without any grace.

---

32 H. 8. c. 40.

For Physicians and their Privilege.

Anno 1540. In most humble wise sheweth unto your Majesty your
For certain reasons, true and faithful subjects and liege men, the president of the corporation of the commonalty and fellowship of the science and faculty of physic in your city of London, and

the commons and the fellows of the same, that whereas divers of them many times having in cure as well some of the lords of your most honourable council, and divers times many of the nobility of this realm, as many other of your faithful and liege people, cannot give their due attendance to them and other their patients, with such diligence as their duty were and is to do, by reason they be many times compelled, as well within the city of London and suburbs of the same, as in other towns and villages, to keep watch and ward, and be chosen to the office of constable and other offices within the said city and suburbs of the same as in other places within this your realm, to their great fatigation and unquieting, and to the peril of their patients by reason they cannot be conveniently attended: It may therefore please your most excellent majesty, with the assent of your lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, to enact, ordain, and establish, That the president of the said commonalty and fellowship for the time being, and the commons and fellows of the same, and every fellow thereof, that now be, or at any time hereafter shall be their successors, and the successors of every of them, at all time and times after the making of this present act, shall be discharged to keep any watch or ward in your said city of London, or the suburbs of the same, or any part thereof; and that they or any of them shall not be chosen constable or any other officer in the said city or suburbs; and that if at any time hereafter the said president for the time being, or any of the said commons or fellows for the time being, by any ways or means be appointed or elected to any watch or ward, office of constable or any other office within the said city or suburbs, the same appointment or election to be utterly void and of none effect; any order, custom, or law to the contrary, before this time used in the said city, notwithstanding.

fellows and commons of college

exempt from watch, &c.

constablery, &c. within London.

2. And that it may please your most royal majesty, by the authority aforesaid, That it may be further acted, ordained, and established for the common wealth and surety of your loving subjects of this your realm, in and for the administration of medicines to such of your said subjects as shall have need of the same, that from henceforth the said president for the time being, commons and fellows, and

Four fellows elected (censors);

their successors, may yearly, at such time as they shall think most meet and convenient for the same, elect and choose four persons of the said commons and fellows of the best learned, wisest, and most discreet, such as they shall think convenient and have experience in the said faculty of physic; and that the said four persons so elected and chosen, after a corporal oath to them ministered by the said president, or his deputy, shall and may, by virtue of this present act, have full authority and power, as often as they shall think meet and convenient, to enter into the house or houses of all and every apothecary now, or at any time hereafter, using the mystery or craft of apothecary within the said city only, to search, view, and see such apothecary wares, drugs, and stuffs as the said apothecaries or any of them have, or at any time hereafter shall have in their house or houses; and all such wares, drugs, and stuffs as the said four persons shall there find defective, corrupted, and not meet nor convenient to be ministered in any medicines for the health of man's body, the same four persons, calling to them the warden of the said mystery of apothecaries within the said city for that time being, or one of them, shall cause to be brent or otherwise destroy the same as they shall think meet by their discretion; and if the said apothecaries, or any of them, at any time hereafter do, obstinately or willingly, refuse or deny the said four persons, yearly elected and chosen as is before said, to enter into their said house or houses, for the causes, intent, and purpose before rehearsed, that then they, and every of them, so offending contrary to this act, for every time that he or they do so offend to forfeit 100*s*., the one half to your majesty, and the other half to him that will sue for the same by action of debt, bill, plaint, or information, in any of the king's courts, wherein no wager of law, essoin, or protection shall be allowed; and if the said four persons, or any of them so elected and chosen as before is said, do refuse to be sworn, or after his said oath to him or them administered do obstinately refuse to make the said search, and view once in the year, at such time as they shall think most convenient by their discretions, having no lawful impediment by sickness or otherwise to the contrary, that then, for every such wilful and obstinate default, every of the said four persons making default to forfeit 40*s*.

sworn by president or deputy;

enter apothecaries' houses,

to examine wares;

burn defective;

with assent of wardens of apothecaries.

Apothecaries resisting

forfeit 5*l*.

Censors refusing oath,

or to examine,

forfeit 2*l*.

3. And for as much as the science of physic doth comprehend, include, and contain the knowledge of surgery as a special member and part of the same; therefore be it enacted, that any of the same company or fellowship of physicians, being able, chosen, and admitted by the said president and fellowship of physicians, may from time to time, as well within the city of London as elsewhere within this realm, practise and exercise the said science of physic in all and every *his* † members and parts, any act, statute, or provision made to the contrary notwithstanding.

Surgery part of physic

may be practised by licentiates.

† *Sic.*

---

1 Mar. sess. 2. c. 9.

An Act touching the Corporation of the Physicians in London.

Whereas, in the parliament holden at London, the 15th day of April, in the 14th year of the reign of our late Sovereign Lord King Henry the Eighth, and from thence adjourned to Westminster, the last day of July, in the 15th year of the reign of the same King, and there holden, it was enacted, that a certain grant, by letters patent, of incorporation made and granted by our said late King to the physicians of London, and all clauses and articles contained in the same grant, should be approved, granted, ratified, and confirmed by the same parliament.

Anno 1553.

14 H. 8. recited,

2. For the consideration thereof, be it enacted by the authority of this present parliament, That the said statute or act of parliament, with every article and clause therein contained, shall from henceforth stand and continue still in full strength, force, and effect, any act, statute, law, custom, or any other thing made, had, or used to the contrary in any wise notwithstanding.

confirmed,

3. And for the better reformation of divers enormities happening to the commonwealth, by the evil using and undue administration of physic, and for the enlarging of further articles for the better execution of the things contained in the said grant enacted:

and enlarged.

4. Be it therefore now enacted, That whensoever the president of the college or commonalty of the faculty of

When president or persons appointed

physic of London for the time being, or such as the said president and college shall yearly, according to the tenour and meaning of the said act, authorise to search, examine, correct, and punish all offenders and transgressors in the said faculty within the same city and precinct in the said

commit,

act expressed, shall send or commit any such offender or offenders, for his or their offences or disobedience, contrary to any article or clause contained in the said grant or act, to any ward, gaol, or prison within the same city and precinct

gaolers must receive,

(the Tower of London except), That then, from time to time, the warden, gaoler, or keeper, wardens, gaolers, or keepers of the wards, gaols, and prisons within the city or precinct aforesaid (except before excepted), shall receive into his or their prisons all and every such person and persons so offending as shall be so sent or committed to him or

and keep at prisoner's charge,

them as is aforesaid; and there shall safely keep the person or persons so committed in any of their prisons, at the proper costs and charges of the said person or persons so committed, without bail or mainprize, until such time as such

till discharged.

offender or offenders, or disobedients, be discharged of the said imprisonment by the said president and such persons as by the said college shall be thereunto authorised, upon pain that all and every such warden, gaoler, and keeper, doing the

Penalty, double fine,

contrary, shall lose and forfeit the double of such fine and amerciament as such offender and offenders, or disobedients, shall be assessed to pay by such as the said president and

if not exceeding 20*l.*

college shall authorise as aforesaid; so that the same fine and amerciament be not at any one time above the sum of 20*l.*; the moiety thereof to be employed to the use of our Sovereign Lady the Queen, her heirs and successors; the other moiety unto the said president and college: all which forfeitures to be recovered by action of debt, bill, plaint, or information, in any of the Queen's, her heirs or successors' courts of record, against any such warden, gaoler, or keeper so offending; in which suit no essoin, wager of law, nor protection shall be allowed nor admitted for the defendant.

Under 32 H. 8.

5. And further be it enacted, by the authority aforesaid, for the better execution of the search and view of poticary wares, drugs, and compositions, according to the tenour of a statute made in the 32d year of the reign of the said late

wardens of apothecaries may attend search;

King Henry the Eighth, That it shall be lawful for the wardens of the grocers, or one of them, to go with the said physi-

cians in their view and search; that if the said warden or wardens do refuse or delay his or their coming thereunto forthwith, and immediately when the said president, or four of his college elect as aforesaid, do call upon him or them, that then the said physicians may and shall execute that search and view, and the due punishment of the poticaries for any their evil and faulty stuff, according to the statute last before mentioned, without the assistance of any of the said wardens, any clause in the afore-named statute to the contrary hereof notwithstanding. And every such person or persons as will or shall resist such search, shall forfeit, for every such resistance, 10*l.*; the same penalty to be recovered in form aforesaid, without any of the delays aforesaid to be had in suit thereof.

or president, &c. act without.

And further be it enacted, That all justices, mayors, sheriffs, bailiffs, constables, and other ministers and officers within the city and precincts above written, upon request to them made, shall help, aid, and assist the president of the said college, and all persons by them from time to time authorised for the due execution of the said acts or statutes, upon pain, for not giving of such aid, help, and assistance, to run in contempt of the Queen's Majesty, her heirs and successors.

Magistrates must aid in.

La Reigne le veult.

Charter 24 Feb. 7 Eliz.

Anno 1565.

Four bodies for dissection.

Reciting the creation of the College of Physicians by charter 10 Henry 8., and the confirmation of it by statute 14 Henry 8., granted to the president of the college or community of the faculty of physic in London, or their assigns, that they might have, annually, when the president should think fit, either at one time or at several times, one, two, three, or four bodies of felons executed in Middlesex, or in or within 16 miles of London, without hindrance by the king or his sheriffs, bailiffs, or others. And that the president or the persons, professors of or experienced in medicine, appointed by the college, might, observing all decent respect for human flesh, dissect the same, without making any pecuniary compensation, provided that they

should, afterwards, at their own expence, bury such bodies. Then follows the usual non obstante.

---

3 Jac. 1. c. 5. s. 8.

Recusants.

No recusant convict shall at any time practise physic, nor use nor exercise the trade or art of an apothecary.

---

10 Geo. 4. c. 7.

Repeals all restrictions on Roman Catholics in this respect.

Charter, 8 Oct. 15 Jac. 1.

Anno 1618.

King James, by this charter, reciting the charter 10 Hen. 8., and the statute 14 Hen. 8., and that other privileges had been granted to them by other acts of parliament, and that divers enormities and abuses were not yet sufficiently provided against and reformed,

Recovery of penalties.

Confirms these statutes in every particular, and grants, that the president, and college, or commonalty, in the name of the King, or their own name, by the name of the President and College of the Faculty of Physic within the City of London, in any of the king's courts of record, or in any other places within the realm, might recover all such penalties, &c. as might accrue to the king or to them under such charters or statutes, or this charter, except on the recognizance mentioned in this charter.

That they might receive the whole of such penalties, &c. to their own use, without accounting to the king.

Censors' power of government and punishing.

That the censors, or any three of them, might, at all times when they should think it requisite, examine, survey, govern, correct, and punish all physicians and practisers of physic, apothecaries, druggists, distillers, and sellers of waters or oils, preparers of chemical medicines to be sold or employed for gain, and every other person practising in the said faculty, or using the art of an apothecary or trade of a druggist, &c., or putting to sale or selling any drugs or other things apt,

or pretended to be apt for medicine, either simple or compounded, within London, or seven miles around, by amerciament or imprisonment, or other lawful means, according to the offence, as by the charter of Henry 8.

Summoning practitioners.

That the censors, or three of them, might, when they should think meet, summon before them every physician and practiser in the faculty of physic within the precinct of London, at such time and place as they should appoint, and examine them concerning their skill or practice, and the manner of their practice.

That they might impose a penalty, not exceeding 40*s.*, on each default of appearance or refusal to be examined.

Penalties on practising unlicensed.

That they might impose a fine, not exceeding 3*l.*, on every such person who should appear to have administered or prescribed medicine, or to have practised at any one or more times, within the precinct of London, without the college licence, and imprison him seven days, but not longer, unless he should neglect to make satisfaction or pay the fine, and that, in such case, they might imprison him until he should make satisfaction or pay it.

On mal-practice.

That they might punish any such person as might appear to have administered or prescribed any noisome, unwholesome, or unfit medicine, by fine or imprisonment, so as such fine should not exceed 10*l.*, or such imprisonment should not exceed 14 days, unless it were for non-payment of the fine; that in such case they might detain him until payment.

Summons of witnesses.

That for the discovery of such offenders, the president and college might, by precept under their common seal, summon any person, being a surgeon, apothecary, or druggist, or employed in the ministering of medicine, or the servant or attendant to any that should receive medicine, as a witness against any such person, to appear before them or the censors, and that they might examine them on oath or without.

That they and the censors might impose a fine, not exceeding 20*s.*, on any such person not appearing, or refusing to be sworn or to be examined without oath, or to answer proper questions.

Search of apothecaries' houses.

That the censors, or three of them, might, when they should think fit, at all reasonable times, enter the house, shop, cellar, vault, workhouse, or warehouse, &c. of any apothecary, druggist, distiller, and seller of waters, oils, or other compositions, or any other person, who should set to sale

any medicine, &c. within the precinct of London, to examine such waters, medicines, &c.; and that they might examine such persons on oath, or without, as they should think fit, concerning the receipts and compositions thereof, and take from or destroy such medicines, &c. as they should deem unfit.

Summon apothecaries, &c.

That the censors, or three of them, might, at any reasonable time, summon before them such apothecaries, druggists, distillers, &c.

That they might impose a penalty, not exceeding 20*s.*, on every such person for every default of appearance.

Mal-practice.

That they might punish every such person who should appear to have offered to sale or kept in his shop, house, &c. any medicines, &c. corrupt or unfit for medicine, or to have made or compounded, or delivered, either simple or compounded, any medicine not agreeable with the prescript or direction delivered to him, by fine, not exceeding for each default 3*l.*, and imprison him until payment.

Recovery of penalties.

That all these fines might be recovered by the president and college, &c. in any court of record, to their own use, and without accounting to the king.

That the censors might imprison the offender, if present, until he should satisfy the same.

Common-hall.

That the president and college might have a hall or council-house within London or its liberties.

Convocations.

That the president might, as often as he should think meet, call a court or convocation therein of the president and college or commonalty, to the number of six persons or more, whereof the president to be one.

Ordinances.

That this court might consider and make ordinances concerning the president and college, and the government of the same, and the reformation and redress of the mischiefs before mentioned, and punish all offenders against such ordinances by fine or imprisonment, and take such fine to their own use; so that such ordinances were not against law.

Registrar.

That the president and college, or the major part of them, assembled in their said hall, might elect a register, who should attend the assemblies of the college, and register their acts and ordinances, and continue in office during the pleasure of the president and college.

That the register should take an oath of office before the president and censors.

That the president and college might elect such other officers as they might think proper, to whom the president and college, or the censors, might administer an oath for the due execution of their office. Other officers.

That the president and college might remove the *register* and other officers for reasonable cause. Removal of.

That the president and censors, or three of them, of which the president to be one, might cause any person who should be convented for and found guilty of any of the offences before mentioned to enter into recognizance to the king, in any sum not exceeding 100*l.*, with condition not to offend again in that behalf, and, on refusal, commit him to prison until he should comply. Recognizance not to practise, &c.

That the president and college might take and hold any real property, not exceeding in the whole the yearly value of 100 marks, above all charges and reprizes, so as such lands were not held *in capite*, or of the king, or any other person, by knight-service. Lands, &c.

That every physician admitted and made a member of the college should be exempt from providing and bearing any armour or other munition within the precinct of London. Exemption from armour, &c.

That they might enjoy all former liberties, privileges, &c. &c. Privileges.

That the king, or his heir or successor, should in the next parliament give his royal assent to any bill or petition by the president and college exhibited, and by the lords and commons approved and assented to, for the better enabling, authorizing, and investing of the president and college with the powers, privileges, &c. by these presents granted, &c. or intended to be granted, &c. Royal assent to statute.

That this charter should in all courts be taken most strongly and beneficially for the college and against the king. Construction of charter.

And finally, in consideration of such fines, &c. reserved a yearly rent to the king of 6*l.*, payable at the Exchequer half-yearly, at Lady-day and Michaelmas-day. Rent reserved.

Charter, 26th March. 15 Car. 2.

By this charter, after reciting and confirming the charter 10 Hen. 8., the statute 14 Hen. 8., and the grants of other Anno 1663. Recital.

privileges by several acts of parliament, and the charter 15 Jac. 1., and reciting the increase of unskilful, illiterate, and unlicensed practisers of physic, and the renewed frauds, abuses, and deceits of divers apothecaries, druggists, and others, and that these evils arose from some defects in the constitution of the College of Physicians, and their coercive and penal powers, and the petition of the then president and other doctors of the college, the king granted: —

Corporate name. That they should continue a corporation, by the name of the President, Fellows, and Commonalty of the king's College of Physicians in the City of London.

Lands, &c. That they should in that name be able to acquire and enjoy every kind of real and personal property, privileges, franchises, &c., and to alien, demise, and dispose of the same.

Suits. That they might in that name plead and be impleaded, sue and be sued in all courts, &c.

Common seal. That they might have, use, and alter a common seal, to be kept by the president.

Forty fellows, That there should be forty fellows, and thereof one president, ten elects, and four censors.

removal of. That forty persons named should be the present fellows for life, unless removed for evil government, or misbehaviour, or non-residence (except in attendance on the king), without licence under the college seal or the king's privy seal.

Modern president; That Sir Edward Alston should be president until the morrow of St. Michael then next, and until another should be duly sworn.

elects; That Sir Edward Alston and nine others should be elects for life, unless for reasonable cause removed.

censors. That four persons named (two of whom were appointed elects and two fellows) should be censors until the morrow of St. Michael then next, and from thence until some other censors should be duly sworn in.

Election of president, That every president should be chosen out of the elects, and continue in office until the following morrow of St. Michael, and until another should be elected, unless removed in the mean time for ill-government, non-residence, or other reasonable cause.

That on or within three days after the morrow of St. Michael yearly, the elects, or any five of them, of whom the president or vice-president to be one, might meet in the

common hall, or other convenient place within the city of London, and elect a president for the following year.

That the elects, or any five of them, might assemble and elect a president for the remainder of the year within convenient time after the death or removal of a president.

vice-president,

That the president might, by writing under his hand and seal, appoint one of the elects to be vice-president, and remove him at pleasure.

That the vice-president should, in the absence of the president, have and exercise the same powers, privileges, &c. as the president if present.

censors,

That the censors should be annually elected out of the fellows by the president and fellows assembled in the common hall or other convenient place, on or within three days after the morrow of St. Michael, and should continue in office until the following morrow of St. Michael, or the election of other censors in their respective places, unless before removed for reasonable cause.

That the president and fellows might assemble and elect one or more censors for the remainder of the year, within a convenient time after the death or removal of any one or more of the censors.

elects,

That the elects, or five of them, whereof the president to be always one, might, at any time after the death or removal of one or more of the elects, assemble and choose out of the fellows one or more to be elects in his or their room.

fellows.

That the fellows should be chosen out of the commonalty in this manner: — On the death or removal of one or more fellows, the president and fellows shall at any time assemble in their common hall or other convenient place in London, and elect one or more of the most learned and able persons, skilled and experienced in the said faculty of physic, then of the commonalty or members of the college, to fill the vacant places.

Punishment and removal of fellows, &c.

That the president and fellows might, at any court at their common hall, &c. summon, hear, and admonish any of the fellows, elects, and censors for evil government, non-residence (unless by licence, as aforesaid), for misbehaviour in their respective places, or other reasonable cause, and remove any of them from their respective places, and, after due publication and entry thereof in the register, proceed to new elections to supply their places.

Votes. That no individual should in any case give more than one vote, although occupying two or more places, except that the president, and in his absence the vice-president, might give a casting vote.

Admission. That every president, vice-president, censor, elect, fellow, and other officer should be sworn into his office, thus, — the nominees in the charter, as therein set forth, afterwards the president, before the elects or any two of them, the vice-president, censors, elects, and fellows, and other officers before the president in the presence of the elects or any two of them.

Common-hall. That the president and fellows might have a council-house within London or the liberties of the same.

Convocation. That the president might, as often as he should think meet, call therein a court or convocation of the president and fellows, or of any competent part or number of them, not less than fifteen, of whom he or the vice-president to be one, giving convenient notice thereof to the fellows by a known officer of the college.

Ordinances. That such convocation, or the major part, might do all acts appointed to be done by the president and fellows, and treat of, make, and set down reasonable ordinances concerning the president, fellows, and commonalty, and the good rule and government of them and of their officers and ministers, goods, lands, &c. and of other practisers of physic, and the reformation and redress of the abuses, deceits, misdemeanors, and enormities of apothecaries, &c. and for the imposing of fines and imprisonment on the offenders against such ordinances; so as the same were not repugnant to the law, and so as they should be approved according to the statute.

Unlicensed practitioners. That no person should practise physic within London and Westminster, or seven miles any ways in circuit thereof, until admitted or licensed so to do by the president and fellows in convocation as aforesaid, by licence, or admittance, attested by their letters testimonial, sealed with their common seal, upon pain of forfeiting to the president, fellows, and commonalty 10*l.* for every month he should so practise; which they might recover in any court of record by action, &c. in which no essoin, &c. should be allowed.

Correction of physicians, That the president and censors, or three of them, of whom the president to be one, should have the power,

when they might think convenient, to supervise, examine, survey, correct, and punish all and singular physicians and practisers of physic, apothecaries, druggists, distillers, and sellers of waters, or of oils, preparers of chemical medicines, and other like persons, within London and Westminster, or the suburbs thereof, or seven miles around the same; and to summon before them such physicians or practisers, and examine them concerning their skill and manner of practice, and impose on them any fine, not exceeding 40*s.*, for every default in neglecting to appear, or refusing to be examined or to answer; and to punish, by fine not exceeding 10*l.*, and imprisonment, not exceeding fourteen days, and until such fine should be satisfied, any person who should be found on appearance to have ministered or prescribed any noisome, unwholesome, or unfit medicine or physic within the precinct of London; and that they might, for the discovery of such persons, by precept under their hands and seals, summon any person they might think meet, employed in the ministering of medicines, or servant or attendant on any who should have received medicines, upon tender of their reasonable charges in that behalf, to testify against such offenders, and examine such witnesses on oath or without, and punish, by fine not exceeding 20*s.*, any such person not attending, or refusing to be sworn or to be examined.

apothecaries, &c.

Witnesses.

That the censors, or any three of them, might, at all seasonable times of the day when they should think proper, enter the houses, shops, &c. of any apothecary, druggist, or such other persons within the precinct of London, to examine their medicines, drugs, &c., and examine such persons, on oath or without, concerning the receipts and compositions thereof, and take or destroy all corrupt and defective medicines, &c.

Search apothecaries' shops, &c.

That any person resisting such search should forfeit to the college for every offence 40*s.*, to be recovered by levy on his goods or imprisonment of his person, as for the other fines.

That the president and censors, or three of them, of whom the president to be one, might summon before them any such apothecaries, druggists, &c., at any convenient time and place within the precinct of London, and impose a fine, not exceeding 20*s.*, on any such person neglecting to appear, without reasonable excuse; and punish any such

Summons of apothecaries, &c.;

punishment for bad medicines.

person as should on appearance be found to have offered to sale any defective or corrupt medicines, &c. or to have delivered or compounded any medicines not agreeable with the prescript or direction delivered to him, by fine, not exceeding 3*l*., and imprisonment until payment thereof.

Examination of country practitioners.

That every person should, before he entered upon the practice of physic in any other part of the realm of England beyond the precinct of London, be examined by the presidents and elects, or four of them, of whom the president to be one, and should be allowed, by testimonial under the particular hands of the persons respectively examining them.

That the president and elects, or any four of them, of whom the president to be one, should call before them and examine all persons desirous of practising physic beyond the precinct of London, and allow and grant such testimonial to such as should prove qualified for the profession, and reject and suppress all such as should prove unqualified.

Punishment of unlicensed, except university graduates.

That no person, except graduates of Oxford or Cambridge, having accomplished all things for their form without any grace, should practise physic in any part of England beyond the precinct of London until so approved, under penalty of 5*l*. to the college for every month of practice, recoverable as the 10*l*. a month for practising in London.

Costs of actions.

That the plaintiff and defendant in any actions for the penalties of 5*l*. or 10*l*. should respectively have their costs of suit and execution, as in other actions of debt, &c.

Commencement of proceedings.

That no proceeding should be taken for the enforcing or levy of any of the penalties under the statutes, charters, or ordinances of the college (except for the penalties for practising without licence) until the assent of the convocation (p. xxiv.) should be given thereto and registered; but that afterwards the president and censors, or three of them, of whom the president to be one, might issue their warrant to any of their officers to convey the offender to any gaol in London or its suburbs (except the Tower), there to remain until payment of the fine, &c., or to levy the amount by distress and sale of the offender's goods and chattels.

Appeal.

That any person thereby aggrieved might, within one month after such entry, appeal to the visitors.

Visitors.

That the Lord Chancellor, or Lord Keeper, Lord Chief Justices of the King's Bench and Common Pleas, and Chief

Baron of the Exchequer should be visitors of the college; of whom two or more might, on appeal, examine, alter, mitigate, reverse, and finally determine on all decisions and sentences of the college; and for that purpose remove all such proceedings, decisions, &c. before them, appoint a time and place for hearing, and summon and examine, on oath or otherwise, all witnesses, and do all other things requisite to justice.

That the visitors, or two or more of them, might after their decisions remit the proceedings to the college, that due execution might be had, &c.

That the decisions, &c. of the visitors should be binding and conclusive.

That if the appellant should not prosecute his appeal to a hearing and decision within six months from the time of preferring it, the president and censors, &c. might proceed as though none had been preferred.

That the president and censors, &c. might proceed on the decision of the visitors, as upon their own decisions not appealed against.

Limitation of proceedings.

That no person should be proceeded against in respect of any offence in this charter mentioned, or by virtue of the same, after the expiration of one year from the committing of it.

Penalties, recovery and

That the college should have all the fines, &c. except the penalties of recognizances, and recover them in any court of record, or levy the same, except the penalties for practising without licence, by imprisonment of the offender or distress and sale of his goods.

disposition of.

That the president and fellows should distribute the produce of the fines (except on unlicensed persons), after payment of expences, among the poor of the parish in which they were incurred.

Rent.

That the college should be remitted the rent of 6*l*., reserved by the statute of James, reserving in lieu thereof a new rent of the same amount, and payable in the same manner.

Registrar,

That the president and fellows, to the number of fifteen, &c. (p. xxiv.) in council, might elect one of the fellows to be the register, to register the ordinances acts &c. of the president and fellows, and such other officers as by them should be deemed meet; all of whom should be sworn be-

and other officers.

fore the president or vice-president, and be removable on sufficient cause.

Recognizance not to offend.

That the president and censors, &c. might compel persons found guilty of the offences beforesaid to enter into recognizances to the king, not exceeding 100*l.*, with condition not to offend again, and on refusal commit him to prison until he should comply.

Gaolers to receive persons committed.

That all gaolers, &c. (except of the Tower) should obey the warrant of the president and censors, and receive persons committed by them, and detain them, at the costs of such persons, without bail or mainprize, until duly discharged, under penalty of double the fine (not exceeding 20*l.*) imposed on the person committed; half to the king, and half to the college, to be recovered by bill, &c.

Six bodies for dissection.

That the president and fellows might yearly take six bodies of men or women, executed in due course of law within London, Middlesex, or Surrey, and dissect the same; afterwards carrying such bodies to be decently buried at their expence.

Lands, &c.

That the college might hold lands, &c. not exceeding the annual value of 200*l.*

Exemption from juries, &c.

That every physician, admitted a member of the college, should be exempt from juries and inquests, and the offices of churchwarden, constable, scavenger, and every such office and place, and from watch and ward, and from bearing or providing arms within London or Westminster, or seven miles thereof, and that every appointment, nomination, &c. to the contrary should be void.

Privileges.

That they might enjoy all former privileges, &c.

Royal assent, &c.

That the king should assent, in the next parliament, in terms similar to those of 15 Jac. 1. (p. xxi.)

Construction of statute.

That this charter should be construed most strongly against the king, and most beneficially for the college, with usual *non obstante*.

1714

10 Geo. 1. c. 20.

Expired.

For examining Medicines, &c. — (*This act was declared to be in force for three years only.*)

Reciting the charter 10 Hen. 8. and the statutes 14 Hen. 8. and 32 Hen. 8. and 1 Mary, and that they were found

insufficient, enacted that the four censors, or three of them, calling to their assistance the wardens of the apothecaries, or one of them, might at all times when they should think fit, at seasonable times in the day, enter the house, shop, cellar, &c. of any apothecary or person keeping for sale, selling, or putting to sale any medicines, drugs, waters, oils, or compositions used for medicines, within London or seven miles around, and examine the same, and take and burn or otherwise destroy all such as they should find and adjudge to be defective, corrupt, decayed, or not meet to be used in medicine for man; except drugs in the houses or warehouses of merchants, importers, or druggists not making or keeping medicines for sale.

Censors might search shops of apothecaries, &c.

3. That if the wardens should neglect to go with them at the time appointed, they might alone execute the same powers.

4. That if such apothecary, whose medicines, &c. were taken, or the person having the charge thereof, should, before the destroying of them, insist that they ought not to be destroyed, and forthwith, by writing under his hand, appeal to and desire the judgment of the *president and fellows* of the college, the censors present should cause such medicines, &c. condemned in the vessels, &c. in which they were contained, and the reasons in writing for the condemnation thereof, subscribed by them, to be put into a box and sealed with the seals of three of the censors and of the person appealing, if he should think fit to put his seal thereto, and cause such box to be conveyed to the college, and there kept until the next assembly of the president or *vice-president and fellows* of the college, which they were required to procure to be summoned in the usual manner, within fourteen days at the furthest, and so soon that none of the things therein then good might decay, and cause notice of such assembly to be left with the appellant at the place where they were taken, two days before the meeting, that he might attend; and that such meeting, consisting of not less than twelve, exclusive of the censors who should have condemned the medicines, &c. should open the box (in the presence of the appellant, if he should attend), and examine and finally determine on such medicines, &c.; and that if they, or the major part of them, should affirm the judgment of the censors, the censors should cause such medicines and the vessels containing them to be destroyed

Appeal to college;

decision thereon.

before the door of the person in whose house they should have been found, in such public manner and at such time as they should think fit; and if the president or vice-president, and fellows, should not within fourteen days after such appeal confirm the judgment of the censors, the censors were required immediately after such examination to cause such medicines, &c., or so much thereof as might remain, together with the vessels, to be carefully returned to the place where found.

Resisting search.

5. That every apothecary or other person resisting or hindering such search or examination should for every offence pay to the college the sum of 10*l*., to be recovered by action of debt, &c.

General issue.

6. That any person sued for acting in the execution of this act might plead the general issue, and give this act and the special matter in evidence.

Patents saved.

7. That this act should not prejudice the right or property of any person under any patent then in force for the sole making and vending any medicines, or empower the president and censors, &c. to inspect the composition of such medicines, or to destroy the same, during the continuance of such letters patent.

Appeal from censors by practisers

8. Reciting that there then existed no appeal from the judgment of the censors in the exercise of their power for correcting and governing all physicians of the city, and other foreign physicians, using the faculty of physic within the city or seven miles around, and the punishing of them for their offences in not well executing, practising, or using that faculty, enacted that every person censured or judged by the censors, or by them condemned to pay any fine, or suffer imprisonment, or undergo any other punishment for any offence supposed to be committed by him, in not well executing, practising, or using that faculty, might, within

to president and fellows;

fourteen days after notice thereof, appeal to the president and fellows, by writing under his hand, delivered to the president, vice-president, or any of the censors, which should suspend the execution of the judgment, and be heard in the college, in an assembly duly summoned of the president or vice-president, and fellows, being not less than twelve, exclusive of the censors from whose judgment the appeal should be, notice being duly given to the person appealing; and that the case should be there fully examined,

and the judgment of the assembly should be final and conclusive, and, if affirmative, executed as if given by the censors. whose judgment final.

9. That this and the recited acts should be public acts, and judicially noticed.

---

6 Geo. 4. c. 50. s. 1.

An Act for consolidating and amending the Laws relative to Jurors and Juries.

(Among others.) All members and licentiates of the Royal College of Physicians in London, actually practising; all surgeons, being members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising; and all apothecaries, certificated by the Court of Examiners of the Apothecaries' Company, and actually practising, shall be and are hereby absolutely freed and exempted from being returned and from serving upon any juries or inquests whatsoever, and shall not be inserted in the lists to be prepared by virtue of this act. Exemption from juries.

The form in the schedule to this act also requires the churchwardens and overseers to omit the names of such physicians, surgeons, and apothecaries in making out the lists of the names of persons qualified to serve on juries.

STATUTA COLLEGII REGALIS MEDICORUM.

De Permissis.

1. Statuimus et ordinamus ut nemo in permissorum numerum eligendus proponatur, qui non annum ætatis suæ vicesimum sextum se clausisse præsidentem et censores, in comitiis minoribus*, certiores fecerit, et qui non gradum doctoris in medicinâ susceperit, et, antequam illum gradum susceperit, per duos annos integros in aliquâ academiâ animo medicinæ studendi commoratus fuerit, et commora-

* Comitia minora dicuntur, quæ habentur à præsidente et censoribus, cum aliàs, quoties ipsis visum fuerit, tum primo die Veneris, singulis mensibus, quo die examinationes institui solent in ædibus collegii. Comitia majora a sociis universis celebrantur.

tionis istius literas testimoniales in illâ academiâ usitatas comitiis minoribus exhibuerit.

2. Nemo in permissorum numerum admittatur qui medicamentum quodvis arcanum (*nostrum* vulgò dictum) in morbis curandis usurpare solitus fuerit; nisi ante examinationem primam id medicamentum, ac ejusdem adhibendi modum, præsidenti aut propræsidenti et censoribus plane exposuerit.

3. Antequàm quispiam in permissorum numerum admittatur, si fortè chirurgorum aut pharmacopolarum sodalitio olim donatus fuerit, sodalitii istius privilegiis omnibus renunciet, nec non emancipationis suæ literas firmâ auctoritate comprobatas registrario proferat.

4. Nemo in permissorum numerum admittatur qui non prius examinatus et approbatus fuerit, in tribus comitiis minoribus, secundum hanc formam: —

Unusquisque eorum qui in numerum permissorum admitti petat, examinetur: —

In primis comitiis, in parte medicinæ physiologicâ.

In secundis, in parte pathologicâ.

In tertiis, in parte therapeuticâ.

Præterea in singulis examinationibus, locum è Celso, vel è Sydenhami operibus, Anglicè reddat. Singulæ examinationes prædictæ Latinè fiant.

5. Qui ad hanc formam in comitiis minoribus examinatus et in singulis examinationibus approbatus fuerit, in comitiis majoribus proximè insequentibus proponatur in permissorum numerum admittendus, et si major pars sociorum præsentium consenserit, quamprimum admittatur.

6. Si vero quispiam in unâ quâvis examinationem prædictarum, minus peritus, nec ad medicinæ facultatem in urbe Londino et intra septem milliaria in circuitu ejusdem exercendam idoneus existimatus fuerit, non nisi præterito integro anno ad examinationem iterum admittatur.

7. Antequam quispiam in numerum permissorum admittatur, det fidem infra-scriptam præsidenti aut propræsidenti, coram sociis in majoribus comitiis: —

> "Dabis fidem te observaturum statuta collegii, aut mulctas tibi contra facienti irrogandas promptè persoluturum, omniaque in medicinâ faciendâ pro viribus facturum in honorem collegii et reipublicæ utilitatem."

8. Admittendus flexis genubus† (*eodem modo quo socii*), manus invicem applicatas humiliter tradat in manus præsidentis vel propræsidentis, qui dicat: —

"Ego *A. B.* præsidens, vel propræsidens, hujus collegii admitto te ad medicinæ facultatem in urbe Londino et per septem milliaria in circuitu ejusdem exercendam quamdiu te bene gesseris, precorque tibi omnia fausta."

9. Si quis vero in urbe Londino, aut per septem milliaria in circuitu ejusdem, medicinæ facultatem exercuerit, qui ad hoc per præsidentis et collegii literas sigillo nostro communi sigillatas non sit admissus; auctoritate præsidentis et censorum, si modo ipsis aut eorum majori parti ita visum fuerit, admoneatur per schedulam in manus traditam, vel in domo ejus relictam, ut medicinam exercere desinat, donec examinatus et approbatus fuerit, literis ad hoc datis sigillo collegii munitis.

Qui monitum hoc neglexerit, legibus regni obnoxius erit.

De Electione extraordinaria in Permissos et in Socios.

1. Quandoquidem fieri potest, ut viri sint quidam egregii et in studiis medicis satis versati, qui non duos annos integros ante susceptum gradum doctoris medicinæ in aliquâ Academiâ commorati fuerint, ideoque per statutum nostrum de permissis in numerum permissorum admitti vetentur, statuimus et ordinamus ut non obstante statuto de Permissis, liceat præsidenti pro suo arbitrio quotannis unum medicinæ doctorem, utpote ob morum integritatem et artis medicæ peritiam, in numerum permissorum approbandum censoribus proponere. Et si, examinationibus tribus ordinariis pro permissis institutis debitè peractis, approbatus fuerit, liceat præsidenti illum in numerum permissorum eligendum collegio proponere, et si major pars sociorum præsentium consenserit, in numerum permissorum quamprimum admittatur.

2. Liceat etiam præsidenti quotannis unum pro suo arbitrio è permissis, qui decennium compleverit à tempore admissionis, utpote morum integritate, doctrinâ, et artis medicæ peritiâ insignem, in socium proponere; et si major pars sociorum præsentium consenserit, in societatem nostram quamprimum admittatur.

* Si quis religionis causâ genua flectere nolit, hoc prætermitti potest.

3. Liceat porrò cuilibet sociorum in comitiis majoribus ordinariis, postridie divi Michaelis habendis, aliquem qui annos septem integros in numero permissorum fuerit, annumque ætatis suæ tricesimum sextum clauserit, examinandum proponere, et si, examinationibus ordinariis pro candidatis institutis in tribus comitiis majoribus ordinariis debitè peractis, approbatus fuerit, et major pars sociorum præsentium consenserit, in societatem nostram quamprimum commodè fieri potest, admittatur.

De Conversatione morali et Statutis Pœnalibus.

1. Nullus sive socius, sive candidatus, sive permissus fuerit, socium aut candidatum aut permissum ignorantiæ in arte suâ vel maleficii nomine, nisi coram judicibus legitimis accuset, aut coram quibusvis afficiat contumeliis. Si quem contrà fecisse præsidenti et censoribus aut eorum majori parti innotuerit, primâ vice solvat quatuor libras, secundâ vice duplicetur mulcta; quòd si tertio quis similiter deliquerit, et modo prædicto convictus fuerit, si quidem socius aut candidatus fuerit, expellatur è societate nostrâ, vel è candidatorum ordine; sin idem sit è permissorum numero, solvat decem libras. Quam quidem decem librarum mulctam quotiescunque idem permissus ejusdem delicti modo prædicto denuò convictus fuerit, ipsi irrogandam statuimus.

2. Nullus socius, candidatus, vel permissus salutatione officiosâ, vel animi benevoli obtentu, opem medicam ultrò offerat, nedum subministret ægro cuilibet, quem medici cujusvis, sive socii, sive candidati, sive permissi, curæ commissum esse cognoverit, et ad quem non accersitus fuerit.

3. Si quis autem malitiæ hujusmodi convictus fuerit, præter ignominiæ notam quam isti (quantum in nobis est) inuri volumus, quadraginta solidos mulctetur à præsidente et censoribus.

4. Si quis paciscatur cum pharmacopolis de aliquâ pretii parte ex medicamentis præscribendis percipiendâ, si sit socius aut candidatus, et hujusce delicti à præsidente et majore parte sociorum in comitiis majoribus sive ordinariis sive extraordinariis præsentium convictus fuerit, è societate nostrâ, vel è candidatorum ordine, expellatur.

5. Sin permissus delicti hujusce à præsidente et censoribus, aut eorum majore parte, convictus fuerit, decem libras quotiescunque id admiserit, mulctetur.

6. Medicus quisque, sive socius, sive candidatus, sive permissus fuerit, singulis suis schedulis, in quibus ægri curatio præscribitur, diem præscriptionis, ægri nomen, et sui denique nominis literas initiales adscribat; nisi causa intersit à præsidente et censoribus approbanda.

7. Si plures medici curationis gratiâ convenerint, consultandum est summâ modestiâ, et non nisi semotis arbitris à re alienis. Nec quisquam præscribat, imò ne innuat quidem, quid agendum sit, coram ægro, aut adstantibus, priusquam junctis consiliis inter ipsos medicos curandi methodus fuerit constituta. Sin autem medici in diversas iverint sententias, ita ut in eandem medendi methodum consentire nequeant, summâ tamen prudentiâ et moderatione se gerant; eorumque dissentionem ita, ut tàm ægro quàm amicis ejus quàm minimum molestiæ pariat, ordinarius medicus ægro aut adstantibus significet.

8. Qui leges has consultandi non observaverit, et à præsidente et censoribus aut eorum majore parte convictus fuerit, quinque libras mulctetur.

9. Nullus denique medicus, sive socius, sive candidatus, sive permissus, consilium ineat de rebus medico propriis, in civitate Londino et intra septem milliaria in circuitu ejusdem nisi cum aliquo è sociorum vel candidatorum vel permissorum numero, sub pœnâ quinque librarum quotiescunque hujusce delicti à præsidente et censoribus, aut eorum majore parte convictus fuerit.

10. Omnes mucltæ quæ per statuta nostra irrogatæ fuerint illicò solvantur.

De Permissis extra Urbem.

1. Nemo ad medicinam extra urbem Londinum et septem milliaria in circuitu ejusdem exercendam admittatur, qui non annum ætatis suæ vicesimum sextum clauserit, et non in aliquâ Academiâ, aut in aliquo nosocomio Londinensi per annum integrum, aut in nosocomio provinciali per biennium, animo medicinæ studendi commoratus fuerit, et præterea prælectiones anatomicas et medicas audierit; de

quibus omnibus præsidentem, vel propræsidentem, fecerit certiorem.

2. Antequàm quispiam in numerum permissorum extra urbem admittatur, si fortè chirurgorum aut pharmacopolarum sodalitio olim donatus fuerit, sodalitii istius privilegiis omnibus renunciet.

3. Nemo in numerum permissorum extra urbem admittatur qui non priùs a præsidente et tribus electis examinatus et approbatus fuerit, quemadmodum legibus regni cautum est.

4. Examinatio Latinè fiat.

Datum ex Ædibus Collegii in Comitiis Majoribus,
Februarii Mensis 20^mo^, 1828.

HENRICUS HALFORD, PRÆSES.

THOMAS TURNER,
JACOBUS TATTERSALL,
FRANCISCUS HAWKINS,
JOHANNES CARR BADELEY, } CENSORES.

SECOND SUBDIVISION.

Cases.

GODDARD'S CASE.

A MANDAMUS was moved for to the College of Physicians, to restore Dr. Goddard to a fellowship of the college; and a doubt was raised whether such a mandamus lay, or for any fellowship in any of the colleges in the universities. At length it was granted, that it might be considered on the return whether it lay or not. Afterwards a return was made, on which it appeared that a fellow was not, as fellow, a member of the corporation, but a kind of officer, as the manciple of a college, and the return was allowed good, and no restitution awarded. 1 Lev. 19. H. T. 1660.

Siderfin observes only that the writ was granted after much debate, and questions whether it lay; because it was doubted whether a writ lay to restore a fellow of a college of Cambridge. Ib. Sid. 29.

On a mandamus to be restored to a fellowship in the College of Physicians, the college returned, that Goddard, as the writ supposes, was not removed, and therefore that they could not restore. Against which Glyn excepted, that the return, in the main, was ill: 1. Because they had not answered the writ, which supposed Dr. Goddard one of the society, and turned out, which they agreed, but did not speak any thing of the privileges and advantages which the letters patent of Hen. 8. giveth them: 2. They say that thirty persons (by bye-law), whereof the president was to be one, were chosen by the name of fellows, to assist *in comitiis*. This is a good bye-law, as 4 Co. 78., to give an interest and privilege to the party chosen, although the corporation Ib. 1 Keb. 75, 76.

commence within time of memory; and they have shown no cause but his absence, without being called and summoned to answer; which is no sufficient return, and he may be *unus sociorum*, and yet not enjoy all the privileges of it: 3. It is alleged, that the bye-law was made *eâ intentione*, that the persons should be present; but it is not alleged that any positive rule is laid upon them: 4. It is said that he was absent; but it does not say for what cause: 5. They do not say that the president had designed any meeting, or given notice of it, without which the person cannot divine when it will be: 6. They say they have put in *aliam idoneam personam*, without naming him: 7. The writ is directed to the president, who returns *ego;* which ought not to be, this being to him in his politic capacity: 8. This is a pleading, and therefore the word "president" is not good without the Christian name: 9. They have alleged no issuable plea.

Ib. 1 Keb. 84. 85.

Wilde, for the college, agreed to the exceptions, as invalid as this case was, but one; viz. by the act of parliament of 14 Hen. 8., there are none but president, elects, and censors, but all the commonalty are *socii*, and so is Dr. Goddard, as much as any man; and they only desire to be restored to the place and privileges, according to the act and letters patent. The writ is general, and doth not particularise any privilege, and therefore the college is not bound to answer otherwise; and the thirty chosen by bye-law are only called *socii* by that, not by the act of parliament: and by Allen this is only a profit of being a fellow, to which he cannot be restored alone without the principal.

Carleton Sjt. for the Doctor. The writ distinctly requireth restitution, *ad locum statum et privilegia unius sociorum;* which is a particular office, and however made is not material. But it being distinct from the commonalty, and the place being distinct, he cannot be expelled without being called to answer.

Glyn K. Sjt. The return ought to have answered the privileges and incidents to the place expressly; and by the return it doth appear that there s a privilege to which the Doctor was elected and chosen, and n which he had a right and freehold, *pro tempore*

Finch, for the college. This doth not concern any freehold, but a privilege occasionally made for convenience by

bye-law, for which no writ of restitution will lie, because it concerns no matter of government or legal interest.

Twisden J. The return is good, because it doth not mention that the eight mentioned by statute are only choseable out of the thirty made by bye-law, but that the thirty were only chosen for convenience and consultation; of which the court cannot take such notice as to restore him, because it appeareth to be but a burthen to him, as the case in Hen. 7.; and as their election was voluntary, so might their ejection.

Twisden J. *ad idem.* Restitution lieth not for the dividend of a fellow, or for privileges only, if he be not removed from his place; as he that is removed from his being of a corporation by bye-law is removed from part of his place itself; and in all agreed with Windham, J. and Foster, C. J. to the same intent, because no reward or fee for such attendance and consultation is due, nor are the eight necessarily to be chosen out of the thirty, but they may augment or decrease the number as they please: and so by all he was denied restitution, and the return ruled good.

There was afterwards a similar decision in the case of Dr. Merrett.

DR. LETCH'S CASE.

4 Burr. 2186 — 2195. E. T. 1767.

A RULE had been obtained, upon the application of Dr. Letch, for the College of Physicians to shew cause why a mandamus should not issue, directed to them, commanding them to admit John Letch, Doctor of Physic, to be a member of the college.

This rule was made upon the whole body of the college or community of the faculty of physic of the city of London, and also upon the president and censors of the said college.

Mr. Yorke showed cause against this rule, and Sir Fletcher Norton argued in support of it.

It appeared that Dr. Letch, who practised as a man-midwife, was summoned by the college to be examined. He came in, and was thrice examined by the *comitia minora*,

and after the third examination was balloted for, "whether he should be approved of by them or not." The majority of the number of balls appeared to be for approving him; but one of the censors declared that he had by mistake put in his ball for approbation, which he meant and intended to be against approving him. It was proposed to ballot again; but the president declared this to be an approbation by a majority of votes on the ballot. On the Doctor's being proposed to the *comitia majora*, nineteen to three of the members present were against putting the college seal to his letters testimonial, and he was informed that he was not elected.

It was contended for the Doctor, that having been returned sufficient by the *comitia minora*, he had thereby acquired an inchoate right to admission, which the court would enforce by mandamus.

The counsel referred to the charter 10 Hen. 8. and the statutes 3 Hen. 8. c. 11. and 14 & 15 Hen. 8. c. 5., and, among others, to the 8th chapter of the statutes or bye-laws:—

"Comitia vocamus congregationes illas et honestas, quas ut præsidens et collegium sive communitas et eorum successores de seipsis habeant, Rex Henricus concessit. Ordinaria autem sive stata comitia, majora dicenda, quater anno celebrenter, &c. In comitiis majoribus fiant electiones et admissiones sociorum candidatorum et permissorum. Quod vero ad candidatorum et permissorum examinationes attinet, eæ fieri possint vel in majoribus comitiis, vel in minoribus et censoriis, pro arbitrio præsidentis aut propræsidentis et censorum, aut eorum partis majoris."

And the 14th chapter:—

"Antequam quispiam aut in candidatorum ordinem aut ad medicinæ facultatem in urbe Londino et per septem millaria in circuitu ejusdem exercendam admittendus proponatur, examinetur in tribus comitiis, sive majoribus sive minoribus, pro arbitrio præsidentis aut propræsidentis et censorum, aut eorum majoris partis, &c., omnes hæ examinationes fieri possunt in comitiis minoribus sive censoriis a præsidente aut propræsidente et quatuor censoribus, aut (uno ex censoribus absente) a præsidente aut propræsidente, tribus censoribus, et absentis censoris vicario. Liceat tamen cuilibet socio, pro arbitrio, disputare et periculum facere quantum exami-

nandus in re medicâ valeat. Qui ad hunc modum examinatus et a præsidente, aut propræsidente et censoribus, aut eorum majori parte (suffragiis per pilas occulte acceptis) approbatus fuerit in comitiis majoribus proxime insequentibus, siquidem commode fieri poterit, sin minus in comitiis quibuslibet majoribus, sive ordinariis sive extraordinariis, a præsidente aut propræsidente proponatur in candidatorum ordinem vel permissorum numerum admittendus et si electus fuerit, peractis iis ab ipso quæ per statuta nostra requiruntur, quam primum admittatur."

Lord Mansfield. I have no doubt what ought to be done, and therefore will not longer keep the gentlemen of the faculty in suspense.

The counsel for the college have admitted the jurisdiction of this court; and it certainly has jurisdiction over corporate bodies, to see that they act agreeably to the end of their institution.

There is no doubt, that where a party who has a right has no specific legal remedy, the court will assist him by issuing this prerogative writ, in order to his obtaining such right.

There can be as little doubt that the college are obliged, in conformity to the trust and confidence placed in them by the crown and the public, to admit all that are fit, and to reject all that are unfit. For under the reason and spirit and true construction of this charter and this act of parliament, no person ought to be suffered to practise physic but such only as have skill and ability, and have diligently applied themselves to the study, and are well grounded in the knowledge of it; and, on the other hand, all persons who are so qualified, and have bestowed their time and money and labour in the proper studies that tend to such qualifications, have a right to be admitted to exercise and practise their profession. And the public have also a right to the assistance of such a person, who has, by his labour and studies rendered himself capable of serving the public by giving them proper advice and directions.

It is true that the judgment and discretion of determining upon this skill, ability, learning, and sufficiency to exercise and practise this profession is trusted to the College of Physicians; and this court will not take it from them, nor interrupt them in the due and proper exercise of it. But

their conduct in the exercise of this trust thus committed to them ought to be fair, candid, and unprejudiced; not arbitrary, capricious, or biassed, much less warped by resentment or personal dislike.

Cases, indeed, may happen, where the rejection may be founded upon other grounds than insufficiency in point of skill and ability or knowledge: it is possible that other causes of rejection may occur; as badness of morals, for instance.

But in the present case they seem to have acted with candour and caution. Some of the gentlemen even make oath of their reasons against admitting this candidate for a licence. Objections to persons applying for licences to practise physic may be grounded on a variety of reasons; and the court are to judge of such objections, and the reasons of them. If they are insufficient, the court may grant a mandamus. If they should refuse to examine a candidate at all, the court would oblige them to do it. In a manuscript book of reports, which I have seen, the reporter cites (in reporting Dr. Bonham's case) a mandamus in the time of Edward III., directed to the University of Oxford, commanding them to restore a man that was *bannitus;* which shows both the antiquity and extent of this remedy by mandamus. But the court ought to be satisfied that they have ground to grant a mandamus; it is not a writ that is to issue of course, or to be granted merely for asking.

The question, therefore, is, Whether here is a proper and sufficient ground for our granting a mandamus? Consider, then, what are the grounds of this application.

Dr. Letch cannot dispute these bye-laws; this point is not open to him: for without them he has no ground to stand upon; he has never been examined by the body at large. Therefore he is under a necessity, upon this application, of allowing the bye-laws to be good. The question, then, will be, Whether the power is devolved on the president and four censors, or remains with the body at large?

I am clear that the power remains with the body, and that the examination by the president and four censors is only preparatory and for the ease of the body at large. There are various instances of delegations of a like kind. Bishops refer examinations of clergymen to their chaplains; so uni-

versities refer examinations to select parts of their bodies; but the *dernier* determination is in the body at large.

These censors, to whom this examination is referred, take an oath "not to approve of unfit persons, or reject such as are fit."

The usage has been to refer the examination of the person applying for a licence to the *comitia minora*, as more easy and more convenient to be executed by a small than by a large number of examiners; but every fellow has notice of it, and may examine and argue with the candidate, though he has no vote at these *comitia minora:* so that every fellow has an opportunity of informing himself and satisfying his own judgment concerning the sufficiency of the candidate. The *comitia minora* have no power, upon their approbation, to admit the candidate; they have only power to approve. If they do approve, then the person so approved of by them is to be afterwards proposed to the *comitia majora* for election; and if, upon being so proposed, he shall be elected, then he is to be admitted.

Supposing the *comitia majora* to execute their power corruptly, taking this word in a large sense, and that they should refuse to admit a person who had been examined, approved, and regularly proposed to them, without being able to deny his fitness, this court ought indeed, in such a case, to interpose.

But that is not pretended, or even hinted to be the present case, with respect either to the *comitia majora* or the *comitia minora*. Dr. Letch charges them with nothing of this kind, nor with any thing to which it is requisite for them to give an answer: his counsel rely on the usage.

The question, therefore is, whether the *comitia majora* have acted corruptly.

Now they have only referred him to a second examination in future; they have not absolutely rejected him.

At the *comitia minora* there were three who, in truth, meant and intended to ballot against Dr. Letch, though one of them made a mistake, and balloted for him: which mistake was declared and taken notice of at the very time, and it was proposed to ballot over again; and this was disclosed to the *comitia majora*.

This fact (of a mistake in the ballot for approbation) being disclosed to the *comitia majora*, was it not extremely rea-

sonable for them to refer the candidate to a further examination? I see no injustice in this. The intention of the ballot was that he should be reported unfit, and two of the censors now swear that they thought him so.

I am satisfied that the *comitia majora* had the power of rejecting him; and it does not by any means appear that they have acted upon improper grounds, or arbitrarily and capriciously. There is no ground laid for demanding a mandamus.

His Lordship concluded with a recommendation to the college to settle all other matters amongst themselves without coming to this court; at the same time intimating to them a caution against narrowing their grounds of admission so much, that if even a Boerhaave should be resident here, he could not be admitted into their fellowship.

Yates J. The Doctor might more properly have applied for a mandamus requiring the college to grant him a licence to practise within London and seven miles of it. However, if he had laid a sufficient ground for his present application, and shown the court that he had a right to be a member of the college, the court ought to grant him a mandamus to enable him to obtain that right, if he had no other legal method of coming at it. But he has not laid a sufficient ground for this application; he has not shown that he has a right to be admitted a member of the college; and we ought not to issue a mandamus requiring the college to admit him a member, unless he first shows that he has a right to such admission. No man can now practise physic until he shall have been examined and approved of, proposed, elected, and admitted; he cannot be a member of the college till all these requisites have been completed in him.

This gentleman has been examined, it is true, by the president and the four censors; and their ballot was in his favour, three to two as to their approbation; but one of them declared at the time that he meant and intended his ballot to have been in disapprobation. The president, however, considered him as approved by the majority.

But the determination of the *comitia minora* is not final: the consequence of their approbation is only that he is to be afterwards proposed to the *comitia majora* for election; and if they elect him, then he is to be admitted.

The trust was placed in the whole body. The college could not delegate this trust placed in the whole body to this select part, the *comitia minora*, so as to make their opinion final; but it was lawful for the college to delegate to them this power of preparatory examination; reserving to the whole body the right of final judgment and determination: neither have the college, in fact, delegated the final judgment to the *comitia minora;* they are only to examine and approve. The candidate, if he meets with their approbation, must still be proposed to the *comitia majora*, and is to be elected by them. So that it is the *comitia majora* who are to judge and to elect; theirs is the final determination.

The mistake in the ballot at the *comitia minora* might be a ground for the *comitia majora* to judge that the Doctor had not satisfied the president and censors of his sufficiency to practise physic: for though, according to the strict letter, the ballot might be said to have pronounced him sufficient, yet the majority of those who balloted thought, and even declared, otherwise.

Upon the whole, as Dr. Letch has laid before us no ground for a mandamus, it cannot issue.

Aston J. The question is, Whether Dr. Letch has laid a sufficient ground for asking a mandamus, requiring the College of Physicians to admit him a member of it?

I agree, with my brother Yates, that he should rather have applied for a mandamus requiring the college to grant him a licence to practise physic within London and seven miles of it, than for a mandamus to admit him a member.

No particular method of admission is specified, either in the charter or in the statute. The college have therefore instituted a method — that which has been now disclosed to us: and they have done right; it is a good and proper one. The examination of the candidate by the *comitia minora* is part of it; but their opinion is not final; the final determination is in the *comitia majora*.

Then, reading the clause of 14 & 15 Hen. 8. c. 5. (xii.), relating to the election of the elects, and of the president by them, he observed, This shows that the makers of the act of parliament looked upon those of the faculty who reside in London to be members of the college.

The power delegated to the *comitia minora* is to examine and to judge upon the sufficiency of the person whom they

have examined; and they are, upon oath, to act impartially therein: but their opinion and judgment are not final. The election is not any part of their power; it is in the *comitia majora*.

If the person examined by them had been approved, proposed, and elected, then, indeed, a mandamus would lie; and so it would if the college should refuse to examine the candidate at all.

But there are none of these circumstances in Dr. Letch's case. He has been examined, he has been proposed: he has not been elected; he has never acquired such a right as can be a ground for asking a mandamus.

And even as to the approbation of the *comitia minora* upon their examination—though the number of balls seemed to indicate their approbation of him, yet it is apparent that there was a mistake in the ballot, and it was declared at the time. Now suppose that mistake to have been the contrary way, and that the censor who made this mistake had meant to ballot for Dr. Letch, but had by mistake actually balloted against him, would it not have been thought a very hard case that this should be holden a disapprobation of him, and that he should be bound down by this slip of the censor, contrary to his opinion and intention, to an undeserved and undesigned rejection?

I think the *comitia majora* have behaved with great candour and moderation. They knew that the majority of the *comitia majora* thought the candidate insufficient; they refer him to further examination: whenever he shall become properly qualified, he may be again examined; and being found so upon such second examination, when he may find or think himself qualified to undergo it, he will be proposed, elected, and admitted in the due and regular manner.

Hewitt, J. I give no opinion whether London licentiates are members of the college or not; and the more I think on it, the more I doubt it.

The present application is to be admitted a member; it is not to oblige the college to grant him a licence to practise in London, &c. The admissions into the college are "*in societatem nostram;*" the others only licences to practise within those limits.

Dr. Letch recognizes the bye-law or statute of the college, and grounds himself upon it, claiming his right of admission

as arising from it; and upon this right he applies to be admitted a member of the college.

I think we should go a great way, if we should say that a licentiate to practise within London and seven miles around is a member of the college. Certainly a person not admitted cannot be meant as one of those that are incorporated.

But this gentleman has not laid a sufficient ground of right to support a claim to admission within this bye-law. It only reposes a trust in the *comitia minora* to examine the candidate: if they approve of him, they are to report their approbation to the society or body at large, the *comitia majora*. Any member may be present at the examination, and ask the candidate questions to try his skill in medicine. The trust reposed in the *comitia minora* relates only to his skill in physic; it does not extend to his morals: they are not empowered to examine into them. The other part of his qualification they are to examine into, and if they approve, report so, but nothing further; it is the *comitia majora* who are to determine finally and to elect.

Therefore, without entering into any other points, I concur in the opinion that this rule ought to be discharged.

Rule discharged.

REX v. ASKEW et al', Censors of the College of Physicians.

4 Burr. 2195 — 2204. M. T. 1767.

On an application for a rule to show cause why an information, in the nature of *quo warranto*, should not be filed against these four individuals, to show by what authority they acted as censors,

The objection was, that they were elected by a select body only, that is, by the fellows, exclusive of the licentiates; though the licentiates demanded admittance, which was refused to them by the fellows, on pretence of their having no business there upon that occasion, whereas the election ought to have been by the whole body.

Lord Mansfield. The question now before us is singly this, Whether the persons applying for this information are fellows, and entitled to vote in the election of censors?

If they are, the election of these censors, being made in exclusion of their votes, is not good.

If they are not fellows, and have no right to vote in the election of censors, this election stands unimpeached.

I consider the words *socii*, *communitas*, *collegium*, *societas*, *collega*, and fellows as synonymous terms, and every *socius* or *collega* as a member of the society, or corporation, or college.

The question is, Whether these licentiates are *socii*, or *collegæ*, or fellows?

The facts are not disputed, and there is no doubt about the law as far as relates to the question now before us.

Here is a charter of incorporation; and it has been admitted on both sides that there has been a great number of bye-laws and long usages, which are agreed to appear upon their books and the extracts from them; and the permission of these licentiates to practise is not disputed. But I doubt whether this permission to practise, and these letters testimonial, can amount to an admission into the fellowship of the corporation or college.

Nothing can make a man a fellow of the college without the act of the college. The first act to be done by them is their judging of the qualifications of the candidate. The admission into the fellowship is an act subsequent to that. The main end of the corporation was to keep up the succession; and it was to be kept up by the admission of fellows after examination. The power of examining, and admitting after examination, was not an arbitrary power, but a mere 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 service; and that not only as a physician, but as a censor, as an elect, as an officer in the offices to which he will upon admission become eligible. In Dr. Letch's case, the reasons for his rejection being called for, the answer was, that they judged him unfit; and as the legislature has vested the judgment

in the *comitia majora*, and there was no pretence or ground to pretend that they had acted corruptly, arbitrarily, or capriciously, that answer was esteemed sufficient. And they have power, not only by their charter, but by the law of the land, to make fit and reasonable bye-laws, subject to certain qualifications.

It appears, from the charter and the act of parliament, that the charter had an idea of persons who might practise physic in London, and yet not be fellows of the college. The president was to overlook, not only the college, but also *omnes homines ejusdem facultatis*. So when, then, the college or corporation were to make bye-laws, these bye-laws were to relate not only to the fellows, but to all others practising physic within London or seven miles of it. The restraint from practising physic is thus expressed: — "Nisi *ad hoc* admissus sit, by letters testimonial under their common seal." Now what does this *ad hoc* mean? It must mean, "ad exercendum facultatem medicinæ" admissus sit. And this is agreeable to the words used in 3 Hen. 8. c. 11., concerning admissions by the Bishop of London and the Dean of St. Paul's. The supervisal of the censors is expressed to include, not only the physicians of London, but "omnes etiam qui per septem milliaria in circuitu ejusdem medicinam exercent." The same observation holds as to punishments. This must regard those who had a right to practise in London and within seven miles of it, and were not fellows of the college. These observations convince me that the charter had an idea that some persons might practise by licence under their seal who were not fellows of the college.

Then let us see how the usage was.

In 1555, they must have had a probationary licence before admission into the college; afterwards, it was to be a probation of four years before admission. The college might grant such probationary licences with some reason, and agreeably to their institution. This shows that some licences were granted to persons not fellows of the college. The 3 Hen. 8. c. 11. takes away all former privileges, and says that no person, within London or seven miles of it, shall exercise as a physician, except he be first examined, and approved, and admitted by the Bishop of London or by the Dean of St. Paul's, calling to them four doctors of physic;

and the charter and statutes confirming it have left every thing at large to the college, no way confined or restrained but by the fitness of the objects. In 1561, a partial licence was granted to an oculist: a person may be fit to practise in one branch who is not fit to practise in another. Licences have also been granted to women; and that may not be unreasonable in particular cases: as, for instance, such as Mrs. Stevens's medicine for the stone. Partial licences have been given for above two hundred years. Of late years, indeed, general licences have been usual; and the persons applying for them have been examined, though not meant to be members of the corporation or college. In 1581, notice is taken of three classes: fellows, candidates, and licentiates: and from that time they have given licences to practise. The licences probably took their rise from that illegal bye-law (now at an end) which restrained the number of fellows to twenty. This was arbitrary and unjustifiable: they were obliged to admit all such as came within the terms of their charter; yet it is probable that the practice of licensing was in consequence of their having made it. However, for above a hundred years, there has been a known distinction between fellows and licentiates; it is as well known as the distinction between graduates and undergraduates in the universities.

This being premised, let us enquire who these gentlemen are that are now applying to the court.

They are persons who set up a title directly contrary to the sense in which their licence is given to them and received by them. They cannot avail themselves of the instrument in this way; it would be a cheat upon the college; and they have acquiesced many years under this licence given them by the college, as merely a licence to practise.

But even supposing them to have a right to be fellows; yet, as it is clear that the licence does not make them *ipso facto* fellows, they could not vote in the election of censors before their admission to the fellowship, and therefore the exclusion of their votes cannot impeach this election. I am of opinion that this rule ought to be discharged.

Yates J. Upon this application of the licentiates, grounded upon their not being admitted to vote, it is incumbent on them to show that they have a right to vote.

They claim to be members of the corporation equally with the fellows of the college; they insist that the charter has made them so; and it has been said that there is no other way of continuing the corporation, and that no bye-laws or usage can contravene the express words of the charter.

But I am far from thinking that all the men of and in London then practising physic were incorporated by the charter. The immediate grantees under the charter were the six persons particularly named in it: the rest were to be admitted by them. They were not *ipso facto* made members; they were first to give their consent before they became members; they could not be incorporated without their consent.

Much less are future practisers of physic of and in London actually incorporated by this charter.

If the inhabitants of a town are incorporated, yet every one must be admitted before he becomes a corporator. The crown cannot oblige a man to become a corporator without his own consent; he shall not be subjected to the inconveniences of it without accepting and assenting to it. Upon moving for an information, in the nature of *quo warranto*, against a corporator, it is necessary to prove that the corporator has accepted.

The counsel for the licentiates insist that their admission by the letters testimonial to practise physic in London, and within seven miles of it, is an admission into the college or corporate body.

But this licence to practise physic in London and within seven miles of it, does by no means render the licentiate liable to all the burdens and inconveniences of being an actual member of the college.

A man is not capable of being admitted into the college without being possessed of certain qualifications which are made requisite. But granting that he really is possessed of those requisite qualifications, yet his merely being qualified for becoming a member does not make him one. The instrument which gives the licence or permission to practise does not mention any such thing as an admission to be a member of the college. The word *admissus* is only used in this instrument as a more classical term than *permissus*; it does not import an actual admission into the college. The

charter, and the act of parliament confirming it, make a distinction between the college or corporation and other men of the same faculty, " to govern the said fellowship and commonalty, and all men of the said faculty;" and again, " collegium sive communitatem prædict' *et* omnes homines ejusdem facultatis."

A good deal has been said about long usage; but usage only applies where the construction is doubtful. Here the construction is not doubtful. If it were, then indeed usage of two hundred years might have weight: but that is not the present case.

The taking money of the licentiates has been urged as an argument on their side; but taking their money does not prove them to be members of the college. If it has been wrongfully taken from them they may recover it back again. It has been called a taxing them to be contributory to the corporate charges and expenses; and such a tax, it has been said, cannot be levied upon strangers. From hence it has been inferred, that the college did not consider them as strangers, but as fellows. But this cannot amount to a proof of their having been admitted into the college, even though it should be granted to afford them a claim to admittance: it could not give them a right to vote, as being members of the corporation, at the election of censors. The present application is not for a mandamus to admit them, but is grounded upon the denial of their right to vote, as being members: it supposes them to have been already admitted.

I am clearly of opinion, that the gentlemen now applying for this information are not members of the college.

Aston J. I agree that the restraining of the number of fellows to twenty is illegal, and think that the distinction between fellows and licentiates had its rise from the restriction of the number of fellows.

No person can be obliged to be a member of a corporation without his consent; and the charter, therefore, included only such persons as accepted and assented to it.

But my sentiments on the construction of the charter connected with the act of parliament, and the right of admission into the college, differ from those expressed by the Chief Justice and Yates J. In grants of this kind the construction ought to be liberal: this includes " omnes homines

ejusdem facultatis de et in civitate prædicta;" and the application to parliament for the act of 14 and 15 H. 8. c. 5., intituled "The privileges and authority of the physicians in London," to confirm the charter, is made by the six persons particularly named in it, "and all other men of the same faculty within the city of London, and seven miles about." All the acts of parliament made *in pari materiâ* should be taken together; and the construction has been uniform till the time of Queen Mary. Until then there was no distinction between major and minor amongst these physicians. It seems to me that the idea was, "that all persons duly qualified, who took testimonials under the college-seal, were to be of the community." And this is sufficient to continue the succession, and perpetuate it.

I shall give no opinion, however, how it may turn out upon mandamus; but on the present application for an information, in nature of a *quo warranto*, against the censors, to show by what authority they exercise their office, — only because they have been elected without their intervention, who have never been admitted into the corporation, — whatever claim they may have to demand such admission, I am clearly of opinion that they have laid no sufficient ground to support it; and therefore this rule ought to be discharged.

Willes J. The licentiates can have no pretence, under the circumstances in which they now stand, to object to the election of the censors, for want of the admission of their votes; for, whatever right they may claim, or whatever right they may really have, to be admitted into the fellowship of the college or corporation, yet, as they never have been admitted into it, no mere right of admission, be it ever so clear and indisputable, can give them a right to vote in corporate elections before they shall have been admitted into the corporation; — therefore, they cannot now maintain this rule.

Lord Mansfield. I rest my opinion upon this ground: that their present application to the court is under an instrument which shows that they are not now fellows of the college, nor admitted into the corporation.

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

I cannot lay it down, that every man who has a licence from the college, by letters testimonial, to practise physic in London, and within seven miles of it, does thereby actually become a member of the college, and obtain a right to vote in corporate elections.

The distinction between fellows and licentiates has been established above a hundred years; and these gentlemen have accepted an instrument which was not understood by either side to convey a right to be *ipso facto* fellows; and it is plain that they never have been actually admitted fellows: and I am clear that they can have no right to vote before admission.

How it might be upon an application to the court for a mandamus to oblige the college to admit them, is another question: I give no opinion at all upon that.

Yates J. I give no opinion how it might be upon a mandamus.

Lord Mansfield. That must depend upon the particular cases of the persons applying for such mandamus, as they might be respectively circumstanced.

As now constituted, the college is at present to be considered as the body corporate. I have a great respect for this learned body; and if they should think proper to hearken to my advice, I would wish them to consider whether this may not be a proper opportunity for them to review their statutes. And I would recommend them to take the best advice in doing it, and to attend to the design and intention of the crown and parliament in their institution. I see a source of great dispute and litigation in them as they now stand. There has not, as it should seem, been due consideration had of the charter, or legal advice taken in forming them.

The statute 14 and 15 H. 8. c. 5., after reciting the charter, mentions it to be expedient and necessary to provide that no person of the said politic body and commonalty aforesaid be suffered to exercise and practise physic but only those persons that be profound, sad, and discreet, groundedly learned, and deeply studied in physic.

I do not say that no man can be a licentiate who is not perfectly and completely qualified to be a fellow of the college. Many persons of no great skill or eminence have been licensed; and there seem to be fewer checks, guards,

and restrictions upon granting licences, than upon the choice of fellows. Yet it has been said, that there are many amongst the licentiates who would do honour to the college, or any society of which they should be members, by their skill and learning, as well as other valuable and amiable qualities; and that the college themselves, as well as any 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 that are fit?" If their bye-laws interfere with their exercising their own judgment, or prevent them from receiving into their body persons known or thought by them fit and qualified, such bye-laws require regulation. Such of them, indeed, as only require a proper education and a sufficient degree of skill and qualification, may be still retained. There can be no objection to cautions of this sort; and the rather, if it be true that "there are some amongst the licentiates unfit to be received into any society." It is a breach of trust in the college to license persons altogether unfit.

I do not speak more particularly; but I recommend it to those who are likely to be established the masters of the college, to take good advice upon the points I have been hinting to them.

Rule discharged unanimously.

REX *v.* THE COLLEGE OF PHYSICIANS.

5 Bur. 2740 —2743. M. T. 1769.

Motion for a mandamus to be directed to the college, commanding them to admit into the body and fellowship Dr. Edward Archer, to whom they had, after the proper examination in 1752, granted a diploma to practise in London, and within seven miles thereof. They produced an affidavit of his having demanded an admission into the fellowship of the college, and of his having been refused; and a similar motion on behalf of Dr. Fothergill. These motions were intended to try the question, whether the licentiates had a right to be fellows or members of the faculty of physic. Rules were accordingly granted to show cause, in

both cases; both which rules were made absolute on the last day of Hilary Term, 1769, and afterwards writs of mandamus were issued and returned; and Dr. Archer's came on to be argued on Wednesday, 22nd November, 1769.

The writ recited, that the licence to practise had been granted to Archer; that, by reason thereof, the said Archer became lawfully entitled to be admitted a member of the said college, commonalty, and corporation, and ought to be admitted a member thereof; that he had tendered himself, and had been refused; and commanded the proper officers to admit and tender the oaths, or show cause.

The return was (admitting the licence), that, by reason of the premises, the said Edward Archer did not become lawfully entitled to be admitted a member of the said college, commonalty, and corporation, as by the said writ was supposed; and, therefore, they could not admit or administer the oaths.

The return was under the hand of the president alone.

The applicants relied on 14 and 15 H. 8. c. 5.

Lord Mansfield asked, how it appeared that the doctor was entitled to such admission into the college?—observing, that the statute he relied upon was only a *private* act, relating solely to a particular body of men.

Aston J. took notice that there was no ground laid for such a claim. It is nothing more than that he was examined and admitted as a licentiate, and therefore he is lawfully entitled to be, and ought to be, admitted a fellow and a member of the corporation. But how does that follow?

Yates J. He has shown no colour of title to be so. How, then, can the court issue a peremptory mandamus to admit him? Here are no premises whereupon to ground the conclusion, that he is entitled to what he claims: here is no title at all shown to support his claim.

The rule was, that the writ should be quashed.

REX *v.* THE COLLEGE OF PHYSICIANS.

5 Bur. 2743 —2762. H. T. 1770.

HILARY TERM, 10 G. 3. Motion for new rules to admit Archer and Fothergill, which were granted and made absolute.

The writ issued in the same term.

The writ recited 3 H. 8. c. 11., and 14 and 15 H. 8. c. 5., and 32 H. 8. c. 40., and 1 Mary, sess. 2. c. 9. at great length; and stated that Fothergill, having been duly examined and approved, was admitted to exercise the practice of physic in the city of London, and for seven miles round the same, by the president and commonalty of the faculty of physic in London, by the letters of the said president and college, sealed with their common seal; that by reason of the premises, the said John Fothergill became lawfully entitled to be admitted a member of the said college, commonalty, and corporation, and ought by them, the said president and college of the commonalty of the faculty of physic in London aforesaid, to be admitted a member of the said corporation; that he tendered himself to be admitted a member, and was and still is refused; and then proceeded to command the president and college immediately to admit him a member of the said corporation, and to the enjoyment of all the liberties, privileges, franchises, emoluments, and commodities to one of the members of the said corporation belonging or appertaining; or to show cause to the contrary.

The return stated, that the execution of the writ appeared in a certain schedule thereunto annexed, admitting the statutes 3 H. 8. c. 11., 14 and 15 H. 8. c. 5., 32 H. 8. c. 40., 1 Mary, sess. 2. c. 9.; and that Fothergill had been examined, approved, and admitted to exercise the faculty of physic in the city of London, and seven miles round the same; and then proceeded: "but we do further most humbly certify, that by reason of the premises the said John Fothergill did *not* become lawfully entitled to be admitted a member of the said college and commonalty and corporation as by the said writ is above supposed. And we do further most humbly certify and return to our most serene sovereign lord the king, that ever since the making of the said acts of parliament, in the said writ mentioned, every person admitted a

member of the said college or commonalty hath been, and hath used and been accustomed to be, before his being admitted a member of the said college or commonalty, *elected* by the president and college or commonalty aforesaid to be a member of the said college or commonalty; and that the said John Fothergill hath *not* been, nor was elected by the president or college and commonalty aforesaid to be, a member of the said college or commonalty. And we do further most humbly certify and return to our said most serene present sovereign lord the now king, that after the making of the several acts of parliament in the said writ mentioned, and long before the said John Fothergill was admitted to the exercise of the faculty of physic in the city of London, and seven miles round the same, as in the said writ is mentioned, to wit, on the first day of February in the year of our Lord 1555, at an assembly of the said president and college or commonalty, a certain reasonable statute, act, and ordinance, commonly called a bye-law, not now extant in writing, was made and ordained by the then president and college or commonalty of the faculty of physic in London, whereby it was ordained: That every person thereafter to be admitted a member of the said college or commonalty should, before his being admitted a member of the said college or commonalty, be *elected* by the president and college or commonalty aforesaid to be a member of the said college or commonalty; —

Which said bye-law still is in full force and effect, in nowise repealed, reversed, annulled, vacated, or made void; and that the said John Fothergill hath not been nor was elected to be a member of the said college or commonalty, according to the form and effect of the said bye-law. And we do further most humbly certify and return to our said most serene sovereign lord the now king, that after the making of the said several acts of parliament in the said writ mentioned, and long before the said John Fothergill was admitted to exercise the faculty of physic, as in the said writ is mentioned, to wit, on the first day of February, in the year of our Lord 1555, at an assembly of the said president and college or commonalty, a certain reasonable statute, act, and ordinance, commonly called a bye-law, not now extant in writing, was made, enacted, and ordained by the said president and college or commonalty, for the wholesome government, over-

seeing, and correction of the said college or commonalty, and of all men exercising the same faculty in the city of London, and within seven miles round the same, whereby persons then exercising, or who should at any time thereafter exercise, the said faculty of physic in the city of London, and within seven miles round the same, were distinguished into three classes or orders; namely, one class consisting of the members of the said college or commonalty for the time being, who were then and were to be from thenceforth called *fellows* of the said college or commonalty; another class, consisting of such persons as had been or should be desirous of becoming members of the said college or commonalty, and had been or should be examined and approved of by the president and censors of the said college or commonalty to be candidates for election into the society or fellowship of the said college or commonalty, who were then and were to be from thenceforth called *candidates;* and the other class to consist of such persons as then were or at any time thereafter should be licensed and admitted to exercise the said faculty of physic in the city of London, and within seven miles round the same, by the said president and college and commonalty, by their letters, sealed with their common seal of the said college or commonalty; which last-mentioned class, not being members of the said college or commonalty, were then and were to be from thenceforth called *permissi*, or licentiates; and that at the respective times of making the statutes, acts, ordinances, or bye-laws hereinafter mentioned, and before and at the time the said John Fothergill was admitted to exercise the faculty of physic, as in the said writ is mentioned, persons exercising the faculty of physic within the city of London, and seven miles round the same, were distinguished into the three classes or orders aforesaid, and well known by the respective names of fellows, candidates, and licentiates. And we do further humbly certify and return to our most serene sovereign lord the now king, that before the said John Fothergill was admitted to exercise the faculty of physic, as in the said writ is mentioned, that is to say, on the fourth day of April, in the year of our Lord 1737, at an assembly of the president and college or commonalty of the faculty of physic, a certain reasonable statute, act, and ordinance, commonly called a bye-law, was made, enacted, and ordained by the

Bye-laws concerning Fellows,

said president and college or commonalty, for regulating the admission of members of the said college or commonalty, whereby it was enacted and ordained, that nobody should be admitted into the society of the college who should not first have been of the number of candidates for one whole year, or publicly read physic for three years in some university of Britain, or been doctor of the chair in some university of this kingdom, or ordinary king's physician; which said last-mentioned bye-law, from the time of the making thereof until and at the time of the said admission of the said John Fothergill to exercise the faculty of physic in the city of London, and within seven miles round the same, and until the first day of April, in the year of our Lord 1765, continued in full force and effect. And we do further certify and return to our said most serene sovereign lord the now king, that on the first day of April, in the year of our Lord 1765, at an assembly of the said president and college or commonalty, a certain other reasonable statute, act, and ordinance, commonly called a bye-law, was made, enacted, and ordained by the said president and college or commonalty of the faculty of physic aforesaid, for the regulating of the admission of members of the said college or commonalty, whereby it was enacted and ordained that nobody should be admitted into the order of fellows who should not have been a candidate for one whole year, except the king or queen's ordinary physician, with salary, or royal professor of physic in the university of Oxford or Cambridge; which said last-mentioned bye-law still remains in full force and effect, not reversed, annulled, repealed, or vacated. And we do further most humbly certify and return to our most serene sovereign lord the now king, that the said John Fothergill is not nor ever was candidate for one whole year, or any other time; nor ever publicly read physic for three years in any university of Britain; nor ever was doctor of the chair in any university of this kingdom; nor is nor ever was king or queen's ordinary physician, with salary or without salary; nor is nor ever was royal professor of physic in the university of Oxford or Cambridge. And we do further humbly certify to our most serene sovereign lord the now king, that after the making of the said several acts of parliament in the said writ mentioned, and before the said admission of the said John Fothergill to exercise the

faculty of physic as aforesaid, — that is to say, on the said fourth day of April, in the year of our Lord 1737, at an assembly of the said president and college or commonalty, — a certain other reasonable statute, act, and ordinance, called a bye-law, was made, enacted, and ordained by the said president and college or commonalty, whereby, reciting that many practised physic in the city of London whom the said president and college or commonalty deemed altogether unfit to be adopted into the number of fellows or candidates, either because they were not Britons by birth, or had not taken the degree of a doctor, or were not sufficiently learned, or sufficiently advanced in age and gravity, or for other like causes, and yet might be able to serve the public, and do good to men's healths at least in some cures, it was ordained and appointed, that after the due examination and approbation of the president and censors, such persons should be permitted to practise so long as they behaved themselves well; which said bye-law or ordinance, from the time of making thereof until and at the time of the examination, approbation, and admission of the said John Fothergill to exercise the faculty of physic in the city of London, and within seven miles round the same, in the said writ mentioned, and afterwards, was in full force and effect; and divers persons from time to time applied to be, and according to and in pursuance of the last-mentioned bye-law or ordinance were, examined and approved of by the president and censors of the said college or commonalty for the time being, and licensed and admitted to exercise the faculty of physic in the city of London, and within seven miles round the same, by the said president and college or commonalty, by their letters, sealed with their common seal; which persons so examined, approved, and admitted to exercise the faculty of physic in the city of London, and within seven miles round the same, have been and are called and known by the name of licentiates. And we do further certify and return, that the said John Fothergill applied to the said president and college or commonalty of the faculty of physic in London aforesaid to be by them licensed and admitted to exercise the faculty of physic in the city of London, and within seven miles round the same; and that the said John Fothergill was thereupon, according to and in pursuance of the last-mentioned bye-law or ordinance, examined and ap-

Licentiates.

proved by the president and censors of the said college or commonalty, and was licensed and admitted by the said president and college or commonalty, according to the said last-mentioned bye-law or ordinance, by their letters, sealed with their common seal, to exercise the faculty of physic in the city of London, and for seven miles round the same; which is the examination, approbation, and admission of the said John Fothergill to exercise, &c. in the said writ mentioned. And we do further certify and return, &c. that the said John Fothergill never was examined and approved or admitted to exercise the faculty of physic in the city of London, and within seven miles round the same, in any other manner, or for any other purpose than as and in order to his being a licentiate as aforesaid. And for these reasons we cannot admit or cause to be admitted the said John Fothergill a member of the said corporation, together, &c. as by the said writ we are commanded."

It was contended for the licentiates, that the charter intended to make them members of the corporation; that it equally incorporated every man then practising the faculty of physic in London, and was not confined to the particular persons named in it; that it included all future practisers, as well as those then existing; that a person having a licence becomes thereby one of the body, and wants nothing but the form of admission. A right of admission is a ground for a mandamus when that admission is refused. They could not found their right upon any fact or precedent, because there had been a constant usurpation ever since the charter; but that no usage or bye-law could control the charter, and none of the reasons given in the return are sufficient to destroy the licentiates' claim. The college, having examined, approved, and admitted him to practise, cannot say that he is not fit to be admitted into their body. That the bye-law exceeded their power, and the usage is contrary to the charter.

For the college was urged, the impropriety that the lowest licentiate should, by obtaining a mere licence to practise physic, be *ipso facto* invested with the important offices of the college, and be trusted with those regulations and inspections which are committed to great and eminent physicians. It is a claim that was never thought of for near two hundred and fifty years; that the contrary usage has

been acquiesced under. The demand of admission into the corporation, upon a mere licence under this bye-law, is unfair, uncandid, ungenerous, and unjust. It is a fraud; it is contrary to the known condition of the licence and to his own agreement: it is a breach of the condition of the licence. These bye-laws are a proper check. No man ought to be admitted into the college without passing an examination as a candidate. The licentiates know very well that their examination reached only to those lesser degrees of learning, skill, and knowledge which might serve merely to qualify them to begin to practise in the profession they had entered into. But it may very well be supposed that many persons who have been admitted such licentiates, merely to enable them to practise, would not have been judged worthy, upon a stricter examination as candidates for the fellowship, to become members of a college. The college exclude none from practising who may be of service to mankind; but the important offices of the members of the college require a considerable degree of learning, knowledge, and judgment. This attempt aims at levelling all ranks; it would confound all distinctions, and make no difference between the most learned and experienced physician and the rawest beginner.

Lord Mansfield. I have foreseen the labyrinth and maze of litigation that this learned body would be involved in by persisting rigidly on both sides in pursuing the points of their dispute, and contesting about a feather. I have read over all their constitutions, statutes, and bye-laws, and many of them appear to be narrow, if not illegal.

This matter came on before upon a title not set out in the writ. A title is now set out; which title is a licence from the college, after having been duly examined and approved, to exercise the faculty of physic in the city of London, and for seven miles round the same. If that alone makes him, *ipso facto*, a fellow of the college, there is no need of admission. The return admits the five acts of parliament stated in the writ, and also admits the licence; but they deny it to be a consequence, that, by reason of the premises, he became lawfully entitled to be admitted a member of the said college and commonalty and corporation, as by the writ is supposed. Then they set forth the usage ever since the making of the acts of parliament, that every person admitted

a member must be, before his being admitted a member, elected to it by the president and college; and that the doctor had never been so elected. Then they set forth a bye-law to the same effect, and that he has not been elected a member according to that bye-law. They then set forth another bye-law, which divides the faculty into three classes; *i. e.* members of the college, candidates for election into such membership (who were to be examined and approved of by the president and censors, to be candidates for election), and licentiates or *permissi*. They set forth another bye-law, that nobody should be admitted into the society of the college who should not first have been of the number of candidates for one whole year, or publicly read physic for three years in some university of Britain, or been doctor of the chair in some university of this kingdom, or ordinary king's physician. They set forth another bye-law, that nobody should be admitted into the order of fellows who should not have been a candidate for one whole year, except the king or queen's ordinary physician, with salary, or royal professor of physic in Oxford or Cambridge. They aver that the doctor never was a candidate for one whole year, or any other time, and that he did not come within any of the exceptions in these two last-mentioned bye-laws. Then they set forth a fifth bye-law, made at the same time with the third, whereby, reciting that many practised physic in the city of London whom the president and college or commonalty deemed altogether unfit to be adopted into the number of fellows or candidates, either because they were not Britons by birth, or had not taken the degree of a doctor, or were not sufficiently learned or sufficiently advanced in age and gravity, or for other like causes, and yet might be able to serve the public and do good to men's healths, at least in some cures, it was ordained, that, after due examination and approbation of the president and censors, such persons should be permitted to practise so long as they behaved themselves well; that many persons from time to time applied to be, and according to and in pursuance of this last bye-law were, examined and approved by the president and censors for the time being, and licensed and admitted to exercise the faculty of physic in the city of London, and within seven miles round the same, and have been and are called and known by the name of licentiates. They add

further, that Dr. Fothergill applied to the president and college to be by them licensed and admitted to exercise the faculty of physic in the city of London, &c.; and that he was thereupon, according to and in pursuance of the last-mentioned bye-law, examined and approved by the president and censors; and was licensed and admitted by the president and censors, according to the said last-mentioned bye-law, to exercise the faculty of physic in the city of London, &c. And they aver this to be the examination, approbation, and admission of him in the writ mentioned; and that he never was examined, approved, or admitted to exercise the faculty of physic in the city of London, &c. in any other manner, or for any other purpose, than as and in order to his being a licentiate as aforesaid.

Now, be this bye-law good or bad, yet the right of admission into the college is claimed under it. It would be a most unreasonable thing to accept this licence under the bye-laws, and yet to treat these bye-laws as null and void; to turn this licence so accepted against the persons from whom it was thus accepted, and to set it up as the foundation of a right to be admitted under the charter. Therefore, as no other foundation of such right to be a fellow is shown, it comes round to the very point upon which our former determination turned; and I am of opinion that the return ought to be allowed.

Aston J. I am entirely of the same opinion, that supposing the bye-law to be bad, yet, as the doctor came in under it, he was bound by it. As he claims his title to the fellowship under it, he cannot now desert that title claimed under the bye-law, and claim under the charter. His acceptance of the licence under the bye-law contradicts his claim under the charter; and it would be a fraud upon the college to make this use of their licence, directly contrary to the manifest and acknowledged intention of it. I also think that the point was determined in effect upon the former application.

Willes J. I also think that this comes round just to the same point that was before determined, and concur with my lord and my brother Aston.

Ashurst J. I concur, and think that the former determination governs this case. Dr. Fothergill has accepted this licence under the bye-law: he ought not, therefore, now to

suppose it a bad one; and yet, upon the foundation of this very same licence, to insist upon a right under the charter.

Return allowed unanimously.

Lord Mansfield. It is now for the college to consider whether they will trust to a return upon these bye-laws, or mend them.

REX *v.* COLLEGE OF PHYSICIANS.

7 T. R. 295. n. E. T. 1796.

DR. STANGER obtained a rule to show cause why a mandamus should not issue to the president and fellows of the college, commanding them to admit him to examination for admission into the class or order of candidates for election into the society or fellowship of the said college. It appeared that the doctor had presented himself for examination, not to the body at large, but to the *comitia minora*. As this court was constituted by bye-law, with power only to examine candidates of a particular description, within which Dr. Stanger did not come, the Court discharged the rule, observing, that if the doctor had any title, as being one of the *homines facultatis* under the charter, he should have applied to the body at large; and also intimated a strong opinion that the bye-laws were reasonable and valid.

REX *v.* COLLEGE OF PHYSICIANS.

7 T. R. 283—295. E. T. 1797. Dr. Stanger's case.

A RULE had been granted, calling on the president and college, or commonalty, of physic in London to show cause why a mandamus should not issue, commanding them to examine C. Stanger, M.D. as to his qualification and fitness to be admitted into the said corporation, as a member or fellow thereof.

The affidavit in support of the rule referred to 3 H. 8. c. 11. and 14 & 15 H. 8. c. 5. It then proceeded to state, that the applicant took a degree of doctor of physic at Edinburgh, after a residence there for three years, and after

having studied physic there and at other places for many years; that he afterwards studied physic in France, Italy, and Germany for several years; that, in 1789, he obtained a licence from the College of Physicians here in the usual way, to practise in London, and within seven miles thereof, and that he had practised ever since; that in June, 1796, he applied to the president and college, at their general meeting, to be admitted by them to be a member of their corporation, submitting himself to be previously examined by them concerning his qualification and fitness to be admitted a member of the corporation, which the college refused; and that he was duly qualified and fit to be admitted a member of the college.

The affidavits on which cause was shown stated, among other things, that for two hundred years past there had been three classes of persons practising physic in London, and seven miles round: the fellows, the candidates (persons desirous of becoming members, and who have been examined and approved by the president and censors to be candidates for election into the society or fellowship), and the licentiates, who may practise as fully in all respects as fellows, and have the same benefits and advantages: that various bye-laws had been made by the college respecting the qualifications of persons to be admitted fellows; one, in 1637, which ordained that no person should be admitted a fellow unless he had performed all his exercises and disputations in one of our universities without dispensation, which has continued ever since with slight alterations; another, made in 1751, of an explanatory kind, to prevent any mistake arising from the words *aliquâ Britanniæ academiâ* in some of the bye-laws respecting this qualification, which declared that the meaning of the words was, that no person should be admitted who was not a doctor of physic of Oxford or Cambridge: that the bye-laws having been altered since 1768, ordain that no person may be admitted into the class of candidates unless he has been created a doctor of physic in the university of Oxford or Cambridge; or, having obtained that degree in the university of Dublin, has been incorporated into the university of Oxford or Cambridge; and until he has been examined as to his knowledge of physic in three of the greater or lesser meetings (i. e. *comitia majora* or *minora*) of the college: that after a person has been

Bye-laws.
1637.
1751.
1768.

a candidate for a year, he may be proposed by the president at one of the *comitia majora*, and admitted a fellow, if the majority of the fellows consent, without further examination: that no person may be admitted a fellow unless he has been a candidate for a year, except that the president may, once in every other year, propose at the *comitia minora* one licentiate of ten years' standing; and, if the major part of the *comitia minora* consent, propose him at the next *comitia majora* to be elected a fellow; and, if the major part of the fellows then present consent, he may be admitted a fellow; and any one of the fellows may propose any licentiate of seven years' standing, and of the age of thirty-six, in the *comitia majora* to be examined: if the major part of the fellows consent, such licentiate may be examined by the president or vice-president and censors; and, if approved by the major part of the fellows then present, he may be proposed to the next *comitia majora* to be a fellow, and admitted, if the majority of the fellows then present consent: that the ordinary *comitia majora* are holden four times a year, and consist of the president, or vice-president, and ten fellows at least; that the ordinary *comitia minora*, consisting of the president, or vice-president, registrar, and censors of the college, are holden once a month; that Charles the Second, by a letter to the college in 1674, signified his pleasure and directed the college not to admit any person who had not had his education in either the university of Oxford or Cambridge;—and that Dr. Stanger, when he was licensed, gave his faith or promise to the college that he would observe the statutes of the college, &c. in the usual manner.

Courts.

It was admitted that no notice could be taken of the letter from Charles the Second.

It was urged for the Doctor:—

1. That under the words of the charter, "omnes homines ejusdem facultatis," &c. within which he came by his licence, he had an inchoate right, which entitled him to tender himself to the college for examination, in order that he might be admitted, if, on examination, the president and college thought him qualified; admitting that they were the sole judges of his fitness, and relying on the dicta of Lord Mansfield and Aston Js., *ante*, p. xlviii. liii. xlvi.

2. That the bye-laws, requiring an education at one of our universities, or at Dublin, were illegal and void, on

grounds of public policy, and also on the ground that they superadded a qualification not required by the charter, and thereby narrowed the number of the eligible. Vide *ante*, p. liv. Rex v. Spencer, 3 Bur. 1827. Rex v. Cutbush, 4 Bur. 2204. Will. on Corp. pt. I. s. 310—316.

For the college it was insisted: —

1. That the Doctor had no right to demand an examination, in order to be admitted a fellow; as a licentiate, relying upon *ante*, p. liv., or as coming within the description, "omnes homines ejusdem facultatis;" for that the election into the body was a mere matter of grant or favour; that the charter evidently marked out two descriptions of persons: the members of the college (fellows), and all those who practised physic in London, or within seven miles thereof; *that* the former were to superintend the latter; and that if the latter had also a right to be admitted fellows, the distinction between the governors and the governed would be destroyed, and the very object of the charter and act of parliament, in giving to the fellows the superintendence of the others practising physic in and about London, would be defeated; observing, that long usage was in favour of this construction.

2. That the Doctor, by giving his faith, when he received his licence in 1789, was estopped to object to the bye-laws; but this point was abandoned, it being considered that he was bound to observe such bye-laws alone as were not illegal.

3. That the bye-laws were neither against sound policy nor law; and allusion was made to instances of degrees taken in either of our universities, giving privileges to the persons on whom they were conferred in other professions.

It was observed, that the not having taken a degree in one of the universities of England was not an absolute bar to any person becoming a fellow of the college; there being two modes by which he might gain admission, without such qualification.

Lord Kenyon. If, in deciding this case, it were necessary for us to answer all the arguments that have been urged at the bar, I should have desired further time to consider of the subject; but as the grounds on which I am warranted in determining the case lie in a very narrow compass, and as I have formed my opinion upon it, I wish to put the question

at rest now. By what fatality it has happened, that almost ever since this charter was granted this learned body have been in a state of litigation, I know not; and I cannot but lament that the learned judges, in deciding the cases reported in Burrow (*ante*, p. xxxix. xlvii. lv. lvii.), did not confine themselves to the points immediately before them, and dropped hints that perhaps invited litigation; though, indeed, I cannot see what these parties are contending for that is worth the expense and anxiety attending this litigation.

The public already have the benefit of the assistance of the licentiates; and their emoluments, the fair fruits of their education and advice, are just the same as those which the fellows of the college receive. We have, however, been pressed with the authority of those who have preceded us here. No person can have a greater veneration for those characters than I have; and, if this point had been decided by them, I should have thought myself bound by their decision. But the cases are unlike. The principal ground on which it was said, in Burrow (*vide ante*, p. lv), that the bye-laws of the college were bad was, that they interfered with their exercising their own judgment, and prevented them from receiving into their body persons known or thought by them to be really fit and qualified; and if I had found that that objection existed in this case, I should have thought it fatal. But, in the very sentence in which Lord Mansfield expressed himself as above, he added, such of them, indeed, as only require a proper education; and a sufficient degree of skill and qualification may be still retained. Two universities have been founded in this country, amply endowed and furnished with professors in the different sciences, and I should be sorry that those who have been educated at either of them should undervalue the benefits of such an education.

In this case it is admitted that a licentiate does not, *de facto*, become a fellow of the college; it is admitted that he must be first examined, and that those who are called the College of Physicians are to judge of his fitness. It seems that the appeal here is rather made *ad verecundiam*, and that Dr. Stanger could not be rejected if he were examined. If the college are not judges of the fitness of the person examined, I do not know who are. Then is this a reasonable test of the fitness of the party? Possibly they

might have framed a better, though I do not say that they could; but the question here is, Whether this is a reasonable bye-law? According to the concurrent opinions of all mankind it is. The legislature has considered that persons who have taken degrees in our universities are entitled to certain privileges in the church: so, if we look into our own profession, those who have been educated at our universities have particular privileges; and though the inns of court are not corporations, yet their regulations show that this has been considered as reasonable. It is not that a person becomes qualified from keeping his commons within the walls of the inns of court or the universities, but living with those of the profession will probably advance him in the knowledge of that profession for which he is a candidate. Again, in the civil law, however competent any particular individual may be from extraordinary endowments, or the exertion of superior talents, he must first take his degrees at one of our universities, and afterwards continue a year in a state of probation before he can practise. Those regulations that are adapted to the common race of men are the best: it does not follow that all institutions calculated for the ordinary classes of men are to be prostrated, merely because they stand in the way of some few individuals of superior talents. Then the question is, Whether this is a reasonable bye-law, that requires a degree to be taken at one of our universities, which, in general, is supposed to be conferred as a reward for talent and learning. If, indeed, this had been a *sine qua non*, and it had operated as a total exclusion of every other mode of gaining access to the college, it would have been a bad bye-law; but these bye-laws point out other modes of gaining admission into the college. If Dr. Stanger has all those requisites that qualify a person for that high station, any one of the fellows may now propose him; he may apply to the honourable feelings of the college, to the very same tribunal to which this mandamus, if it were granted, would refer him: for in all events he must submit to their examination and determination. In the profession of the church, we find that the bishops insist on having a testimonial of the person to be ordained, signed by a certain number of clergymen; and though the bishops themselves may have the power of judging of the fitness of the person to be ordained, it was never doubted, but that

this was one reasonable test of fitness, even before examination; it is a test to regulate their own conduct. So here, I think that this is a reasonable test. Therefore on this short ground, without entering into any of the other topics that have been argued, I am of opinion that these are good and reasonable bye-laws, and that we are bound to refuse the writ.

Ashurst J. Though this matter has taken considerable time in the argument, it is now reduced to a narrow compass. The counsel who have argued for the issuing of the mandamus do not contend that a licentiate, as such, does *ipso facto* become a member or fellow of the college; they only say, that any man who is fit in learning and morals has a right to offer himself for examination, without any superadded qualification; and therefore that the bye-law, requiring that every licentiate, in order to entitle him to offer himself for examination, shall be a doctor of one of the two universities in England or that of Dublin, is a void bye-law. It is not denied by the counsel who have argued for the rule, that the corporation have the right of making bye-laws for the regulation of their own body; and Lord Mansfield, on whose authority they ground themselves, has, in their favour, said (*ante*, p. lv.) that such bye-laws as only require a proper education and a sufficient degree of skill and qualification may be still retained; and that there can be no objection to cautions of this sort, and the rather, if it be true, that there are some amongst the licentiates unfit to be received into any society. This brings it, then, to the question, Whether the bye-law now under discussion is or is not to be considered as a bye-law of regulation? It does appear to me, that in order to insure a proper education and a competence in learning there cannot be a more likely method than the having spent fourteen years in one of our learned universities, and, after having been examined by persons competent to the subject, having been admitted to a doctor's degree. This, it should seem, would prevent, *in limine*, the danger of that happening which Lord Mansfield complains of; viz. of persons being admitted amongst the licentiates unfit to be received into that society. Indeed the legislature, so long ago as the passing of the act 14 & 15 Hen. 8., seemed to show their own opinion, how much stress ought to be laid on such a kind of test; for there, in speak-

ing of country physicians, the act says, that "no person shall be suffered to exercise or practise in physic through England until such time as he be examined in London by the president and three elects, and have from them letters testimonial of their approving and examination;" but then the act goes on with this exception, "unless he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form without any grace." This shows the opinion of the legislative body of that day; and the college might think it a very fit model for their imitation in the formation of the bye-law now under discussion, and that it would prevent them from having their time too much broken in upon by improper applications for examination. I would not be thought to infer that the gentleman now applying is in any degree deficient either in learning or education; but general laws cannot give way to particular cases; and as this law has been of some standing, we must suppose it has been found to be attended with general convenience, and therefore it should be abided by: I therefore concur in the opinion that the rule for a mandamus should be discharged.

Grose J. This being a motion for a mandamus to a body incorporated by charter, we must see that we are authorised by the charter or the bye-laws to grant the application. On examining the charter, which was confirmed by act of parliament, we find that there was a select body of eight, including the president and an indefinite number of the commonalty. The election of the president is to be made annually by the college; so also is the election of the four censors. The intention of the crown was to put an end to the mischiefs occasioned by the ignorance of the unskilful practitioners; and for that purpose this corporation was created with power of making bye-laws, of admitting skilful persons to practise physic, and of preventing all others practising: the great object was to admit only those to practise physic who were, to use the language of the act, "profound, sad, and discreet, groundedly learned, and deeply studied in physic." How or when the fellows are to be chosen or admitted is not directed by the charter; it is left to the discretion of the persons named in the charter under the general power given to them of perpetuating themselves, and of making bye-laws. The charter is therefore silent, both as to the election of fellows, and as to the examination

of them before election; but the examination is incident to the power of election. The charter being silent on these heads, and the college having the power of making bye-laws, they have made bye-laws to ascertain a criterion of fitness of future candidates; by pointing out, in some cases, the mode of their education, in others the persons by whom they are to be proposed as candidates. One of these bye-laws is objected to as illegal, because it requires a degree to be taken at one of our universities, which, it is contended, is superadding a qualification to those required by the charter; but I think it is only ascertaining a criterion of fitness, as has been done, most properly, in other professions in cases alluded to, both at the bar and the bench. Then it is said that a licentiate has an inchoate right: if by that Dr. Stanger's counsel mean that he has one qualification which, when added to others, may give him a right of admission, I agree with them; but the college are to judge of the other qualifications: if, by this inchoate right, they mean any thing more, I dissent from them. It is admitted, by this application, that the college have a right to insist on an examination; and upon what ground? — as a test of fitness; but, though this right is not expressly given to them by the charter, nor is there a word denoting any obligation either to admit or examine, it is incident to their power of judging who is fit to be admitted. That Lord Mansfield thought that they had such a right incidentally, is clear from what fell from him in Dr. Askew's case, in which he said: "It is true that the judgment and discretion of determining upon this skill, ability, learning, and sufficiency, to exercise and practise this profession, is trusted to the college of physicians; and this court will not take it from them in the due and proper exercise of it." (*Ante*, p. xli.) The same power that authorises them to judge of fitness, also authorises them to regulate the mode by which they shall judge. They think, of which they are much better judges than we can be, that every man who is to be a candidate ought either to have taken his degree at one of our universities or in Dublin, or to be proposed by one fellow or by the president. The bye-laws requiring this do not appear to me to be unreasonable, or inconsistent with the charter, any more than requiring a particular mode of education; and, in the case so often alluded to, Lord Mansfield thought such bye-laws were good; for, when he recom-

mended to the college to revise their bye-laws, he said such of them, indeed, as only required a proper education and a sufficient degree of skill and qualification may be still retained. In consequence of that opinion, the college have reviewed and altered their bye-laws, requiring, in some cases, an education at either of our universities, or at Dublin; in others, permitting a nomination of persons as fit to be examined by men whom they deem worthy of such a trust, considering such degree and nomination merely as tests of the person taking it or named having skill and learning, and being fit to be examined. And, in making these bye-laws, I think that the college have shown a due attention to discharge their duty to the public, and to attain the ends of their institution. Therefore I concur in the opinion already given, that this rule ought to be discharged.

Lawrence J. This is an application for a mandamus to compel the College of Physicians to examine Dr. Stanger, in order that he may be admitted a fellow; and the foundation of the application is, that he has been admitted to the practice of physic, and is one of the *homines facultatis* within the meaning of the charter, which, it is said, gives him a right to admission, if, on examination, he shall be found fit; and that all the bye-laws militating against such right are illegal. His counsel have been under the necessity of insisting on the licence giving him a right to examination; for, if the being admitted to be a member of the body be matter of election, it is immaterial whether the bye-laws be good or bad. It seems to me that the insufficiency of the provisions of the statute 3 Hen. 8. probably gave rise to this charter; the object of which was to establish a better mode of determining who were proper persons to be licensed to practise physic, and to prevent the practice of ignorant empirics; and, if so, it was not necessary that all men of the faculty should be members of the body. All that was necessary was, that it should be composed of a sufficient number of learned and discreet practisers of physic, who should have a power of continuing the succession in such persons as themselves, and that they should license proper persons, and restrain unfit persons from the practice of it. If this were the object, is it natural to construe the charter as giving a right to all men of the faculty to become members of this body, when the charter speaks of men of the faculty in a

sense contradistinguished from the members of the body; or to suppose that the Crown meant to incorporate all, when the charter was made for the government of some who, if all were incorporated, could not exist? It is admitted that there were two distinct classes under the charter; and, according to Dr. Stanger's construction, one class, that of the governed, would be extinguished. Another mode of construing the charter was, by considering the words *omnes homines ejusdem facultatis* to mean the individual members of the corporation; but, if so, there would be no power given to make bye-laws to affect the licentiates; and the clause in the charter that gives the exemption from serving on juries speaks of the persons exercising the faculty as contradistinguished from the members of the college, "nec presidens nec aliquis de collegio prædicto medicorum, nec successores sui, nec eorum aliquis exercens facultatem illam." Therefore, it seems to me that the *homines facultatis* are not the individual members of the college. Then it was said that there might be some persons who might not choose to become corporators, and that this would make a class to be governed. But that is improbable: it is not to be supposed that, as the principal object of the charter was to incorporate those who were skilled in physic, and to prevent those from practising who were unfit, they to whom the charter was offered would refuse the advantages of this corporation, especially as the obvious means of constituting a body, to consist of all, would be to make it compulsory on the physicians to become members, as is the case with companies in some city and corporate towns, of which persons carrying on certain trades are obliged to be free. But seeing that there is, in some degree, an uncertainty as to the words *homines ejusdem facultatis*, the usage that has prevailed ought to govern us in the construction of them, especially as the usage perfectly accords with the design of the corporation. It is said, indeed, that the usage is in favour of Dr. Stanger's claim; but that is not so, for there is no proof that, before these bye-laws were made, any persons were admitted into the body as a matter of right, and we must therefore take it that they came in by election. If Dr. Stanger claim as a matter of right, it must be under the words of the charter, "quod ipsi omnesque homines ejusdem facultatis," &c.; but if this gave him the right, the college could not resist his

claim, though he would not submit to examination. And if every *homo ejusdem facultatis* came within this description of claim, Dr. Archer would have had a right to be admitted. The charter does not say that all men of the faculty, who, on examination, should be found fit, shall be admitted: if it has said any thing in their favour, it has given them the right as soon as they become men of the faculty; it has directed no examination. Suppose, by a charter, all the weavers of a town were incorporated, they would all have a right to be admitted without any examination. If, then, all the men of the faculty, within the limited district, have a right, from being men of the faculty, they possess all the fitness that the charter requires. This seems to me to be only a contrivance to get out of Dr. Archer's case, and to set up a right on the ground of being a licentiate. In the course of the argument it was said, that only those were to be admitted who were "profound, sad, and discreet, groundedly learned, and deeply studied in physic;" but, if so, it destroys the argument arising from the words *omnes homines ejusdem facultatis*. An argument has also been drawn from the statute 3 H. 8.; and it has been said that the persons licensed by that act were the only persons who, at the time of the charter, were men of the faculty, and that they and the six persons named were meant to be incorporated. But the words of the charter do not extend to all those persons, they are confined to the *homines de et in civitate prædictâ*, i. e. to all men of and in the city of London practising physic; but this does not extend to persons practising in other places. Now, if that construction had been adopted, it would have excluded the greater part of those who have been members of the college practising physic in Oxford, Cambridge, and other places beyond these limits, as not falling within the description of those persons of whom, according to the construction, the college is to consist.

Taking the whole of the charter and the usage, this construction will reconcile all the difficulties: the intention of the Crown was to incorporate the six persons named in the charter, and all men practising physic at that time *de et in civitate prædictâ*, and all those persons were entitled to admission; but the Crown did not intend to give any right to those who might thereafter become *homines facultatis*, but intended that the succession should be continued by the

power incidental to all corporations to elect. Had the charter incorporated *nominatim* every man authorised to practise physic in London, and given no directions as to the succession, they would have been authorised to continue themselves by election as they have done; and the charter has done the same thing in substance, by incorporating the same persons by a general reference to their character and situation. This avoids all contradiction; it is consistent with the usage; and, according to this construction, no one is entitled as a matter of right, but only by election. In making such elections, there is a trust and duty to keep up the body by a choice of learned men sufficient to answer the purposes of the charter; and if this be done, all the interest that the public have has been consulted; they have no interest in this or that man being a member of the college, so long as the body is continued, and there are proper censors, elects, and other officers; and so long as proper persons are licensed, and improper persons restrained, the objects of the charter, as far as concerns the public, will be attained. We have been pressed, however, with the dicta of Lord Mansfield in R. *v.* Dr. Askew: very great deference is always due to what fell from him; but it is sufficient to say that this was not the point then before the court, the only question there being, whether licentiates were of the body.

On the other question, respecting the validity of the bye-laws, I can hardly add to what has already been said by the court; and, therefore, shall only say, that I agree with them in thinking the bye-laws reasonable.

Rule discharged.

DR. SCHOMBERG'S CASE.

Anno 1753. I DO not find any authentic report of this case: it was the subject of vehement discussion; and the minutes of the proceedings are, probably, not a little distorted through the feeling of party. The observations made by the Solicitor-General, of counsel for the Doctor, produced an invective from Dr. Brown, equally unworthy of perusal with the other party-performances on the subject. The following is a summary of the facts, as they appear from the entries in the

college register: — Dr. Schomberg commenced practice in London, having taken a degree at Leyden and been matriculated at Cambridge. He at first treated the college mandate to discontinue his practice with contempt, but afterwards prayed leave to continue it until he should obtain a degree in medicine at Cambridge; which was refused. He very soon after obtained the degree of M. B. in that university, and then demanded an examination for admission into the order of *candidates*, as a right derived from his Cambridge degree. This examination was allowed, the censors reserving their opinion as to the right, and he was found fully competent; but being very haughty, and the fellows being very angry, he was rejected at the *comitia majora*, on which he preferred his appeal to the visitors under the charter, Car. 2. (*ante*, p. xxvi. xxvii.), which they at first entertained, but afterwards dismissed, on the ground that they had no jurisdiction. At length the Doctor submitted to ask admission as a favour, on which terms the college had previously offered, but they, having incurred the expense of a law-suit, and being worn out with consultations, refused to concede it.

COLLEGE OF PHYSICIANS *v.* LEVETT.

1 Ld. Raym. 472.
E. T. 11 W 3.

The plaintiffs brought debt against the defendant for 25*l.* for having practised physic within London for five months, without licence. Upon *nil debet* pleaded, it was tried before Holt C. J., at Guildhall. The defence was, that the defendant was a graduate doctor of Oxford; but it was ruled by Holt, upon consideration of all the statutes concerning this matter, that he could not practise within London or seven miles round without licence of the College of Physicians; and, by his direction, a verdict was given for the plaintiffs.

COLLEGE OF PHYSICIANS *v.* WEST.

10 Mod. 353, 354. H. T. 3 Geo. 1.

THE question was, Whether a man who had taken his degree of doctor of physic in either of the universities might not practise in London, and within seven miles of the same, without a licence from the College of Physicians?

The court was clearly of opinion that a licence from the college was necessary, and that by reason of the charter of incorporation, confirmed by the statute 14 & 15 Hen. 8. c. 5., penned in very strong and negative words.

The court was of opinion, as to the testimonials granted by the universities upon a person's taking the doctor's degree, that they might have the nature of a recommendation; that they might give a man a fair reputation, but conferred no right; and, consequently, all those statutes which have confirmed the privileges of the universities could revive or confirm nothing but the reputation which this testimonial might give such graduates. And whereas it has been insisted, that by the last clause of this statute it is said "that none shall practise in the country without a licence from the president and three elects, unless he be a graduate of one of the universities;" it was said, all the inference from that would be, that, possibly, two licences may be necessary when a person is not a graduate. In the case of Dr. Levett, Holt C. J. did not think this a question worth being found specially. The College of Physicians is, without doubt, more competent to judge of the qualifications of a physician than the universities; and there may be many good reasons for taking a particular care of those who practise physic in London.

DR. BONHAM'S CASE.

8 Co. 107—114. M. T. 6 Jac. 1.

THE declaration in this case, which, with the other pleadings, is stated at large, alleges trespass and false imprisonment by the defendants, the president and censors of the College of Physicians and their servants. The plea set forth

the charter of Henry VIII., the confirmation of it, and extension of the powers of the college, by 14 & 15 Hen. 8. and the statute 1 Mary, sess. 2. c. 9.; the election of a former president and censors, in whose time Dr. Bonham practised in London without licence; that he was insufficient; that he was summoned to be examined; that he attended thereupon, was examined, and found insufficient; that he was many times afterwards examined, and forbidden; that he nevertheless did practise, and was amerced 100*s*. by the said president and censors, and prohibited thenceforth to practise until found sufficient; that afterwards another was chosen president, and three of the defendants and another were chosen censors; that in their time plaintiff was summoned before them to be examined; that he did not appear on the summons; that thereupon it was considered by the said censors, or governors of the college aforesaid, that the said Thomas Bonham, for his disobedience and contempt, should be amerced at 10*l*., and that the said Thomas Bonham, for the causes aforesaid, should be arrested and delivered into custody; that afterwards that president died, and another (defendant) was elected president; that, defendants being president and censors, plaintiff came before them; that defendants asked plaintiff whether he would satisfy the college for his disobedience and contempts aforesaid, and again submit himself to be examined and to obey the judgment of the college; that the plaintiff answered, that he had before then practised in London, and would afterwards practise in London, no leave being asked of the said college, and that he would not in any thing to the president and censors or governors of the college yield obedience, then and there affirming that the president and censors had no authority over those who were made doctors in the university; on which the said censors, for the offences and disobedience aforesaid, then and there ordained and decreed that the said Thomas Bonham should be sent to prison, there to remain until from thence by the president and censors for the time being he should be delivered, as by, &c.; and then and there made their warrant, sealed with the common seal of the said college or commonalty, and directed to the keeper of the prison of our lord the king in the Compter of London, &c. commanding, &c. the keeper, &c. that he should receive the body of the said Thomas Bonham, and him in the prison,

&c. there safely keep, without bail or mainprize, at the proper costs and charges of the said Thomas Bonham, until &c.; which Thomas Bonham as aforesaid, together with the warrant aforesaid, &c., the said defendants being president and censors, &c., and the servants of the said president and censors, by their warrant to one R. W., then keeper of the said prison, &c., did commit and deliver into safe custody, according, &c., which commitment, &c. is the same trespass, &c.

The replication, protesting no insufficiency or insufficiently answering, set forth the last clause of 14 & 15 Hen. 8. c. 5.; that he took his degree as doctor of physic at Cambridge, without grace, &c., by colour whereof he did so exercise physic as it was lawful for him to do, until defendants took and imprisoned him, &c.

Whereupon the defendants demurred, and plaintiff joined in demurrer.

8 Co. 114—121. H. T. 7. J. 1.

Thomas Bonham, doctor in philosophy and physic, brought an action of false imprisonment against Henry Atkins, George Turner, Thomas Moundford, and John Argent, doctors in physic; and John Tailor, and William Bowden, yeomen.—The pleadings are recapitulated.

This case was often argued by the serjeants at bar, in divers several terms; and now this term the case was argued by the justices, and the effect of their arguments who argued against the plaintiff, which were divided into three parts, shall be first repeated.

The first was, Whether a doctor of physic, of the one university or the other, be, by the letters patent, and by the body of the act 14 Hen. 8., restrained from practising physic within the city of London, &c.

The second was, if the exception in the said act of 14 Hen. 8. has excepted him or not.

The third was, that his imprisonment was lawful for his said disobedience.

And as to the first, they relied upon the letter of the grant, ratified by the said act of 14 Hen. 8., which is in the negative, &c. "Nemo in dicta civitate, &c. exerceat dictam facultatem nisi ad hoc per prædict' præsidentem et communitatem, &c. admissus sit," &c. And this proposition is a general negative, and "generale dictum est generaliter intelligendum," and *nemo* excludes all; and therefore a doctor

of the one university or the other is prohibited within this negative word *nemo*. And many cases were put where negative statutes shall be taken *stricte et exclusive*, which I do not think necessary to be recited here; also they said that the statute 3 Hen. 8. c. 11., which in effect is repealed by this act of 14 H. 8., has a special proviso for the universities of Cambridge and Oxford, which, being here left out, doth declare the intention of the makers of the act, that they did intend to include them within this general prohibition: "Nemo in dicta civitate," &c.

As to the second point, they strongly held that the said latter clause, "and where that in the dioceses of England, out of London," &c., according to the words, extends only to places out of London; and so much the rather, because they provided for London before, "Nemo in dicta civitate," &c. Also, the makers of the act put a distinction betwixt those who shall be licensed to practise physic in London, &c.; for they ought to have the admittance and allowance of the president and college in writing, under their common seal: but he who shall be allowed to practise physic throughout England, out of London, ought to be examined and admitted by the president, and three of the elects; and so they said that it was lately adjudged in the King's Bench, in an information exhibited against the said Dr. Bonham for practising physic in London for divers months.

As to the third point, they said, that for his contempt and disobedience before them at their assembly in their college, they might well commit him to prison; for they have authority by the letters patent and act of parliament, and therefore for a contempt or misdemeanor before them they may commit him. Also the act of 1 Mary has given them power to commit them for every offence or disobedience, contrary to any article or clause contained in the said grant or act. But there is an express negative article in the said grant and ratification by the act of 14 Hen. 8., "quod nemo in dicta civitate, &c. exerceat," &c.; and the defendants have pleaded that the plaintiff had practised physic in London by the space of one month, &c., and therefore the act of 1 Mary has authorised them to imprison him in this case, wherefore they concluded against the plaintiff. But it was argued by Coke C. J., Warburton and Daniel, justices of the Common Pleas, to the contrary; and Daniel J. conceived that a doctor of

physic, of the one university or the other, &c. was not within the body of the act; and, if he was within the body of the act, that he was excepted by the said latter clause. But Warburton argued against him for both the points; and the Chief Justice did not speak to those two points, because he and Warburton and Daniel agreed that this action was clearly maintainable for two other points, and therefore in this action the Chief Justice omitted to speak to the said two points; but to two other points he and the said two other justices, Warburton and Daniel, did speak: —

1. Whether the censors have power, for the causes alleged in their bar, to fine and imprison the plaintiff?

2. Admitting that they have power to do it, if they had pursued their power?

But the Chief Justice, before he argued the points in law, — because much was said in commendation of the doctors of physic of the college in London, and somewhat, as he conceived, in derogation of the dignity of the doctors of the universities, — first attributed much to the doctors of the said college in London, and confessed that nothing was spoken in their commendation which was not due to their merits: but yet, that no comparison was to be made between that private college and either of the universities of Cambridge and Oxford; no more than between the father and his children, or than between the fountain and the small rivers that descend from it. The university is alma mater, from whose breasts those of that private college have sucked all their science and knowledge, which I acknowledge to be great and profound; but the law saith, "erubescit lex filios castigare parentes:" the university is the fountain, and that and the like private colleges are *tamquam rivuli*, which flow from the fountain; "et melius est petere fontes quam sectari rivulos." Briefly, "Academiæ Cantabrigiæ et Oxoniæ sunt Athenæ nostræ nobilissimæ, regni soles, oculi et animæ regni, unde religio, humanitas, et doctrina in omnes regni partes uberrime diffunduntur;" but it is true, "nunquam sufficiet copia laudatoris, quia nunquam deficiet materia laudis," and therefore those universities exceed and excel all private colleges, "quantum inter virburna cupressus." And it was observed that King Henry VIII. in his letters patent, and the king and parliament in the act of 14 Hen. 8., in making of a law concerning physicians, for the more safety and health of

men, therein follow the order of a good physician (rex enim omnes artes censetur habere in scrinio pect' sui); for "medicina est duplex, removens et promovens: removens morbum, et promovens ad salutem;" and therefore five manner of persons, who more hurt the body of man than the disease itself, — one of which said of one of their patients, "fugiens morbum incidit in medicum,"—are to be removed: 1. improbi; 2. avari, qui medicinam magis avaritiæ suæ causa quam ullius bonæ conscientiæ fiducia profitentur; 3. malitiosi; 4. temerarii; 5. inscii." And of the other part, five manner of persons were to be promoted, as appears by the said act, &c.: those who were, 1. profound; 2. sad; 3. discreet; 4. groundedly learned; 5. profoundly studied. And it was well ordained that the professors of physic should be profound, sad, discreet, &c., and not youths, who have no gravity and experience; for, as one saith, "in juvene theologo conscientiæ detrimentum, in juvene legista bursæ detrimentum, in juvene medico cæmeterii incrementum." And it ought to be presumed every doctor of any of the universities to be within the statutes; *sc.* to be profound, sad, discreet, groundedly learned, and profoundly studied; for none can there be master of arts, who is a doctor of philosophy, under the study of seven years, and cannot be doctor in physic under seven years more in the study of physic: and that is the reason that the plaintiff is named in the declaration doctor of philosophy and doctor of physic; "quia oportet medicum esse philosophum, ubi enim philosophus desinit medicus incipit." As to the two points upon which Coke, Warburton, and Daniel gave judgment: —

1. It was resolved by them, that the said censors had not power to commit the plaintiff for any of the causes mentioned in the bar; and the cause and reason thereof shortly was, that the clause which gives power to the censors to fine and imprison doth not extend to the clause "quod nemo in dicta civitate, &c., exerceat dictam facultatem," &c., which prohibits every one from practising physic in London, &c. without licence from the president and college, but extends only to punish those who practise physic, &c. "pro delictis suis in non bene exequendo, faciendo, et utendo facultate medicinæ," by fine and imprisonment: so that the censors have not power by the letters patent and the act to fine or imprison any for practising physic in London, but only

"pro delictis suis in non bene exequendo," &c.; *i. e.* for ill and not good use and practice of physic; and that was made manifest by five reasons, which were called *vividæ rationes*, because they had their vigour and life from the letters patent and the act itself; and the best expositor of all letters patent and acts of parliament are the letters patent and acts of parliament themselves, by construction and conferring all the parts of them together. The first reason was, that these are two absolute, perfect, and distinct clauses, and as parallels, and therefore the one did not extend to the other; for the second begins "præterea voluit et concessit," &c., and the branch concerning fine and imprisonment is parcel of the second clause. The first clause, prohibiting the practice of physic, &c. comprehends four certainties:— 1. Certainty of the thing prohibited; *sc.* practice of physic: 2. certainty of the time; *sc.* practice for one month: 3. certainty of penalty; *sc.* 5*l.*: 4. certainty in distribution; *sc.* one moiety to the king, and the other moiety to the college; and this penalty he who practises physic in London incurs, although he practises and uses physic well and profitable for the body of man; and on this branch the information was exhibited in the King's Bench. But the clause to punish "delicta in non bene exequendo," &c., on which branch the case at bar stands, is altogether uncertain; for the hurt which may come thereby may be little or great, *leve vel grave*, excessive or small, &c.; and therefore the king and the makers of the act could not, for an offence so uncertain, impose a certainty of the fine or time of imprisonment, but leave it to the censors to punish such offences *secundum quantitatem delicti*, which is included in these words, "per fines, amerciamenta, imprisonamenta corporum suorum, et per alias vias rationabiles et congruas." 2. The harm which accrues by *non bene exequendo*, &c. concerns the body of man; and therefore it is reasonable that the offender should be punished in his body; *sc.* by imprisonment: but he who practises physic in London, in a good manner, although he doth it without licence, yet it is not any prejudice to the body of man. 3. He who practises physic in London doth not offend the statute by his practice, unless he practises it by the space of a month. But the clause of *non bene exequendo*, &c. doth not prescribe any certain time; but at what time soever he ministers physic *non bene*, &c., he shall be

punished by the said second branch: and the law hath great reason in making this distinction, for divers nobles, gentlemen, and others come upon divers occasions to London, and when they are here they become subject to diseases, and thereupon they send for their physicians in the country, who know their bodies and the cause of their diseases. Now it was never the meaning of the act to bar any one of his own physician; and when he is here he may practise and minister to another by two or three weeks, &c. without any forfeiture; for any one who practises physic *bene*, &c. in London, although he has not taken any degree in any of the universities, shall forfeit nothing, unless he practises it by the space of a month: and that was the reason that the time of a month was put in the act. The censors cannot be judges, ministers, and parties: judges, to give sentence or judgment; ministers, to make summons; and parties, to have the moiety of the forfeiture; "quia aliquis non debet esse judex in propriâ causâ, imo iniquum est aliquem suæ rei esse judicem:" and it appears in our books, that in many cases the common law will control acts of parliament, and sometimes adjudge them to be utterly void; for when an act of parliament is against common right and reason, or repugnant or impossible to be performed, the common law will control it, and adjudge such act to be void. So if an act of parliament gives to any to hold or to have conusance of all manner of pleas arising before him within his manor of D., yet he shall hold no plea to which he himself is a party.

If he should forfeit 5*l.* for one month by the first clause, and should be punished for practising at any time by the second clause, two absurdities would follow: — 1. that one should be punished not only twice, but many times, for the same offence; and the law saith, "nemo debet bis puniri pro uno delicto." 2. It would be absurd by the first clause to punish practising for a month, and not for a lesser time; and by the second to punish practising, not only for a day, but at any time. So he shall be punished by the first branch for one month by the forfeit of 5*l.*; and by the second by fine and imprisonment, without limitation, for every time in the month for which he practises physic. But it was objected, that where by the second clause it was granted that the censors should have "supervisum et scrutinium, correctionem et gubernationem omnium et singulorum medicorum,"

&c. they had power to fine and imprison. To that it was answered: — 1. that that is but part of the sentence; for by the entire sentence, it appears in what manner they shall have power to punish; for the words are "ac punitionem eorum pro delictis suis in non bene exequendo, faciendo, vel utendo illa facultate;" — so that, without question, all their power to correct and punish the physicians by this clause is only limited to these three cases; *sc.* "in non bene exequendo, faciendo, vel utendo," &c. Also this word *punitionem* is limited and restrained by these words, "ita quod punitio eorundem medicorum, &c. sic in premissis delinquentium," &c.; which words, "sic in premissis delinquentium," limit the former words in the first part of the sentence, "ac punitionem eorum pro delictis suis in non bene exequendo," &c. 2. It would be absurd, that in one and the same sentence, the makers of the act should give them a general power to punish without limitation, and a special manner how they shall punish. 3. In *quo warranto* against the mayor and commonalty of London (H. T. 38 Eliz.), it was held, that where a grant was made to the mayor and commonalty, that the mayor for the time being should have "plenum et integrum scrutinium, gubernationem, et correctionem omnium et singulorum mysteriorum," without granting them any court in which should be legal proceedings, it is good for search, whereby a discovery may be made of offences and defects, which may be punished by the law in any court; but it doth not give, nor can give them any irregular or absolute power to correct or punish any of the subjects of the kingdom at their pleasure.

2. It was objected, that it is incident to every court created by letters patent or act of parliament, and other courts of record, to punish any misdemeanor done in court, in disturbance or contempt of the court, by imprisonment. To which it was answered: — 1. that neither the letters patent nor the act of parliament has granted them any court, but only an authority, which they ought to pursue as it shall be afterwards said: 2. if any court had been granted them, they could not by any incident authority, *implicite* granted them, for any misdemeanor done in court, commit him to prison, without bail or mainprize, until he should be, by the commandment of the president and censors, or their successors, delivered, as the censors have done in this case:

3. there was not any such misdemeanor, for which any court might imprison him; for he only showed his case to them, which he was advised by his counsel he might justify, which is not any offence worthy of imprisonment.

The second point was, admitting that the censors had power by the act, if they had properly pursued their authority or not?—and it was resolved by the Chief Justice, Warburton, and Daniel, that they had not pursued it, for six reasons:—

1. By the act the censors only have power to impose a fine or amerciament, and the president and censors imposed the amerciament of 5*l.* on the plaintiff. 2. The plaintiff was summoned to appear "coram presidente et censoribus, &c. et non comparuit," and therefore he was fined 10*l.*: whereas the president had no authority in that case. 3. The fines or amerciaments to be imposed by them, by force of the act, do not belong to them, but to the king; for the king had not granted the fines or amerciaments to them, and yet the fine is appointed to be paid to them *in proximis comitiis*, and they have imprisoned the plaintiff for nonpayment thereof. 4. They ought to have committed the plaintiff presently, by construction of law, although no time be limited in the act. 5. Forasmuch as the censors had their authority by the letters patent and act of parliament, which are high matters of record, their proceedings ought not to be by *parol, et eo potius* because they claim authority to fine and imprison; and therefore if judgment be given against one in the Common Pleas, in a writ of recaption, he shall be fined and imprisoned; but if the writ be vicontiel in the county, there he shall not be fined and imprisoned, because a writ of the court is not of record (F. N. B. Recaption; so in F. N. B. 47. *a*). A plea of trespass, *vi et armis*, doth not lie in the county court, hundred court, &c. for they cannot make a record of fine and imprisonment; and, regularly, they who cannot make a record, cannot fine and imprison. And therewith agrees 27 H. 6. 8. Book of Entries, tit. Account. The auditors make a record when they commit the defendant to prison; a justice of peace, upon view of a force, may commit, but he ought to make a record of it. 6. Forasmuch as the act 14 Hen. 8. has given power to imprison till he shall be delivered by the president and the censors, or their successors, reason requires that it should be taken strictly, for

the liberty of the subject, as they pretend, is at their pleasure; and this is well proved by a judgment in parliament, in this very case: for when this act of 14 Hen. 8. had given the censors power to imprison, yet it was taken so literally, that the gaoler was not bound to receive such as they should commit to him; and the reason thereof was, because they had authority to do it without any court, and thereupon the statute 1 Mar. c. 9. was made, that the gaoler should receive them upon a penalty, and yet none can commit any to prison unless the gaoler receives him. But the first act for the cause aforesaid was taken so literally that no necessary incident was implied. And where it was objected, that this very act of 1 Mar. c. 9. has enlarged the power of the censors, and they urged it upon the words of the act, it was clearly resolved that the said act of 1 Mar. did not enlarge the power of the censors to fine or imprison any person for any cause for which he ought not to be fined and imprisoned by the said act of 14 Hen. 8.; for the words of the act of Queen Mary are, "according to the tenor and meaning of the said act;" also, "shall send or commit any offender or offenders for his or their offence or disobedience, contrary to any article or clause contained in the said grant or act, to any ward gaol," &c. But, in this case, Bonham has not done any thing which appears within this record contrary to any article or clause contained within the grant or act of 14 Hen. 8. Also, the gaoler who refuses shall forfeit the double value of the fines and amerciaments that any offender or disobedient shall be assessed to pay; which proves that none shall be received by the gaoler by force of the act of 14 Hen. 8. but he who may be lawfully fined or amerced by 14 Hen. 8., and that was not Bonham, as by the reasons and causes aforesaid appears. And admitting that the replication be not material, and the defendants have demurred upon it, yet, forasmuch as the defendants have confessed in the bar that they have imprisoned the plaintiff without cause, the plaintiff shall have judgment; and the difference is when the plaintiff replies, and by his replication it appears that he has no cause of action, there he shall never have judgment: but when the bar is insufficient in matter, or amounts, as the case is, to a confession of the point of the action, and the plaintiff replies, and shows the truth of the matter to enforce his case, and in judgment of law it is not material, yet the

1 Mar. c. 9.

plaintiff shall have judgment; for it is true that sometimes the declaration shall be made good by the bar, and sometimes the bar by the replication, and sometimes the replication by the rejoinder, &c.: but the difference is, when the declaration wants time, place, or other circumstance, it may be made good by the bar, so the bar, replication, &c. But when the declaration wants substance, no bar can make it good; so of the bar, replication, &c. And Coke C. J., in the conclusion of his argument, observed seven things for the direction of the president and commonalty of the said college for the future: — 1. that none can be punished for practising physic in London but by forfeiture of 5*l.* by the month, which is to be recovered by the law: 2. if any practise physic there for less than a month, that he shall forfeit nothing: 3. if any person prohibited by the statute offends in *non bene exequendo*, &c. they may punish him according to the statute, within the month: 4. those whom they may commit to prison by the statute, ought to be committed presently: 5. the fines, which they set according to the statute, belong to the king: 6. they cannot impose a fine or imprisonment without a record of it: 7. the cause for which they impose fine and imprisonment ought to be certain, for it is traversable; for although they have letters patent, and an act of parliament, yet, because the party grieved has no other remedy, neither by writ of error nor otherwise, and they are not made judges nor a court given them, but have an authority only to do it, the cause of their commitment is traversable in an action of false imprisonment brought against them. As, upon the statute of bankrupts, their warrant is under the great seal, and by act of parliament, yet, because the party grieved has no other remedy, if the commissioners do not pursue the act and their commission, he shall traverse that he was not a bankrupt, although the commissioners affirm him to be one. *A fortiori*, in the case at bar, the cause of the imprisonment is traversable; for otherwise the party aggrieved may be perpetually, without just cause, imprisoned by them. But the record of a force, made by a justice of peace, is not traversable, because he doth it as judge, by the statutes of 15 R. 2. and 8 Hen. 6.; and sò there is a difference when one makes a record as a judge, and when he doth a thing by special authority, as they did in the case at bar, and not as a judge. And afterwards, for the said two

Coke's Directions.

V. post.

last points, judgment was given for the plaintiff, *nullo contradicente*, as to them. And I acquainted Sir Thomas Fleming, C. J. of the King's Bench, with this judgment, and with the reasons and causes of it, and he well approved of the judgment which we had given; and this is the first judgment on the said branch concerning fine and imprisonment which has been given since the making of the said charter and acts of parliament, and therefore I thought it worthy to be reported and published.

S. C.

2 Brownl. and Goulds. 255—266.

This case is reported in Brownlow and Gouldsborough, to nearly the same effect as in Coke. The pleadings are abridged; the arguments of counsel are given at considerable length, as are also the arguments of Coke C. J. and Walmesley J. — the reporter having been absent when Foster, Daniel, and Warburton, justices, argued it. Such portions of their arguments alone are given as do not appear in the report by Coke.

It was observed by the counsel for the plaintiff, that in 9 Hen. 5. a private act was made for physicians, by which there is great regard shown to those which are learned and educated in the university. (V. *ante*, p. iii.)

Walmesley J. By the common law, any physician who was allowed by the university might practise and exercise the said faculty within any place within England, without the dispensation, examination, or approbation of any. The censors have power to make laws, which is the office of the parliament; for those which are so learned may be trusted with any thing: and for the better making of these, they have power to assemble all the commons of the corporation; and the king allows of that by his letters patent; for it is made by a congregation of wise, learned, and discreet men: and the statute 1 Mar. inflicts punishment upon contempts, and not for any other offences; and they hold a court, and so may commit, as every other court may, for a contempt, of common right without act of parliament, or information or other legal form of proceeding.

Coke C. J. The censors have no court: but if they have, yet they ought to make a record of their commitment; for so was every court of justice; but they have not made any record of that.

COLLEGE OF PHYSICIANS *v.* ROSE.

3 Salk. 17. H. T. 1703.

In a special verdict, in an action on the case, the jury found that Rose, the defendant, was an apothecary, and sent for by a sick person, of what distemper *non constat ;* that he came to the patient, and being desired to send him something in order to his cure, he accordingly sent him some boluses, and this being without any licence, the question was, Whether it was practising as a physician?

Per Curiam. It is: for the making up and compounding medicines is the business of an apothecary, but the judging what is proper for the cure, and advising what to take for that purpose, is the business of a physician; therefore, let the distemper be what it will, the prescribing and advising what is fit for it is the business of a physician, though without a fee; but that rarely happens. So the plaintiff had judgment, but it was reversed in the House of Peers.

S. C.

6 Mod. 44. M. T. 2 Anne.

An action on the statute 14 & 15 Hen. 8. c. 5. for practising physic within seven miles of London without licence.

The case upon a special verdict was, that the defendant, being an apothecary by trade, was sent to by John Seale, then sick of a certain distemper, and he, having seen and being informed of the said distemper, did, without prescription or advice of a doctor, and without any fee for advice, compound and send to the said John Seale several parcels of physic, as proper for his said distemper, only taking the price of his drugs.

The question was, Whether this is a practising of physic, such as is prohibited by the statute?

And after several arguments, the Court at last unanimously agreed that practising of physic within this statute consists: —

1. In judging of the disease and its nature from the constitution of the patient, and many other circumstances.

2. In judging of the fittest and properest remedy for the disease.

3. In directing or ordering the application of the remedy to the disease; and that the proper business of an apothecary is to make and compound or prepare the prescriptions

of the doctor, pursuant to his directions. And it was agreed, that the defendant's taking upon himself to send physic to a patient, as proper for his distemper, without taking aught for his pains, is plainly a taking upon himself to judge of the disease and fitness of remedy, as also the executive or directory part.

Et per totam Curiam. The plaintiff had judgment. Note: this judgment was reversed in the House of Lords, *et juste*, &c.

S. C. ROSE *v.* COLLEGE OF PHYSICIANS.

Bro. Parl. Ca. 1st ed. vol. i. p. 78. 80.; in Tomlin's ed. vol. v. p. 553.

In the tenth year of Hen.8. the defendants were incorporated, and in the letters patent granted for that purpose, which were confirmed by stat. 14 & 15 Hen.8. c. 5. is this clause. (*Vide* p. ix. line 39. to p. x. line 7.)

The plaintiff, who was an apothecary and freeman of London, attended one Seale, a butcher, in the parish of St. Martin in the Fields, and made up and administered proper medicines to him, but without any licence from the faculty, and also without the direction of any physician and without taking or demanding any fee for his advice.

The defendants, apprehending this conduct to be an infringement of their privileges, brought their action against the plaintiff to recover the penalty of 5*l.* per month, under the above clause in their charter; and on the trial the jury found a special verdict, stating the charter, the confirmatory statute, and the facts of the case, and submitted to the court, whether the defendant Rose did practise physic, within the intent of the letters patent and act of parliament? And, after this verdict had been three several times argued in the Court of Queen's Bench, the judges were unanimously of opinion that the facts found did amount to the practising physic within the meaning of the act of parliament, and gave judgment accordingly.

Hereupon a writ of error in parliament was brought to reverse this judgment; and on behalf of the plaintiff in error it was argued, that the consequences of it would not only ruin him but all other apothecaries; as, in case of the

affirmance of this judgment, they could not exercise their profession without the licence of a physician; that the constant usage and practice which had always been with the apothecary was conceived to be the best expounder of this charter, and that therefore the selling a few lozenges or a small electuary to any person asking a remedy for a cold, or in other ordinary or common cases where the medicines had a known and certain effect, could not be deemed unlawful or practising as a physician, when no fee was taken or demanded for the same; that the physicians, by straining an act made so long ago, endeavoured to monopolize all manner of physic solely to themselves, and if they should succeed in this attempt, it would be attended with many mischievous consequences: for, in the first place, it would be laying a heavy tax on the nobility and gentry, who in the slightest cases, and even for their common servants, could not have any kind of medicine without consulting and giving a fee to a member of the college. It would also be a great oppression upon poor families, who, not being able to bear the charge of a fee, would be deprived of all kind of assistance in their necessities; and it would prove extremely prejudicial to all sick persons, who, in case of sudden accidents or new symptoms happening in the night-time, generally send for the apothecary, but who should not dare to apply the least remedy without running the hazard of being ruined. On the other side it was contended, that by several orders of the college its members were enjoined to give their advice to the poor gratis, and that not only to such as could come to them for it, but every physician in his neighbourhood was obliged to visit the sick poor at their own lodgings; and therefore the objection, that if the apothecaries could not administer physic but by the prescript of a physician the poorer sort of the people would be lost for want of proper remedies, had not the least foundation: And when these orders were observed not to have their full intended effect, on account of the high prices which the apothecaries generally demanded for the remedies prescribed, whereby the poor were deterred from consulting the physician for fear of the charge of the physic, the college, by a joint stock, erected several dispensaries in town, where, after the physicians had given their advice gratis, the

patients might have the physic prescribed for a third, and generally less, of what the apothecaries used to exact for it: by which expedient many hundred persons of mean condition received their cures at a very small expense, and without one farthing profit arising to the physicians: That in cases of sudden and immediate necessity, not only apothecaries, but any other person, might do his best to relieve his neighbour, without incurring the penalty of the law; but there was no reason why the apothecaries, under that pretence, should be permitted to undertake at leisure all dangerous diseases, and especially where, as in this city at least, a skilful physician may be as soon had as an apothecary: That in common or trifling indisposition the patients themselves were generally their own physicians, and would, of course, send for any medicine of which there had been common experience for their cure, and which the apothecary might lawfully make up and sell; but for the apothecary to be permitted to judge of diseases in their beginning, whether slight or not, and to order medicines for the same, would be both dangerous and more chargeable: dangerous, because the most malignant distempers usually begin with apparently inconsiderable symptoms, and are many days before they appear in their proper colours, and as apothecaries are not bred to have suitable skill, the management thereof ought not to be left to their judgment; and more chargeable, because, be the disease ever so slight, the apothecary will be sure to prescribe largely enough; and should he chance to mistake, then that distemper, which by the discreet advice of a physician might by one proper medicine have been eradicated at the beginning, runs out into great length, to the extreme hazard and great expense of the patient.

But, after hearing counsel on this writ of error, it was ordered and adjudged that the judgment given in the Queen's Bench for the president and college or commonalty of the faculty of physic in London against the said William Rose should be reversed.

DR. LAUGHTON *v.* GARDNER.

Cro. Jac. 121. T. T. 4 J. 1.

DEBT upon the statute 14 Hen. 8. cap. 5., by the plaintiff, as president of the College of Physicians in London and of the Corporation of Physicians there; for that the defendant used the art of physic in London, without licence from the college there, against the statute and their charter; for which he demanded 5*l.* for every month, being the penalty given by the statute. The defendant pleaded the statute of 34 Hen. 8., which enables every one to practise physic or surgery, being skilful therein, notwithstanding any act to the contrary. The plaintiff replies, and shows the statute 1 Mar. c. 9., which confirms their charter, and every article thereof to stand in force, any act, statute, law, or custom to the contrary notwithstanding. Hereupon the defendant demurred:—1. because this general clause in this law doth not restrain the statute of 34 Hen. 8.; 2. that this pleading is a departure, for it ought to have been shown before. It was argued for the plaintiff:—1. that the act of 34 Hen. 8. is repealed by the statute of 1 Mar. c. 9. *quoad* the College of Physicians in London as fully as if it had been by express words recited and repealed; for when it confirms the charter of 14 Hen. 8., and appoints that it and every part thereof shall stand and be available, the statute of 34 Hen. 8. cannot stand with it: "Quia leges posteriores leges priores contrarias abrogant;" 4 Ed. 4., Porter's Case, 1 Co. 25. *b.*: 2. that it is not any departure; because there is not any new matter, but matter pleaded in reviving of the former for fortification thereof. And a record was shown Mich. 10 & 11 El., which was in the same manner as this record, and where the plaintiff had judgment. Wherefore, &c. And there being none on the defendant's part to argue, the Court, upon hearing of the record, gave rule that judgment should be entered for the plaintiff, unless, &c.

S. C. ATKINS *v.* GARDINER.

1 Brownl. & Goulds. 93. E. T. 5 Jac. 1. vid. 1 Rol. 515. l. 20. Com. Dig. Fran. F. 16.

THE plaintiff, being president of the College of Physicians in London, brought an action of debt against the defendant for practising physic, upon the charter made to them by Hen. 8. &c., which was confirmed by 14 Hen. 8.; and he obtained judgment upon the statute to recover a sum for himself and the college, and before execution the president died; and whether the successor should have execution, and 8 Ed. 1. cited, and divers other books to that purpose.

S. C. Cro. Jac. 159, 160.

Upon a judgment in debt upon the statute 14 Hen. 8., by Dr. Laughton, president of the College of Physicians in London, who died before execution had, and thereupon the successor brought a *sci. fa.* to have execution. It was thereupon demurred, because the *sci. fa.* ought to be brought by the executor or administrator of him who recovered, and not by the successor. But upon hearing of the record, without argument, the Court held that the successor might well maintain the action, for the suit is given to the college by a private statute; and the suit is to be brought by the president for the time being, and he having recovered in right of the corporation, the law shall transfer that duty to the successor of him who recovered, and not to his executors. The action being brought for that he practised physic in London without licence of the College of Physicians, against the statute of 14 Hen. 8. Wherefore it was adjudged for the plaintiff.

S. C. Noy. 121.

Dr. Laughton, late president of the College of Physicians, had recovered for the king and for himself, by the name of *presidens collegii*, 60*l.*, and dies; and afterwards Dr. Atkins, being made president, brought a *scire facias* upon that judgment, and by the whole Court adjudged well. And it ought not to be brought by the executor of Dr. Laughton.

THE CORPORATION OF PHYSICIANS *v.* TENANT.

2 Bulstr. 185, 186. H. T. 11 Jac. 1.

IN an action of debt brought against Doctor Tenant, for his practising of physic, contrary to the charter to them granted by King Henry VIII. in the tenth year of his reign, &c.

he being no doctor of any of the universities in England, nor licensed by the College of Physicians for to practise, upon *nil debet* pleaded, a verdict was found for the plaintiff. It was moved by George Croke, in arrest of judgment for the defendant, that the declaration was not good; for that the action is here brought by the name of the president alone; whereas the president and college, being but one joint corporation, ought to have all joined in the action, which they have not so done, and therefore the declaration here is not good. It is shown in the declaration that the college was incorporated in the time of King Henry VIII., but it is not shown *in facto* by what name they were incorporated; and it is further shown, and divers privileges to them granted, not showing what, whereas all this ought to be showed (being all matter of fact). And it is further set forth, that none is to practise physic without their licence; this is not good. By this declaration he demands 60*l.*,—5*l.* for every month: one moiety thereof to be to the president and scholars, and the other to the king. The jury find that he owes for one month, not showing what month. Coke C. J., 14 Hen. 8. is a private act for their incorporation, by the name of the president and college, the action is here brought in the name of the president alone, and this is noways to be answered, unless that the act doth specially give the action in this manner, to be brought by the president alone, and so to recover to the use of the college. As to the other matter, they are not to show how they are incorporated; but this ought to come on the other side, 22 El. 4. fol. 34., touching the pleading of an act done by a corporation by their known name; also, they have no such corporation by letters patent, by the name of president and college. 15 *Aprilis*, 14 Hen. 8., the act of confirmation of their letters patent: their letters patent are good; the whole Court agreed in this. — It was urged that the action here was well brought by the president alone, and that they are enabled so to do by the act of parliament, the act of confirmation, being thereby enabled "placitare & implacitari per nomina" of the president and college. Coke C. J.— This is to be taken and intended of the whole corporation, being a corporation aggregate of many. May the president here sue alone? — then he ought to demand the same for himself alone, here he demands it for himself and the college; this he cannot so do

without special words to this purpose, thereby to enable him to bring the action alone, and to recover to himself and the college. — The action of debt is here brought by the president alone, and declares *quod reddat ei* and to the college so much. Coke C. J. "Quod possunt placitare & implacitari," this ought to be the whole body; this action cannot here be brought, as it is, by the president alone, without special words so to do. Doddridge J. — Clearly the president here cannot sue alone in his own name. The Court, clear of opinion that the recovery is to be to him alone, as the action is brought; and so all the four judges, Haughton, Dodderidge, Croke Js., and Coke C. J., agreed clearly in this, that if the president here might bring the action alone in his own name, yet the recovery ought not to be to him and the college, as the declaration here is. Dodderidge J. and Coke C. J.—Clearly the president here cannot sue in his own name, but the whole corporation with him, the suit to be in the name of them all. Haughton J.—He may here well bring the action alone, in his own name; the whole Court agreed in this, that the declaration here was not good, and that the plaintiff ought not to have judgment, and so the rule of the court was, "quod querens nil capiat per billam."

THE PRESIDENT AND COLLEGE OF PHYSICIANS *v.* BUTLER.

Lit. 168—171. M.T. 4 Car. 1. in Ban. Com.

THE president and college of physicians, for themselves and the king, complain against John Butler by information, and demand 60*l*., and declare their incorporation by 10 Hen. 8., reciting their patent, and its confirmation by 14 Hen. 8.; that defendant, without licence, contrary to the statute, practised eleven months. The defendant pleads in bar 34 Hen. 8. c. 8. and that he, for the space of thirty years, had experience of the nature of herbs, &c., and so according to the statute; and as to any practice otherwise, or in other manner, not guilty. On which issue is taken; but as to the plea upon the statute, the plaintiff replies, 1 Mar. ses. 2. c. 9. confirming 14 Hen. 8.: whereupon defendant demurs and assigns that the replication is a departure.

It was argued for the defendant:—

1. That 34 Hen. 8. was good, notwithstanding 1 Mar. c. 9., and in nowise affected by it.

2. That 14 Hen. 8. does not extend to that branch of the practice of physic which is within 34 Hen. 8., which was not made to interfere with 14 Hen. 8. but with 3 Hen. 8. c. 11., which provides generally for the practice of physic and surgery; for every part of surgery is attendant upon physic, and none could practise it without the allowance of the Bishop of London, calling to him four doctors. The statute 14 Hen. 8. repeals this in three main points, as to the practice of physic, but does not meddle with surgery or external applications; then follows the statute of 34 Hen. 8., which provides as to that to which 14 Hen. 8. does not extend, *i. e.* to outward applications. For 34 Hen. 8. recites 3 Hen. 8., and repeals it; therefore, had 34 Hen. 8. intended that this was within 14 Hen. 8., it would have repealed that as well as 3 Hen. 8.: but, inasmuch as surgery was clearly out of 14 Hen. 8., it repeals 3 Hen. 8. and allows 14 Hen. 8. Besides the mischief done away by the 34th, and for which a fine was imposed, is not as to the misdoings of physicians, but of surgeons who, from covetousness, restrained all persons who had skill in the application of external medicines, and so abused their privilege. So the 34th says, that any one may apply outward medicines, such as did not require the apothecary, as for the stone, strangury, &c., so that the 14th extends to the medicine compounded by the apothecary. Even if this be within the 14th, it is that branch of it which is within the 34th, and repeals it to this extent, by the words "any other statute to the contrary," &c.

Admit that 1 Mar. takes away the privilege given by 34 Hen. 8., it is a departure to introduce it in the replication, it should have appeared in the count.

The information is otherwise insufficient, and does not lie in this court; for the letters patent give a forfeiture of *5l.* per month for practising without licence, and does not show where the action may be brought to recover it, nor the court where the suit shall be; therefore he may sue in any court. 6 Eliz. Dy. 36. Gregorie's case, 6 Rep. If it say in any court of record, then the courts of Westminster are intended; but if it leave it at large, then he may sue in any court. The same distinction is noticed in Kelloway, 3 Hen. 8. If he may sue in any court, he may sue before the justices of oyer

and terminer, or justices of assize. The statute 21 Jac. 1. c.4. limits and confines all actions and informations on penal statutes which, before that statute, might have been brought before justices of assize of oyer and terminer, &c. to be afterwards brought within the proper county. Had the offence been committed in Middlesex, it is admitted that the action might have been brought in the courts of Westminster.

It was argued for the plaintiff:—

That the information never was, nor could be, before the justices of oyer and terminer; for, although the words do not limit it to Westminster, it is in effect limited by a moiety of the forfeiture being assigned to the king; and it therefore ought to be brought where the attorney-general may most conveniently attend. And this is not a popular action, but given to the college alone, and is a debt to them for which they may sue by original. And the statute is confined to popular actions on penal statutes.

Admitting the replication a departure, the plea is insufficient, and, the declaration being good, the plaintiff is entitled to judgment. The defendant pleads 34 Hen. 8. to enable him to practise; and in the practice which he shows he has exceeded the licence of the statute by his own confession, and shows a practice within 14 Hen.8. The words of 34 Hen.8. are, "That he may minister to any outward sore or swelling, or any the like, &c. and that he may give drinks for the stone, strangury, and ague." The defendant shows that he had experience in herbs, and that he administered ointments, plasters, poultices, and potions, for sores, maladies, the stone, strangury, fevers, and the like. By the 34th, potions are restrained to three cases. But he admits that he has given them not only in these three, but in other cases, and that the party was afflicted with outward sores. Stone, strangury, and ague were common known diseases, but other sores, though outward, may have arisen from internal diseases, more dangerous than those with which he was permitted to meddle. He ought to have pleaded otherwise than thus; for he says diseases, fevers, and such like, and the words *such like* ought to refer to outward sores, and not to other diseases; and he shows that he gave *potiones*, which ought to have been with an *Anglice* drinks, as the statute does not allow potions. So the word is agues, and he says fevers: there is a great difference

between agues and fevers: ague may have intermission, fever not; and fever may so reduce a man, that it is not for such as the defendant to administer medicine to him. He ought to have said *febribus, Anglice* agues. Therefore, the declaration being good, the plea insufficient, and the replication merely idle, and not affecting the declaration, the plaintiff ought to have judgment.

It is said, that 34 Hen. 8. does not interfere with 14 Hen. 8., and true it is that it interferes only with surgery, for it recites the mischief arising from the covetousness of surgeons; and it thence appears, that it was not the meaning of the statute to take any thing from the physicians. But the preamble of the 34th interferes with the 14 Hen. 8., which was one reason for passing 1 Mar.; for, if Mr. Butler be to be credited, it gives licence to any one skilful in herbs to administer potions. Outward applications appertain to surgery, but the giving of potions pertains to physicians, for potions are clearly physic; and then the 34th takes away that which was given to the college by the 14th, and if it be permitted them to give potions for the stone, &c. all the abuses before provided against will be restored: for this reason, 1 Mar. was made to repeal so much of 34 Hen. 8. as interfered with 14 Hen. 8. The effect of the 1 Mar. is, first, to confirm 14 Hen. 8.; and, secondly, to give the college further privilege: and there is no statute which impeaches the 14th except the 34th, therefore the 34th is so far repealed by the words in 1 Mar., any statute to the contrary notwithstanding.

There is no departure, for the replication corroborates the count. The declaration relies on 14 Hen. 8., which is sufficient until 34 Hen. 8., is pleaded, and then the replying of 1 Mar. does away with the effect of the plea. The same question of departure was debated by the judges in Laughton against Gardiner, and held not a departure.

It was again argued for the defendant: —

That the statutes 14 Hen. 8., 34 Hen. 8., and 1 Mar. were not contradictory, and might stand together: that where the 14 Hen. 8. uses the words *facultatis medicinæ*, it must be taken to include surgery: that the word *medicina* in 3 Hen. 8. c. 11. includes external as well as internal remedies: that 14 Hen. 8. does not repeal 3 Hen. 8. in express words, and, although contrary in meaning to it, both may stand by one

S. C. Ib. 212, 215.

construction; that is, the former requiring the licence of the bishop, &c., and the other of the college, by holding that persons practising must have a licence from each. But the meaning of 34 Hen. 8. is different; there it is taken that surgery is not within 14 Hen. 8., and it is confined to external applications. Then comes 1 Mar., which does not purport a repeal of 34 Hen. 8., and to restore licences; it was made to give the college a greater privilege than they had by 14 Hen. 8., that is, to commit without bail or mainprize. It recites the 14th, and confirms it, but does not intend to repeal the 34th. It confirms their liberties, such as were in force, and the 34th is an exposition of the 14th; and when 1 Mar. confirms the 14th, and all articles, clauses, &c, it ought to be intended all clauses in force.

As to the exception to the plea:—The plea is good in substance; though he might have pleaded not guilty, yet he might plead the special matter; and he concludes *absque hoc* he is guilty otherwise, or in other manner. He has not justified more than the statute warrants, for by that he may minister drinks, and that can be only translated into Latin by *potiones*. Secondly, the word in the statute is agues, and he justifies *febribus;* and though *febris* comprehends both, yet, as there is no other particular word which signifies ague, it is good.

Thirdly, as to the laying of the information, it is within the letter and meaning of 21 Jac. 1. It has been objected, that the words in the statute are all actions which a common informer might bring: although the words seem to import this, there are subsequent words which explain it, "by any person whatsoever." Therefore this is within the meaning, for it is in ease of the subject; and all physicians in England ought to be examined and approved by the college in London.

For the plaintiffs it was again argued:—

That 1 Mary had altered 34 Hen. 8. in part. We go only on part, so that 14 Hen. 8. is in force, as at first, in every branch of it, notwithstanding 34 Hen. 8.; for 1 Mar. restores it. What 14 Hen. 8. relates to is medicine, not in its general acceptation, so as to include surgery, but as to all that is peculiar to physicians. Although 34 Hen. 8. allows men to give medicines, it is at their peril; for if a man die under

their hands, it is as at common law; and 1 Mar. restores all of 14 Hen. 8. which 34 Hen. 8. had repealed.

As to the departure, Laughton's case is on the same point, as is also the case of the College of Physicians against Eliheus Cornelius.

The plea is bad, for it exceeds the licence of 34 Hen. 8. The plaintiffs are not within 21 Jac. 1., for they are not a common informer, but the only subjects entitled to bring the action. And 21 Jac. 1. is to be construed strictly, for it goes to take away the jurisdiction of the superior courts.

It was a third time argued for the defendant, That 3 H. 8., which licenses physic, comprehends all physic; whence it is to be inferred that 14 H. 8. and the charter did not comprehend surgery. By the charter and statute all the physicians are constituted a body politic; and if that extended to surgery, then all the surgeons in London would be of the corporation of physicians, which they are not, but a distinct company, and out of their jurisdiction and government; and surgeons cannot be punished for their practice, although without licence. That statute and patent extend only to the learned part of physic: for the science of physic is a learned art; and therefore the statute was made to restrain unlearned men, as there is more learning necessary for judging rightly of a disease, than in curing it. At times, there are several diseases in the constitution at once; and what may cure the one, might aggravate the other: for which reason, the knowledge of physic is displayed in applying such remedy as may cure both at the same time; but for the practice of surgery, the knowledge of the nature of herbs, &c. is sufficient. This, it may be said, is granted as to outward diseases. But I am sure, that as to the stone, strangury, and ague, no great skill is necessary to discover them; and then the cure depends more on experience and practice, than on learning. I have heard of a physician who travelled upwards of one hundred miles to learn a remedy for these diseases, from an old woman who had much experience in them! And drinks for agues, strangury, &c. is surgery, and not physic in its proper signification. In 3 H. 8. physic and surgery are spoken of together; but, in licensing to practise, the bishop is to call physicians to allow physicians, and surgeons to allow surgeons. Then 34 H. 8. proves, that all the defendant has

S. C. Ib. 246—252.

done is surgical: it recites 3 H. 8., and then says, "The company of surgeons, &c. have troubled," &c. — there is nothing said of physicians. If, then, the surgeons did so, this college could not restrain or correct them who so practised. Another part of 14 H. 8. is, that none shall be suffered to practise but those who are professed, sage, discreet, and learned. It may be said, that under colour of ministering their drinks in agues, &c. they may minister to other diseases. Also I confess, that ague is attendant upon certain great diseases, and for such agues they may not give drinks; but for simple agues, which do not accompany other diseases, they may; and on such is our justification: and if he ministered to others, a fair issue tendered, which may be tried. Stone, strangury, and ague were never within 14 Hen. 8.; but of 34 Hen. 8. preamble, body, and all the words of the statute are against surgeons. And even if it be doubtful whether 14 Hen. 8. extends to agues and strangury, the statute 34 Hen. 8. expounds it. It cannot be denied, that surgeons may cut for the stone; and that if ague, &c. exhibit ulcers, they may cure them. For the same reason, they may cure these diseases internally, if they can.

In the first place, 14 Hen. 8. is a private statute, and private statutes go not beyond their words; but general statutes, which are for the benefit of the commonwealth, shall be construed liberally and equitably. The 14 Hen. 8. is made for the benefit of the physicians, that none may practise but themselves, and is a private statute; and therefore to be construed strictly, as appears by Dr. Bonham's case. These drinks for the stone and agues are only distilled waters, or beer mingled with herbs, which any one may use in his house, according to receipts, and therefore not within 14 Hen. 8.; and if a gentleman had such receipts, and used them to cure diseases, would he be within the statute?

Secondly. Admitting these diseases within 14 Hen. 8., still 34 Hen. 8. clearly takes them out of 14 Hen. 8.; and it remains in force as to the rest only.

Thirdly. The statute of 1 Mar., which recites 14 Hen. 8., has the word *continuare* alone, which implies a confirmation of the existing, and not a grant of new privileges; and the object of this statute was to punish the jailors for permit-

ting an escape; for which they were not punishable under the former statutes.

The statute 1 Mar. cannot repeal 34 Hen. 8., for there are not express words; and 1 Mar., being a private act, cannot without express words repeal 34 Hen. 8., which is a public act.

The replication is bad on the special demurrer; for it avoids, but without confession.

There is a departure; for 14 Hen. 8. remains in force as to all diseases, except the stone, strangury, and agues, and as to these the action lies on 1 Mar. alone, and therefore it ought to have been set out at first.

Again, it was argued for the plaintiff, that the action was well brought in the name of the president alone, and so are the precedents.

By the common law, before 3 Hen. 8. any one might have followed any lawful trade; but there is a distinction between the practice of physic and mechanical trades. In mechanic trades, if one undertake a thing and do not perform it duly, an action on the case lies; but it is otherwise in the practice of physic, for the injury precludes the remedy, *i.e.* the death of the patient by the unskilfulness of the physician. On this account was 3 Hen. 8. passed, which did not sufficiently redress the grievance, because the allowance or disallowance of physicians was referred to incompetent judges; for the bishop could not judge of the skill of the physician. Another inconvenience was, that the penalty was given to any who would sue, therefore no one was particularly interested. Then came 14 Hen. 8., which does not extend to all who give physic, but to all who profess the practice of it. It has been said that 14 Hen. 8. does not extend to restrain the practice in these diseases, but they admit that they are within the letter of the statute, though not within the meaning; but by the common law they are taken to be within physic. The common law recognises the physician and the surgeon; but the empiric is unknown to it. Veiel Entries, fol. 187. A physician may maintain debt for his fees; so without doubt may a surgeon: but is there any precedent of an action by an empiric or herbalist? — Assumpsit he may have, but not debt. The knowledge of herbs, and also of waters, pertains to physicians; for who can judge of baths, but physicians? — and that appertains

to the practice of physic. Veiel Entries, fol. 463. pl. 3. Action against one for practising medicine: and it was necessary to show in what the practice consisted; *scil.*, *tam per visus, &c. quam interiores potiones.* And there is another action there, that one who practised as a surgeon practised as a physician: that whereas the plaintiff was ill of the colic, the defendant, *ut medicus sed indoctus et cupidus lucri*, told the plaintiff that he was troubled with three impostumations, and administered to him *medicinam insalubrem et intoxitatam*, whereby the plaintiff's life was endangered: and in the same book, fol. 463. pl. 1. it is shown what the surgeon ought to do. Entries, fol. 127. and Appeal of Maiham, 46. pl. 5. Register tresp. fol. 139. The statute 32 Hen. 8. shows that, in the opinion of parliament, surgery was a branch of physic; and there were two kinds of surgeons: barber-surgeons, who were incorporated by 1 Ed. 4., and surgeons only. Admit that, contrary to the words, the statute is to be construed equitably, how far shall this equity go? take it that it extends to surgeons, yet it can never extend to empirics.

Statute 34 Hen. 8. does not restrain 14 Hen. 8.; it deals only with the mischief mentioned in 32 Hen. 8.; and it was evidently not the intention of 34 Hen. 8. to raise a new profession, but to tolerate the old. For the statute runs:— "Whereas many give medicines without charge, that is, for charity and neighbourhood," and the purview is general that such, &c. And the distinction is, if any be inclined to administer medicines to his family or his friend, he is not within the statute; but if he make profession, and set up a bill that he can cure such and such diseases, it is otherwise. Pl. Com. 463. Even if 34 Hen. 8. affected 14 Hen. 8. it is in so much repealed; for 1 Mar. notices 14 Hen. 8. and provides that *staret et continuaret*, &c. any act, statute, &c. to the contrary; and what statute is there to the contrary except 34 Hen. 8.?

As to the omission of the word *staret, continuaret* removes the impediment 34 Hen. 8., as well as it confirms the former statute; and though 1 Mar. is a private statute, it is sufficient the substance being pleaded. The plea in law is bad, for it is a justification under the statute which gives the justification in this manner, "that he," &c., and justifies generally the application of plasters and the giving

of potions for the sore ague, stone, strangury, &c.; and does not say "secundum formam statuti," and therefore shall not be construed "reddendo singula singulis." Nor does he add, that the practice is the same, as in the declaration. (There were other technical objections, not peculiarly applicable to this case.)

S. C. Ib. 349—352.

Richardson C. J., for himself and his brethren, said,—I will recapitulate the principal points of this case, which are these: — The plaintiffs declare, that the charter granted to the college commands, "that none shall practise physic, &c. without licence," &c.; and that the defendant, contrary to that, had practised physic for the space of twelve months, whereby he had forfeited 5*l.* for every month, which amounts to 60*l.* The defendant pleads the statute 34 Hen. 8., which makes it lawful for any one skilful, &c. to administer outward plasters, &c. or potions, &c. and as to other practice, not guilty. The plaintiffs reply, and show the statute 1 Mar., which confirms their first charter, any act to the contrary notwithstanding; whereupon the defendant demurs in law. Our joint resolution is, that the plaintiffs must recover.

It has been objected to the jurisdiction of this court, that by statute 21 Jac. the action ought not to be brought here; but it is clear that it can be brought in no other place, but only in the king's courts of record at Westminster: for the statute does not mention in what court it shall be brought, and the statute 21 Jac., which gives power to the justices, gives them power in no case in which they had not power and jurisdiction before; and they previously had no jurisdiction in this case.

It was further objected, that the action was not well brought, being brought in the name of the president alone. To which I answer, that the charter itself runs, "that they may plead and be impleaded in the name of the president alone; and the action shall be brought by that name by which the king enables them to bring their action, and to plead and be impleaded, as 11 Hen. vii. 27, 28.;" — so that in this case the action is good, well grounded, and in the proper name. And as to the plea in bar, it is insufficient, in as much as it is not pleaded according to the statute, for the plea ought to have been in conformity with the statute. The power given by the statute is, to minister to outward

sores or diseases any ointments, plasters, &c. and other like, and this ought to proceed "according to the skill and knowledge." And here the defendant says, that he had knowledge in the nature of herbs, roots, and waters, &c. and did apply ointments, potions, &c. for the stone, &c. and such other diseases, and he ought to have said, according to his knowledge in those diseases, and not in other like. The administering ought to have been to outward tumours, &c.: here outward is omitted, and he has pleaded generally, so that his plea goes to the whole, and is therefore misconceived. Whereas potions are to be applied in the stone, strangury, and agues, the defendant has pleaded *potiones pro ulceribus, morbis, &c. et talibus consimilibus*, which is more than the statute allows; therefore the plea is ill. It is a rule, that the plea must be issuable, which this is not, as it is pleaded; for the defendant here ought to have divided his plea, and to have justified in part, as in applying outward plasters, &c. to outward diseases, and potions in stone, strangury, and ague.

It has been objected, that the replication is a departure. When any new matter is pleaded it is a departure, but here is none; for the replication supports the declaration by the statute 1 Mar., which could not have been alleged in the declaration. There was no reason to show 1 Mar. until 14 Hen. 8. had been put in question.

As to the matter of law, — which is, How far 34 Hen. 8. gives licence against 14 Hen. 8., to what persons, and in respect of what things? — on consideration of all the law on 34 Hen. 8. we are of opinion, that this statute does not extend, either in words or intent and meaning, to give liberty to any person to practise or exercise for gain or profit: it is evident from the preamble, and also the statute, that it was directed principally against surgeons who were covetous, &c. And therefore the statute has limited who shall practise, and for what diseases; and the parties licensed are such persons as shall be good honest people, as old women, and such as are inclined to give their neighbours physic through charity and piety, and not those who expect gain from it, as empirics, who do nothing in piety and charity; so that this statute excludes all who take any money or gain. And if such were the construction of it, this statute provided against surgeons would in truth help them, for

it would give them liberty to administer pills and potions, as well as to apply outward medicines to outward diseases. Surgery is only that which is to be performed by the hand, &c. And moreover we are of opinion, that if the statute of 34 Hen. 8. had abridged 14 Hen. 8., that of 1 Mar. would have settled all on the same footing, and in as great extent as it was before; for it concludes, "any act to the contrary notwithstanding," and was enacted to suppress unskilful men. This statute, 34 Hen. 8., and *Laughton* v. *Gardner* are express on this point, although in that the plea was better than in this, and, after it had been pending three years, judgment was given against the defendant; therefore let judgment be entered for the plaintiff.

PRESIDENT AND COLLEGE OF PHYSICIANS

v. ———

2 Show. 166. M. T. 33 Car. 2.

Debt on the statute 14 Hen. 8. c. 5. for 5*l.* a month. Plea, *nil debet*. On the trial at Guildhall,

Pemberton C. J. allowed the printed statute book as evidence of their charter and statutes, without any exemplification or sworn copy of either, and said he would intend them right, unless they showed a variance between that and the original in parliament.

Secondly. It was excepted, that a copy of the statute was produced by the defendant, and sworn to be a true copy, taken out of the Rolls' Chapel, and there was no "Le roi veut" in it; and it was alleged that Cardinal Wolsey had received a great sum of money to foist it in among others. But my lord disallowed the exception, saying there were several forms of statutes in ages past, and that as this had been allowed an act of parliament so often, and in so many cases, he would not dispute it now.

Thirdly. They took exception that the president only should bring the action; but the Chief Justice said that had been overruled frequently.

Fourthly. It was urged, that the practising was in Westminster, and the action laid in London; and by the statute 21 Jac. 1. c. 4., which lays popular actions in their proper

county, it is said, that if it appear upon the evidence to be committed in another county than where brought, the defendant shall be found not guilty. A question was then first made, Whether this action of debt be within the statute? As to the last point, a special verdict was found.

A question was also made, if that the offence be committed one year before the action brought.

COLLEGE OF PHYSICIANS *v.* BASSET.

12 Mod. 10.

In an action for practising physic without licence, the declaration laid it to be "at Westminster in Com. Midd.," but not that it was within seven miles of London; and therefore bad.

THE COLLEGE OF PHYSICIANS *v.* BUSH.

4 Mod. 47.
T.T. 3W.& M.

They brought an action of debt upon the statute of 14 Hen. 8. c. 5., which prohibits the practice of physic within London, or seven miles thereof, under the penalty of 5*l.* for every month, except the party is approved under the seal of the college: and for practising physic in Westminster for so many months, this action was brought.

The defendant pleaded letters patent of King Charles the Second, by which free liberty is given to French Protestants to exercise the faculty of physic in London and Westminster, &c.; and that he was a French Protestant, &c.

Upon a demurrer, the plea was held ill.

But then an exception was taken to the declaration, which sets forth that the defendant practised physic in Westminster, and does not say that it was within seven miles of London.

For which reason the defendant had judgment.

THE PRESIDENT AND COLLEGE OF PHYSICIANS *v.* TALBOIS.

1 Ld. Ray. 158. H. T. 8 & 9 W. 3.

THE plaintiffs brought an action against the defendant *tam quam*, for practising without licence, &c.; and Darnell S. took exception that the action was misconceived, for it should have been sued singly in the name of the president, according to Cro. Jac. 121. 159. Cro. Car. 186. (*Ante*, p. xcvii. xcviii.) But, *per curiam*, the precedents have been the one way and the other; and this seems to be the better method; for, being a corporation, it is natural for them to sue by their name of creation.

THE PRESIDENT AND COLLEGE OF PHYSICIANS *v.* SALMON.

1 Ld. Ray. 680—683. T. T. 13 W. 3.

THE plaintiffs, by the name of the president and college, or commonalty, &c., brought an action of debt against the defendant for 5*l.* per month, for having practised physic without licence. Upon demurrer to the declaration, it was argued for the defendant,

1. That the action ought to have been brought in the name of the president alone, or of the college alone, the words of the charter being, "quod ipsi per nomina præsidentis collegii seu communitatis," &c.; *nomina* in the plural number, and not *nomen*; showing that they are two distinct names. Besides that, the president and college are distinct; for by 32 Hen. 8. c. 40., the president of the college, &c. sheweth, &c. 1 Mar. ses. 2. c. 9. enacts, that when the president of the college, &c. shall search, &c. The charter of Elizabeth, which gives power to have a body and to anatomise, grants to the president *collegii sive communitatis*; whereas, if they had been incorporate with him, it ought to have been *collegio*.

For the plaintiffs it was argued, that they being incorporated by the name of the president and college, or commonalty, and having capacity given them to purchase by the

said name, in consequence it gives them power to be sued and to sue by the said name; for when a corporation is created with ability to purchase, they shall have ability to sue as incident. 10 Co. 30. b. 1 Rol. Abr. 513. Then the subsequent clause which follows, &c. is not restrictive, but only additional, and will not take away the right to sue by the name of the corporation. 11 Hen. 7. 28. Fitz. brief 485. 5 Ed. 4. 20. 16 Hen. 7. 1. 29 Hen. 6. 4. 44 Ed. 3. 6. b. 13 Hen. 7. 14. The action may be brought by the president alone, or by him and the college or commonalty, as here; but there is no precedent of an action brought by the college.

The whole Court held the action well brought here.

Holt C. J. If it had been a new case, I should have been of opinion that the action could not be brought in the name of the president only, but, by the reason of the law, they all ought to join, because they are made a body aggregate of a president and commonalty, and have power to purchase; and it is proper for them to bring actions in the name of the head and body, especially the penalty here being given to the president and college: but it has obtained to bring it in the name of the president alone. Cro. Car. 256. But the manner here is most proper. And the resolutions in Cro. &c. are founded upon a mistake, for the word *nomina* in the said clause means only that they are several words, though, as a name of corporation, they are but one; and the word *et* is omitted, which is in the name of the corporation. Coke says, in Sutton's hospital case, 10 Co. 29. b., that a corporation must have a name; which is true: but that ought to be understood either by patent of incorporation, or arising from the nature of the thing; as if the king should incorporate the inhabitants of Dale, and give them power to elect a mayor: though no name of corporation be mentioned in the patent, yet their name ought to be mayor and commonalty, or mayor and burgesses. The corporation of the town of Norwich have been, ever since the time of Henry the Fourth, known by the name of the mayor, sheriffs, and commonalty; the patent having destroyed the four bailiffs that they had before, and erected this new corporation of mayor and sheriffs: and yet no such name is given them by the said charter.

2. Exception. That it is said in the declaration, that the defendant, by the space of so many months *ante exhibitionem billæ*, *sci.* the 23d of August, practised physic, &c.; which was impossible: but it ought to have been from the 23d, &c. To which it was answered and agreed by the Court, that the words 23d August coming in after a *scilicet*, if they were repugnant to that which went before, should be rejected; and then the declaration would be good for so many months before the exhibiting of the bill.

3. Exception. That the declaration was ill, because it said that the defendant "exercuit et adhuc exercet," which is too general; for it ought to have specified in what he exercised physic, to the end that the Court might judge whether he exercised physic or not. Farther, that 34 & 35 Hen. 8. c. 8. gives power to particular persons, as persons having knowledge of the nature of herbs, to practise some sorts of physic, *sci.* to administer drinks for the stone, &c., without incurring any penalty: and perhaps the defendant practised within the said act; and then he will be exempt from any penalty of 5*l.* per month. Besides that, the jury cannot be proper judges of what is practising physic, nor can the defendant know what defence to make to a charge so general: and in Rast. Ent. 426. it is shown in what, &c. To which it was answered for the plaintiffs, and agreed by the Court, that the offence made such by the act is the exercising physic, and it is sufficient to lay it in the words of the act; as in an indictment upon 5 Eliz. c. 4., it is sufficient to say that the defendant *exercuit* such a trade, without showing what particular act he did. And the generality of the charge is no inconvenience to the defendant, because the proof is incumbent upon the plaintiffs; and if there is any thing contained in another act for the benefit of the defendant, he ought to plead it; or he may give it in evidence, upon *nil debet* pleaded.

4. Exception. That debt will not lie, it not being given by the statute, but an information at the suit of the king. Debt is given by 25 Car. 2. c. 2. for the penalties for not having taken the oaths, and usually in all penal statutes. To which it was answered, that when a certain penalty is given by a statute, the person to whom, &c. shall have debt by construction of law; and the case upon 2 & 3 Ed. 6. c. 13. of tithes is a stronger case, the treble value sounding in 1 Rol. Ab. 598.

damages, and not being given in certain to any person by the words of the statute: and the case in Cro. Car. 256. is as the present case is. Which was agreed by the Court. But Holt C. J. said, that the case of debt for tithes upon the statute of Ed. 6. was at first a strain, because it gave an action of debt; whereas the statute gave but treble damages: but the party should rather have had an action upon the statute.

5. Exception. That the action was brought H. 5 W. & M., the entry Mich. 8., two years after the death of the queen; and the memorandum was, that they prosecute for the king and the late queen. Holt C. J. It is no part of the declaration, and may be amended.

6. Exception. This action ought not to be brought *tam quam*, no action being given to the king. *Per curiam.* The precedents are the one way and the other.

7. Exception. The charter confirmed by the act is, that no person shall practise, &c. without licence under the seal of the president *or* * college; and the averment is, that he had no licence under the seal of the president *and* college; which is a variance: but held well enough.

Judgment for the plaintiff *nisi*, &c.

S.C. Salk. 451.

Upon demurrer to the declaration, this exception, among others, was taken: that the action ought to be brought in the name of the college only, or of the president only, the words of the patent being, "quod ipsi per nomina præsidentis collegii seu communitatis facultatis medicinæ," London, shall sue and be sued. To this it was answered, that they are incorporated by the name of president and college, and have, in consequence of that, a power to sue and be sued by that name: and this power is not taken away by the additional affirmative power which is further given to them. And judgment was given for the plaintiff.

S.C. 3 Salk. 102. Rep. temp. Holt, 171.

In this case it was held by Holt C. J., that when my Lord Coke says a corporation must have a name, it must be understood either as expressed in the patent, or implied in the

* According to Ruffhead the word is "and."

nature of the thing; as if the king should incorporate the inhabitants of Dale, and give them power to choose a mayor: in this case, though there is no name of incorporation in the patent, yet it would be a good incorporation, and the name would be mayor and commonalty. So the city of Norwich was incorporated, by a grant of Henry the Fourth, by the name of mayor and sheriffs, and they are called mayor, sheriffs, and commonalty.

COLLEGE OF PHYSICIANS *v.* SALMON.

(*A former Action.*)

DEBT against the defendant for practising physic without licence; in which the plaintiffs declare by the name of the president of the college, *seu communitatis* of the faculty of physic in London, &c. The defendant craved oyer of the letters patent, whereby it appeared that they were incorporated by the name of the president, college, *sive communitas* of the faculty of physic in London, and were empowered to sue and be sued by the name of "præsidens collegii, sive communitatis facultatis medicinæ" in London; and then pleaded *misnomer* in abatement. S. C. 3 Salk. 237.

Per curiam. The plea is good: they may sue by their name of incorporation, which is president "collegium sive communitas" of the faculty of physic, &c.; or by the name given to them for that purpose, which is "præsidens collegii, sive communitatis," &c. But here they sue by neither of those names, but by the name of president of the college *seu communitas*, &c. So judgment was given *quod billa cassetur*.

Afterwards, T. 13 W. 3. B. R., another action was brought by the same plaintiff against the same defendant, and for the same cause; and this was brought in the name of president and college, or commonalty, which was the true name of the incorporation: and, upon demurrer, it was objected, that it ought to be brought in the name of president of the college, for by that name they have power to sue. Ib.

Per curiam. They may sue by the name of incorporation, or by the name of president only: but though, by their charter, they have power to sue by that name, yet, per

Holt C. J., it is better, as in this case, by the name of their incorporation.

S. C. 5 Mod. 327, 328.

By the statute 14 Hen. 8. c. 5. the charter by which the College of Physicians is incorporated is confirmed; which act made them a perpetual college in London, and seven miles compass thereof, with power to choose a president every year. It enables them to purchase lands, and to sue and be sued; and prohibits any to practise physic within that circuit, unless approved under the seal of the college, upon pain of *5l.*, to be divided between the king and the college.

An action of debt was brought upon this statute by the plaintiff, by the name of "præsidens et collegium seu communitas facultatis medicinæ, London," against the defendant, for practising physic without licence, "per quod actio accrevit domino regi et dom. reginæ, et eidem præsidenti, qui tam collegio et communitate," &c. Upon demurrer to the declaration, it was insisted, —

1. That the action was misconceived, for it ought to be brought by the president of the college of physicians only. So is Dr. Laughton's case (*ante*, p. xcvii.), who brought an action as president of the college of physicians in London, and of the corporation of physicians there; for the president and the college being incorporated, they ought to join in the action. It had been naught if the action had been brought in the name of the president alone, without the college.

To this it was answered, that it might be a question, whether this action had been good if it had been brought by the president alone; but it cannot be a question, whether it shall be good or not when brought by the corporation. In the case of the College of Physicians *v.* Bush (*ante*, p. cxii.) the action was brought in the name of "præsidens, collegium, seu communitas," and held naught. In Dr. Goodall's book, treating of this college, there are several precedents of actions brought by them in the same form as this is; and it must be the proper way to sue by the incorporate name.

Holt C. J. said, there was no judgment given in the case of the College *v.* Bush; but that this is the best way of declaring, since the penalty is given to the corporation.

2. The statute prohibits the practice of physic within seven miles of London, unless the person so practising be approved under the seal of the college, under the penalty of 5*l.*, to be divided between the king and the college. They allege that the defendant practised within that circuit, not being admitted under the common seal of "the president and commonalty," when the statute says, "it must be by the president and college *sive communitas;*" and, by the statute, the penalty is given to the king and college, which is not the same person.

To this exception it was answered, that the words "college and community" are *ejusdem significationis*, and therefore ought to be taken so in this case.

3. The conclusion is, "per quod actio accrevit domino regi, &c. et præsidenti qui tam, &c. collegio sive communitate," &c.; when it should have been brought by the informer, "qui tam pro domino rege quam pro seipso."

As to this exception, it was said, that this is of no force; for, in all informations upon penal statutes, the conclusion is, "per quod actio accrevit domino regi," and puts the king before the informer.

PHYSICIANS *v.* BUTLER. (*Vide ante*, p. c.)

Sir W. Jones, 261, 262. T. T. 8 Car. 1.

ACTION *qui tam* for 60*l.* in the name of the president. Declaration set out the charter 10 Hen. 8., stat. 14 Hen. 8., that the defendant, not being admitted, exercised the faculty in London for twelve months. Defendant pleaded 34 H. 8., as before stated. The plaintiff replied 1 Mary, on which defendant demurred, and for cause assigned, that the replication was a departure, on which judgment was given in the Common Pleas for the plaintiff: on that error was brought in the King's Bench. It was assigned for error, 1. that it was a departure; 2. that the writ was in the name of the king and the president, and the declaration in the name of the informer also. All the judges agreed to affirm the judgment. First, the writ and declaration are good; and although there are precedents, in which on a penal law the writ was to answer the informer *qui tam*, &c., yet

they thought that the better and more proper form of the writ was to answer the king and the informer, for the debt is given them in moieties; therefore it is not so proper to demand the whole for the informer, and for the king and the informer notwithstanding to have judgment for several moieties; accordingly Partridge *v.* Crocker; but when it is by way of information, then it shall be, that the informer who informs for the king and himself. Another exception was taken to the writ—that it was in the name of the president, and not of the college also; and that, on the contrary, in the end of the declaration it is, whence an action hath accrued to the aforesaid king and president to have 60*l.* from the defendant, one half for the king, and the other half for the president and college; but the Court held it good notwithstanding; for although the incorporation is at first by the name of president and college, it is afterwards by the charter given to the president; for there may be a corporation in one name to purchase lands, &c. and nevertheless to sue by another. 11 Ed. 1. A corporation was called the master, wardens, freres, and sœurs of Rounceville, and directed by the same patent to sue by the name of master and wardens of Rounceville. 2. Although the action is given by way of suit by the president alone, yet the recovery and money recovered shall be for the president and college; therefore the conclusion to have the money for the president and college is good enough. 3. It was resolved that the plea in bar was not good, for the liberty given is disjunctive, for outward medicaments to use plasters, ointment, bathes, &c., and potions for three diseases, namely, the stone, strangury, and agues alone; and the plea jumbles all together, that he ministered ointments and potions to all the said maladies, which he cannot do, for he can administer potions only to three diseases, and no other. 4. It was resolved not to be a departure, for the replication was following upon and corroborating the declaration. But on the main point they said nothing; that is, whether 1 Mary took away the operation of 34 Hen. 8., for they gave judgment that the plea was bad. Crooke alone said to this point, that it seemed to him that the statute 34 Hen. 8. was not repealed or vacated by 1 Mary.

S. C.—BUTLER *v.* THE PRESIDENT OF THE COLLEGE OF PHYSICIANS.

Cro. Car. 256. 228. B. R. E. T. 7 C. 1.

ERROR of a judgment on a demurrer in the Common Bench. The first error assigned was, because the record was, "ad respondendum domino regi et præsidenti collegii, &c. Qui tam pro domino rege quam pro seipso sequitur quod reddat eis sexaginta libras, unde idem præsidens, qui tam, &c. dicit, &c:" whereas the action ought to have been brought by the president only, *qui tam*, &c., and not by the king and president, &c. *Sed non allocatur.* For, being an original writ, the writ is most often so, and sometimes the other way, and they conceived it good both ways. But informations are always, that the party *qui tam* for the king, *quam pro seipso sequitur*, &c. The second error was, that the replication was a departure from the count; for the count sets forth that king Henry the 8th, "anno decimo regni sui incorporavit (& per le statut of 14 Henrici 8. confirmavit)" the College of Physicians by the name of the president, &c.; that no man should practise physic in London, or within seven miles, without licence under the seal of the college, upon the penalty of 5*l.* for every month that he so practised; the one moiety unto the king, the other unto the president of the college, to the use of the said college. And for that the defendant not being allowed, &c. had practised physic for twelve months in London, the said action was brought, &c. The defendant pleads the statute of 34 Hen. 8. c. 8., That every one who hath science and experience of the nature of herbs, roots, and waters, or of the operation of the same by speculation or practice, may minister or apply in and to any outward sore, uncome, wound, aposthumations, outward swelling, or disease any herb, ointments, baths, pultess, or implaisters, according to their cunning, experience, and knowledge, &c., or drink for the stone and strangury in any part of the realm, without suit, vexation, &c., any act or statute to the contrary notwithstanding. And that he, having skill in the nature of herbs, roots, and waters by speculation and practice, applied to persons requiring his skill herbs, ointments, baths, drinks, &c. to their sores, uncomes, wounds, and for the stone and strangury or agues, and to all

other diseases in the said statute mentioned, " prout ei bene licuit. Et quoad aliquam aliam practisationem seu facultatem medicinæ aliter vel alio modo quod non est culpabilis. Et de hoc ponit, &c." And makes his averment, " Et hoc paratus est verificare." The plaintiff replies, and shows the statute of the 1st Mar. c. 9., which confirms the charter of 10 Hen. 8. and the statue of 14 Hen. 8., and appoints that it shall be in force, notwithstanding any statute or ordinance to the contrary. And upon this it was demurred, because it is a departure; for it entitles him by another act, viz. the 1st Mar. c. 9., which is not mentioned in the count, and therefore was assigned for error. But all the Court here conceived that it is no departure; because it fortifies the count, and so as to revive the statute of 14 Hen. 8. if it were repealed in this particular by the statute of 34 Hen. 8. c. 8. And for that was shown to the Court Mich. 42 and 43 Eliz. rot. 397., where the president of the College of All Souls brings an action upon the case for taking toll, and shows a charter of 26 Hen. 6. to be discharged of toll. The defendant pleaded the act of resumption of liberties granted by Henry 6th, and so the liberty gone. The plaintiff pleaded a reviver of them by the statute of 4 Hen. 7. And it was held to be no departure, but as it were a confession and avoiding. The third and principal error assigned was, if the statute of 34 Hen. 8. c. 8. be not repealed by the statute of 1 Mar., and if not, whether the defendant hath made a sufficient justification? And *quoad* that whether the said statute be repealed, the Court was not resolved. But Richardson C. J. conceived it was repealed by 1 Mar. c. 9. by the general words any act or statute to the contrary of the act of 14 Hen. 8. notwithstanding. But I conceived that the act of 34 Hen. 8. c. 8. not mentioning the statute of 14 Hen. 8. was for physicians, but the part of the act of 34 Hen. 8. c. 8. was concerning chirurgions and their applying outward medicines to outward sores and diseases, and drinks only for the stone, strangury, and ague. That statute was never intended to be taken away by the act of 1 Mar. c. 9. But to this point Jones and Whitlock would not deliver their opinions. But, admitting the statute of 34 Hen. 8. be in force, yet they all resolved the defendant's plea was naught, and not warranted by the statute; for he pleads that he applied and ministered medicines, plasters, drinks, " ulceribus morbis et maladiis, calculo, strangurio,

febribus, et aliis in statuto mentionatis." So he leaves out the principal word in the statute, *externis;* and doth not refer and show that he ministered potions for the stone, strangury, or ague, as the statute appoints to these three diseases only, and to no other. And by his plea his potions may be ministered to any other sickness; wherefore they all held his plea was nought for this cause, and that judgment was well given against him. Whereupon judgment was affirmed.

THE PRESIDENT AND COLLEGE OF PHYSICIANS *v.* HUYBERT.

Goodall, 261—267.
H. T. 27 & 28 Car. 2.

The record is set forth, which it is unnecessary to introduce or abridge, as no question arose upon it.

This was an action *tam quam* upon the charter and statute for the penalty of 5*l.* per month for twenty months. The defendant pleaded *nul tiel* record as to the statute, whereupon the plaintiff joined issue.

Ib. 267—273.

The tenor of the statute was certified to the King's Bench by mittimus from the Chancery.

For the defendant it was objected: —

1. That search had been made among the records of parliament, and it doth not appear there that the royal assent was to this act, and therefore there is not, in truth or in law, any such act of parliament. For when statutes are enrolled, the royal assent ought to be entered upon the roll also.

2. The issue here is, whether there be such a record or not, and this is to be tried by the record itself; for all records are of that high nature, that they can be tried only by themselves. Now here the tenor of the record only is certified, and not the record itself; and therefore the issue is not sufficiently proved by the plaintiffs. In Page's case, 5 Rep., it is resolved, that the tenor of a record is not pleadable at common law; that it is not sufficient at common law to show forth to the Court the tenor of letters patent; but the letters patent themselves must be produced to the Court. It is the record itself only that is pleadable, and not

the tenor thereof; and, by consequence, it is the record itself that must be certified here, to prove this issue of *nul tiel* record, and a certificate of the tenor only is not sufficient.

Hales C. J. If the first objection be allowed, it would endanger not only this, but many acts of parliament which have never yet been questioned. For there are many on the rolls whereof the royal assent doth not appear, especially ancient acts, and yet they have been ever received as good acts of parliament. For the method of proceeding in the making of acts of parliament was anciently different from that which is now used. Formerly a bill, in the nature of a petition, was delivered to the Commons, and by the Commons to the Lords, and then was entered upon the Lord's rolls, and there the royal assent was entered also. And upon this, as a ground-work, the judges used, at the end of the parliament, to draw up the act of the parliament into the form of a statute, which afterwards was entered upon the rolls called the statute rolls, which were different from those called the lord's rolls, or the rolls of parliament. Upon the statute rolls neither the bill or petition from the Commons, nor the answer of the Lords, nor the royal assent, was entered, but only the statute as it was drawn up and penned by the judges. This was the method till about Hen. 5. time, when it was desired that the acts of parliament might be drawn up and penned by the judges before the end of the parliament. And this was by reason of a complaint then made, that the statutes were not fairly and equally drawn up and worded after the parliament was dissolved or prorogued. In Hen. 6. time the former method was altered, and then bills containing the form of the act of parliament were first used to be brought into the house. These bills were, before they were brought into the house, ready drawn in the form of an act of parliament, and not in the form of a petition, as before; upon which bills it was written by the Commons, "*Soit baile al seigneurs*," and by the Lords, "*Soit baile al roy*," and by the king "*Le roy le voet*." All this was written upon the bill, and the bill, thus indorsed, was to remain with the clerk of the parliament, and he was to enter the bill thus drawn at first in the form of an act of parliament or statute upon the statute rolls, without entering of the answer of the King, Lords, and Commons upon the statute roll; and then issued out writs to the sheriffs, with transcripts

of the statute rolls, viz. of the bill drawn at first in the form of a statute, and without the answer of the King, Lords, and Commons to the bill, to proclaim the statutes.

Now this record which is before us in Court upon the mittimus is not a transcript of the bill upon which the answer of the King, Lords, and Commons was written; but it is a transcript of the entry which was made upon the statute roll, upon which roll it is not necessary that the royal assent must be entered. And though oftentimes the royal assent hath been entered by the clerk upon the statute rolls, yet it is not necessary that it should be there to make a good statute, it having been before upon the bill. There be many statutes, which have not the royal assent to them, entered upon the statute rolls. This objection would destroy half the acts of parliament that be. If in the body of the statute itself the consent of the King, Lords, and Commons doth not appear, it is void, and *felo de se*. As in the case 4 Hen. 7. fol. 18. which is cited in Hob. 111, Rex *v.* Lord Hunsdon, and the Countess of Arundel and Lord W. Howard, upon an act of attainder of a particular person, the consent of the Commons did not appear in it, and therefore, saith the book, all the judges held clearly that it was no act, and therefore he was restored. And yet it doth not hold true generally, that in the body of the act the three assents must particularly appear, especially in cases of ancient statutes. The reason is, because the forms of drawing up and wording ancient statutes were very various; Prince's case, 8 Co. King Edward 3., *auctoritate parliamenti*, grants, by an instrument in form of a charter, yet it is there held that it was a statute.

This very act of 14 Hen. 8. hath always been taken to be a good act. (Bonham's case, *ante*, p. lxxx. Butler's case, *ante*, p. c. cxix.)

The Court is bound to give judgment upon the record certified to it, and by that it appears, that it is a good act of parliament; for in the certificate the three assents of the King, Lords, and Commons are contained in the body of the act. There are other statutes of the same sessions (14 Hen. 8.) as this statute, without the royal assent upon the roll of the statutes; as the act about the marrying of the six clerks, c. 8., and the act of the port of Southampton, c. 13., and others of the same sessions; and they have never been

questioned. And in truth the royal assent was at the end of the bills of that sessions.

If the defendant thinks that the certificate here is false, it being of an act of parliament, whereas he thinks there is no such act, the party grieved by such false certificate is to take his remedy by way of action upon the case against the person that made such false certificate, as the clerk of the parliament, or the clerk in chancery; but the defendant cannot be admitted here in this court to aver contrary to the record certified, and so to relieve himself this way; for we have no power over those records; we cannot cause the parliament rolls themselves to be brought into this court; we take them to be as they are certified unto us.

As to the second objection, though the tenor of a record be not pleadable, yet upon the issue of *nul tiel* record, the tenor of the record is sufficient to prove that issue, being sent by way of mittimus into the court where the issue is depending, upon that particular purpose only.

Nul tiel record may well be pleaded to a private act of parliament, but it cannot be pleaded to a public act of parliament; for the court is bound to take notice of public acts of parliament, but not of private ones.

When execution may be awarded upon the record certified, a certificate of the tenor is not sufficient, because no execution can be granted upon a tenor only. The reason thereof is this, if execution might be upon the tenor, then two executions might be, viz. one upon the tenor in one court, the other upon the record itself in the other court; and it would be against reason that two executions should be for the same thing. But where the writ which commands the court below to certify a record doth also tie up the hands of that court from awarding any execution, there a certificate of the tenor only is sufficient, as in some cases of writs of error upon judgment given in other courts.

The like of *certiorari* to remove presentments, upon which process may be awarded in this Court.

The reason why it is not sufficient to plead the tenor of letters patent, or to show or produce to the Court the tenor of letters patent, as in Page's case is resolved, is, because the letters patent are the private conveyance of a particular person, and therefore he must plead and show forth, and

produce to the Court the letters patent themselves, and the tenor thereof was not sufficient at common law.

But upon *nul tiel* record pleaded, a certificate of the tenor only, and not of the record itself, hath always been held a sufficient proof of that issue, and the tenor certified is to be filed in this Court, and to remain here always to this purpose only, viz. as a proof of this issue; but the record itself remains where it was before, to be made use of for any purposes that may happen hereafter.

The rest of the judges were of the same opinion, and so judgment was given for the plaintiffs.

THE PRESIDENT AND COLLEGE OF PHYSICIANS *v.* NEEDHAM.

Goodall, 273, 274.

The plaintiffs brought debt *qui tam* for the penalty for practising several months, contrary to 14 Hen. 8.

The defendant pleaded as to part of the money in the declaration mentioned *nul tiel* record as to the statute; and as to the residue *nil debet*.

The plaintiffs demurred to the plea, for that it was double; for the plea of *nul tiel* record, if true, is an answer to the whole demand, and therefore the pleading *nil debet* also as to part, rendered the plea vicious.

The defendant objected to the declaration, that an action of debt does not lie upon the statute, for it does not give an action of debt, and that the plaintiff should have brought an information on the statute, and not an action of debt.

Ante, p. cxv.

Twisden J. An action of debt doth lie by equity and construction of the statute.

Jones J. In the statute of tithes 3 Edw. 6. no action of debt is mentioned, yet an action of debt lies upon that statute, and so here.

Rule for judgment for the plaintiff.

THE COLLEGE OF PHYSICIANS *v.* HARRISON.

MSS. at the College of Physicians. Anno 1828.

THIS was an action *qui tam* for the penalties at the rate of *5l.* a month, for — months during which it was alleged that the defendant practised as a physician in London.

Dr. Turner, the treasurer, and a fellow of the college, was called as a witness on the part of the plaintiff; but, on an objection to his competency on behalf of the defendant, Sir J. Scarlett, the plaintiff's counsel, dispensed with his evidence.

Mr. Roberts, clerk to the college, produced the charter of 10 Hen. 8., which was stated to be set forth, word for word, in 14 & 15 H. 8.

The statute-book was produced, to show 14 & 15 H. 8.

Campbell, for the defendant, objected, that, if an act of parliament, it was a private act, and a copy must be produced from the parliament rolls.

Lord Tenterden. *Primâ facie*, a statute being so found is evidence that it passed, whether it is an act of parliament or not; and whether, if it be an act of parliament, it is a private act, ought to be reserved for the decision of the four judges.

Campbell. The declaration alleges the incorporation of the persons in the statute named and *expressed*, whereas the statute incorporates certain persons named, and "all the men of the same faculty;" that is, all who have regularly graduated at any acknowledged university. This is a fatal variance.

Scarlett. If it be necessary to allege the incorporation of "all the men of the same faculty," &c., which, I contend, it is not. So the declaration does not allege that more were incorporated than were so in fact, they are comprised within the word *expressed*.

Campbell. It is necessary to aver the incorporation of all the parties who were, in fact, incorporated; and the word *expressed* does not comprehend "all the men of the same faculty," &c.

Lord Tenterden. I am very clearly of opinion that the word expressed does comprise "all the men of the same faculty," &c.

Campbell. The power granted by the charter required confirmation by act of parliament, and there is an averment in the declaration that the charter was confirmed by act of parliament. Of that, the printed statute-book is no evidence: it is a private act relating to a particular class of his Majesty's subjects, and to a particular place, that is, physicians within seven miles of London, and must, therefore, be proved by an examined copy from the parliament rolls. Were such a copy produced, it would not prove that such statute ever passed; for it is merely a document in the form of a petition, without the conclusion *le roy le veut*, or any thing to intimate that the royal assent was given to it.

Lord Tenterden. At present, I think that this is a public act which applies to all London; and the last section applies to the whole kingdom: but I will save that point.

Scarlett. It is for the health of all his Majesty's subjects.

It was then proved, on behalf of the plaintiffs, that the defendant frequently attended Miss A. during three years, received fees, and wrote and left prescriptions, many of which were for internal applications, and were made up, some by a surgeon and apothecary, and others by a druggist; that he also wrote a prescription of an internal remedy for the witness, who was the servant of Miss A.

On behalf of the defendant, it was proved by the same witness that the defendant attended Miss A., on account of a curvature in the spine, and for the health as well. That she had that affection of the spine during the whole period of the defendant's attendance. That the defendant generally employed half an hour in endeavouring to extend the spine, by rubbing with the hand, and by the use of an instrument, which operation the defendant performed almost every time he attended. That the defendant did not take any fee for his advice to the witness. A letter was read, addressed by the defendant to the censors of the college, in which he denied the powers claimed by the college under 14 & 15 Hen. 8., challenged an examination of them by a court of law, proposed to waive those foreign topics which had previously embarrassed the question, and prevented a satisfactory decision, declined submitting himself to the examination by the board of censors, and concluded with a reference to his attornies, who, he stated, were furnished with instructions to give every facility to a legal investigation of their

assumed privileges, but directed neither to compromise his rights nor those of his professional brethren.

It appeared that the defendant's attornies, on the application of the plaintiffs', declined admitting the practice as a physician for a month.

Another letter was put in, addressed by the defendant to Dr. Chambers, a fellow of the college, in which he expostulated with Dr. C. for declining to meet him in consultation, in obedience to a bye-law of the college, stating that Drs. Baillie, Warren, Paris, and Turner had met him in consultation notwithstanding this bye-law *; that the patient had, therefore, procured the assistance of an experienced and able physician — a gentleman who, like himself, thought proper not to apply for the college licence, and proceeds: "As far as regards me individually, it is really a matter of perfect indifference whether I am, in future, to meet in consultation with the fellows of your college, or am to lose their services in cases of danger or obscurity. London, happily, contains many physicians, out of the pale of your corporation, in whose skill invalids may safely confide. Under this impression, my first determination was wholly to overlook the contents of your note addressed to the mother of my patient; but, on referring to the purport of it, a few nights since, in a large party of physicians, who, in the phraseology of your college, are denominated *alieni homines*, I became convinced of my error. Indeed, it now appears to me that, in following the bent of my inclination, I should have neglected the duty I owe to my alma mater, the university of Edinburgh, and to my brethren the *alien* physicians established throughout the British dominions, as well as to the public at large."

It was contended, on behalf of the defendant, that there was no proof of his practising as a physician; that the case of Miss A. was a surgical case; and that the medicines prescribed were merely auxiliary to the manual and mechanical operation. That the defendant's practice was confined to special complaints; and that a surgeon may prescribe medicines for the purpose of advancing his surgical operations. That the prescription for the witness was gratuitous, and it did not appear for what complaint. That no part of the

* Drs. Warren, Turner, and Paris were called upon to pay the penalty imposed by this law.

letter amounted to an acknowledgment that he practised as a physician.

Lord Tenterden. The single question now for consideration is, whether it has been made out that Dr. Harrison did exercise the faculty of physic during the period mentioned in the declaration. It appears that Dr. H. was in the habit of attending Miss A., and writing prescriptions, which were sent to some other person to make up; and Mr. Pickthorne, who is a surgeon and apothecary, tells you that he now attends Miss A., and he formerly made up prescriptions for her during the time that Dr. Harrison attended her; and he says that he made them up for internal remedies, and not external applications. Then a witness tells you that one, at least, of the complaints for which he attended was an affection of the spine; and, for the purpose of remedying that affection, means were employed by the hand, and by an instrument, on the occasion of the visits of Dr. Harrison. That he attended her frequently; that he received fees from her; all these prescriptions are of his writing; and he attended her as well for that complaint as for her health. That is the evidence of the particular facts.

It is said, in behalf of the defendant, that this does not prove the practising as a physician, but practising as a surgeon; and that a man may lawfully practise as a surgeon, without incurring the penalty of this statute. That the statute is directed against those who exercise the faculty of physic, and not against those who exercise the profession of surgery only; but if a man exercises both, then he is within the statute. Now, it strikes me as something extraordinary, comparing the defence which is set up by this gentleman with his own letters, that he should contend before you that he did not, in truth, practise as a physician at all: that he had merely practised as a surgeon. Look at his own letters, and see how this defence agrees with his communication. As a surgeon he wanted no licence from the college; he was not in the habit of practising physic, and they had nothing to do with him.

It appears that he was challenged upon the subject, and was called upon to take up his licence or discontinue his practice. What does he say? Not that he does not practise as a physician — not one word of that; but he says, "I have a right to practise as a physician (and you find that

said again and again); I have a right to do it: your bye-laws are all wrong; you cannot maintain them." That is the substance of his communications.

Now the earliest of his letters is sent in an envelope to Dr. Chambers: upon what occasion, in particular, it was written, does not appear. Dr. Chambers, I suppose, was a fellow of the college, and would have been an incompetent witness. It appears, from the tenor of this letter, that Dr. C. had declined to meet him in consultation. Now, I take it, there is hardly any one of you, gentlemen, who has not had experience of the fact, that a physician and a surgeon are in the constant habit of meeting together. No physician refuses to meet a surgeon; and, if the case is originally surgical, it is a common thing for a surgeon to call in a physician, to advise upon that part which relates to that branch of the faculty, although a part of the case may relate to the profession of surgery, and no physician ever refuses to give his advice in company with a surgeon. (His Lordship then read a part of the last letter put in, which referred to the bye-law, the calling in another physician who had not applied for the college licence, and the challenge to the college to try the question, and then observed that there was not one word implying that he had practised as a surgeon only. Every expression contained in it appears to me to be an express assertion of his right to practise as a physician, without their licence. His Lordship then read the other letter addressed to the censors, and continued:)—Now he says that he does not practise as a physician but as a surgeon, and they have nothing to do with it. That is the defence.

Gentlemen, these are his own letters. Connecting these letters with the evidence — not that he attended this lady for a complaint which was considered and may be considered as surgical, but that he also wrote prescriptions, which are now produced, and signed by him as a physician would sign them — you will say whether or not it is made out to your satisfaction that this gentleman has practised as a physician. If you are of opinion he has, your verdict should be for the plaintiff; and if you are of opinion that he has not practised physic, but that he has practised as a surgeon only, that is not against the law, and you will find your verdict for the defendant.

Verdict for the Defendant.

DOCTOR ALPHONSO, AND THE COLLEGE OF PHYSICIANS IN LONDON.

2 Bulst. 259. M.T. 12 Jac. 1.

Nota, that as touching this case of Doctor Alphonso, which concerns the College of Physicians in London, who committed him for practising of physic, was brought to the bar by a *habeas corpus;* the return was read, the same upon the reading appeared to the Court to be insufficient, no cause being therein showed for his commitment. Moore, moved the Court for time to amend the return.

Dodderidge. Clearly the return here is not good.

Haughton J. The censors by the act are to commit him, if they do find him to be faulty: here they have committed him, but not showed wherefore they did this in their return, and so the return not good. The Court was clear of opinion, that the return here was bad and insufficient.

Dodderidge. As to the motion made for the amendment of this return, matter of form merely in a return is amendable, but not matter of fact which goes in justification of the imprisonment and fine.

Haughton J. If he do practise ill again, then you shall do well to make a better warrant for the commitment of him: we will do all the right we can to the college; but this their return here is bad, and without all defence.

Dodderidge. They are very well directed in Dr. Bonham's case, 8 Co. 114. in what manner they ought to make their return: here we all agree in this, that the return here is clearly insufficient: and therefore, by the rule of the Court, Doctor Alphonso was bailed until the next term, then to appear again, the Court conceiving this to be the best for him, for that if the court should discharge him for the insufficiency of the return, then they would presently take him again, and commit him, and then would amend their return, and make it better; and for this cause, for the good of the Doctor, by the rule of the Court, he was bailed but not absolutely discharged of his imprisonment.

THE KING *v.* BOWERBANK.

Skin. 676.
E.T. 8 W.3.

A *HABEAS CORPUS* being brought upon a commitment by the College of Physicans, it was excepted, firstly, because it was *pro malâ praxi*, which is uncertain. Secondly, the conclusion is ill because it was to remain without bail till he was discharged by the president and college, or others authorised, or by due course of law; for if a commitment was for a fine, it ought to be *quousque* he paid the fine; if for a contempt, till he had submitted himself. Thirdly, the offence is pardoned, for though the king has granted fines to the corporation, he might, however, pardon the offence, and the king in this case has pardoned all that he can pardon; and if the commitment was for a punishment, it ought to have been a distinct commitment, and *ulterius quod committatur* for four months; and the commitment ought to recite the judgment. And *per curiam* he was discharged.

DR. GROENVELT'S CASE.

1 Ld. Ray. 213, 214.
E.T. 9 W. 3.

DR. GROENVELT being committed last vacation by the censors of the College of Physicians, was this term brought into the King's Bench by *habeas corpus*, upon which the gaoler returned that the said Doctor being examined last vacation and convict, by the censors of the College of Physicians for his ill practice upon the body of J. S. in the year 1692, by which the said J. S. died, was fined by the said censors 20*l.*, and committed to gaol until he should be delivered by the said college or otherwise by due course of law. Upon which return the Court resolved several points.

1. That the sentence or judgment was too general; for the cause of commitment ought to be certain, to the end that the party may know for what he suffers, and how he may regain his liberty: if he was committed for the fine, it ought to be until he pay the fine; but if the intent of the censors was to punish him, not only by fine, but also by imprisonment, they ought to have made them two distinct parts of the judgment,

by condemning him to prison so long, and from thence also until he should pay the fine.

2. That the king is creditor *pœnæ*, as Rokeby J. termed it, and that all fines for offences *de jure* belong to him, because it is his correction, and the public revenge is in his hands; but yet the king may grant them, as in this case he has done to the College of Physicians. And in like manner many lords of liberties, have the fines for offences committed within their lordships.

3. That although a fine belongs to a subject by the king's grant, as in this case to the College of Physicians; yet the king, by pardon of the offence before the fine is set, may in like manner pardon the fine. And as to the objection that by this means the king may make his own grant ineffectual; the Court answered and resolved that the king neither by grant nor otherwise can pass his power, or extinguish that power which he has to pardon offences. For *per* Holt C. J. it is a personal trust and prerogative in him for a fountain of grace and bounty to his subjects, as he observes them deserving or useful to the public. And *per* Rokeby J. as he cannot but have the administration of public revenge, so he cannot but have a power to remit it by his pardon, when he judges it proper. Of necessity then when the offence is pardoned, the fine is destroyed to whomsoever it may belong; because the fine is the penalty of an offence; and as there is no offence where the crime is pardoned, so there cannot be any penalty imposed for the offence.

4. If the *mala praxis* of the Doctor in the year 1692 was not pardoned by the several acts of grace, which had been made since; for then the commitment was illegal though imposed only for a punishment and not for the fine. It was argued that this power of correction in the college was in the nature of a private judicature; instituted for the redress and reparation of those persons, who lose their friends by such prejudicial means; that it is their satisfaction and right, as an appeal is; for this malpractice has injured a private person, and the law allows him satisfaction by this punishment: the name of the king is not used in the proceedings, as in an indictment or information; therefore the offence ought to be regarded not as an injury to him, but to the party for which this punishment is *quasi* a recom-

pense, and therefore cannot be pardoned no more than an appeal.

But the Court resolved, that *mala praxis* is a great misdemeanor and offence at common law, whether it be for curiosity or experiment, or by neglect, because it breaks the trust which the party has placed in the physician, tending directly to his destruction. But yet the king may pardon it, as he pardons greater crimes. And the proceedings against the Doctor in this case were not for reparation of the party, for that ought to be by action upon the case, nor is it a civil prosecution as an appeal is; but a sort of criminal proceeding for the correction of the Doctor; and therefore it could not be at this time, after so many general pardons, imposed upon him.

The Doctor was discharged.

S. C.

3 Salk. 265. PER HOLT C. J. and the Court. The king is creditor *pœnæ*, and all fines for offences belong to him; and accordingly several lords of manors have the fines for all offences within their *seigniories;* but it is from the grants of the king, and he may pardon the offence, and remit the fine, for this is a prerogative which he cannot part withal; for as he hath the public revenge in his hands, so it is necessary and for his honour to have a power of mitigating or remitting the exercise of it.

S. C. THE KING *against* GREENVELT.

12 Mod. 119. MOTION to discharge Dr. Greenvelt, committed by the censors of the College of Physicians *pro malâ praxi* in the year 1692, chiefly because this offence is pardoned by two general acts of pardon since.

The counsel for the college insisted, that though a general pardon pardoned all public offences, yet it did not release any private right; that this penalty *pro malâ praxi* was not only a public infliction, but also a satisfaction in part to the party. But suppose it were only a public punishment, the

king having granted the fines to the college, he could not by the pardon destroy his own grant; and therefore that these fines remain notwithstanding. But *per Curiam, seriatim :* The penalty *pro malâ praxi* is only a satisfaction to the public justice, and not to the party who had his action on the case; and that whenever a crime is pardoned, all the effects and consequences therefore are discharged; and when an act of parliament appoints a fine for a public offence, such fines of common right belong to the king, unless they are otherwise particularly disposed; that the king, by granting away his fines, does not extinguish his power of pardoning, for that would be an extinguishment of his prerogative by implication: and the power of pardoning being inseparably annexed to the crown, and not grantable over, the king, therefore, pardoning this offence, before the fine actually imposed, whereby an interest would have vested in the grantee, the offence was thereby gone; and thereby the penalty depending thereon discharged.

The prisoner was discharged.

DR. GROENVELT *v.* DR. BURNELL ET AL'.

Carth. 421.

The plaintiff brought his action against the defendants (who were late censors of the College of Physicians in London), for false imprisonment, which was by colour of proceedings had before them in that college, and that the plaintiff had requested of the present censors to have a copy of the said proceedings, but they denied to give him any copy thereof, &c.

Wherefore he now moved for a rule of court to the censors, &c. to cause a copy of the said proceedings to be delivered to him (the plaintiff), at his own charge. But this was opposed, because there was only a plea pleaded but no issue joined; therefore the plaintiff may demur if he thinks fit.

Sed per Curiam. 'Tis usual to make such a rule for the sake of evidence, after issue joined, but not by way of assisting the defendant to plead.

'Tis likewise usual for the judges of gaol-delivery to deny a copy of an acquittal to him who intends to bring an action thereon, when there was a probable cause for a criminal prosecution, for the Court will never help any litigious suit. The Court denied to make any rule in this case.

S. C. DR. GROENVELT *v.* DR. BURWELL ET AL', CENSORS OF THE COLLEGE OF PHYSICIANS.

1 Ld. Ray. 454, 465. E.T. 11 W. 3.

THE pleadings are stated at length, of which the following abstract is sufficient for the present purpose: —

The declaration alleged assault, battery, and false imprisonment. The plea traversed the battery, and as to the rest of the alleged trespass and imprisonment, justified for that, &c., stating the charter 10 Hen. 8., the act 14 & 15 Hen. 8. c. 8. confirming the charter, and granting further powers, the statute 1 Mar. sess. 2. c. 9. That plaintiff practised physic in London; that so practising, and pretending that he was very skilful in the faculty, he undertook the cure and recovery of one S. W., the wife of one W. W., of a certain infirmity or disease just after child-birth, and as it was supposed caused thereby, for 40*s.* to the said plaintiff paid, and other 40*s.* to be afterwards paid. That, nevertheless, the plaintiff so indiscreetly, unscientifically, and unskilfully attempted "et talis insalubres, iniquas, malas, et perniciosissimas pilulas et noxia pharmaca" to her then gave and administered, that the said S. W. not only was in nowise cured, but grew so exceedingly infirm, and greatly and dangerously injured in her constitution, that from thenceforth to this time she has laboured under extreme suffering, and languished in a most sad and grievous condition, and still remains incurable from grievous suffering; so that her life has been, and still is despaired of, by reason of the bad, unskilful, and pernicious practice of the plaintiff. That T. M., one of the

elects, was before then elected president, and then continued to be president. That before then four of the defendants were elected, and then continued to be censors. That at the College of Physicians complaint was made to them on behalf of the said W. W., and S. his wife, against the plaintiff of the aforesaid undue, unskilful, bad, and pernicious practice; that thereupon plaintiff was summoned; that the plaintiff personally appeared before them; that they the censors thereupon proceeded to examine and investigate such complaint, and on the testimony of several credible witnesses then present, in the presence of the plaintiff, affirming the truth thereof, and hearing the plaintiff, and whatever in his defence or excuse he could say; and, on consideration of the whole matter, the defendants, then being censors, by virtue of the aforesaid charters and statutes, adjudged the plaintiff guilty of the said improper, unskilful, and bad practice, and thereupon imposed on the plaintiff a fine of 20*l.*; and further adjudged that the plaintiff should, for his aforesaid offence, be committed to the gaol of our lord the king at Newgate, and have and undergo imprisonment in the same gaol at his own costs and charges, without bail or mainprise, for the space of twelve weeks then next following, unless sooner discharged by the president of the college, and such persons as by the college should be thereunto authorised, or otherwise by due course of law; which said adjudication of the censors was reduced to writing and recorded, and now with the censors remains in full effect and in nowise annulled. That the defendants, in execution of their judgment, by virtue of the said charters, &c. by their certain precept or warrant in writing, setting forth at large the said complaint and judgment, under their hands and seals directed to the other defendant, their servant in the execution thereof, commanded him that he the body of the plaintiff should take and deliver to the keeper of the gaol of Newgate, there to remain, &c., by virtue whereof plaintiff was taken, and, with the warrant, delivered to the keeper, &c.; which taking, imprisonment, and detention are the residue of the alleged trespass and imprisonment, &c.

The replication admitted that plaintiff was a doctor of physic, and had practised in London; but protesting against the charter and statutes, the bad practice, and the complaint on behalf of the said W. W. and S. his wife, and the judg-

ment alleged; replied *de suâ injuriâ*, and not by virtue of the warrant.

The defendants demurred, and assigned as causes of demurrer, that the plaintiff in his replication said, that true it is that he, for a long time, *sci.* for the five years, &c. was and still is a doctor of physic, &c. as the said defendants have above alleged; whereas it is manifest and apparent to the Court that the defendants in their plea did not so allege, but that they there only alleged that the plaintiff had used and exercised the art or faculty of physic during that period, and still did use and exercise the same, pretending that he was very skilful in the same, which greatly varies, &c. That the protestations of the plaintiff are vain and superfluous; that the first of them is an imperfect sentence, and in sense deficient; that the second is a negative, pregnant, &c.; and that, in particular, the plaintiff traversed the virtue of the said warrant, which is not traversable, being its validity and matter of law, whereas he ought to have traversed the making and existence of the said warrant or its delivery to the said J. C. (other defendant). That further, the plaintiff traverses that all the defendants imprisoned him by virtue of the said warrant, and on this tenders issue; whereas they alleged, that the said J. C. alone, by virtue of the said warrant, took and delivered him to prison, and that they the other defendants made the said warrant. That the traverse wanted form in that, &c. Whereupon plaintiff joined in demurrer.

1 Ld. Ray. 465—472. T. T. 12 W. 3. S. C. Rep. t. Holt, 536, 537.

This was several times argued at bar, and now Holt C. J. delivered the opinion of the Court, that judgment ought to be entered for the defendants.

Holt C. J. Though it has been argued that the replication is good, we all hold the contrary: it is ill, as well in matter as in form. The defendants, in their plea, show that a warrant was granted, and that by virtue thereof the plaintiff was arrested and imprisoned; to which the plaintiff does not make any answer that there was not such warrant, nor traverses it, but only says that he was not arrested by virtue of it. If he had denied that there was any such warrant, it had been a good traverse; for then J. C. would not have had authority to have arrested the plaintiff. But if the plaintiff was arrested for any other cause, and not upon this warrant, then the plaintiff should have shown the other cause. As, suppose there were two warrants, the one good

and the other ill, and the plaintiff had been arrested upon the ill warrant, he ought to show it specially: but if C. had a good warrant at the time of that arrest, though he had declared that he had arrested the plaintiff upon the warrant, that was insufficient, yet in an action brought against C. he might have justified under the good warrant; having had it in his custody at the time of the arrest. For the single question would be, Whether he had good authority at the time of the arrest? And this is like the case in 34 Ed. 1. Fitzh. Avow. 232. cited in 3 Co. 26. *a.*; that if a man distrains for any thing, yet in his avowry he may avow the taking for what he pleases. As, if a man distrains his tenant for that which he cannot justify, but at the same time rent is arrear, he may avow for the rent arrear, and is not obliged to avow for that for which he took the distress; nor can the plaintiff in replevin traverse the taking for the rent arrear, but can only plead, in bar to the avowry, *reins* arrear. So here the plaintiff cannot say that C. did not take him by virtue of the good warrant: for if he had such warrant in his custody at the time of the arrest, he was arrested by it. And the traverse is an ill traverse in this manner. But the plaintiff should have traversed that there was any such warrant; or he might have said that it was granted afterwards, *absque hoc*, that there was any such warrant at the time of the arrest. Therefore the replication is ill, and the question will be, Whether the plea in bar is good? And we all hold that it is good.

The principal exceptions taken by the plaintiff's counsel are four: —

1. That the plea is uncertain; so that the defendants have not entitled themselves to a sufficient jurisdiction.

2. That, admitting that the defendants have entitled themselves to a sufficient jurisdiction, they have exceeded their jurisdiction, by imposing a fine and imprisonment also: for though they might have committed the plaintiff in execution for the fine, yet they could not impose both a fine and imprisonment as a punishment.

3. That there is no answer to the assault, and therefore the plea is ill.

4. That it does not appear that the plaintiff is a member of the college.

But as to the first, which is the only material exception: —

The defendants have entitled themselves to a sufficient jurisdiction; for they have jurisdiction,

1. Over the person of the plaintiff, since he practised physic in London;

2. Over the subject matter, the unskilful administration of physic;

3. The fact for which the plaintiff was punished was committed within the limits of their jurisdiction; *i. e.* in London. Then where a man has jurisdiction in all these particulars over another man, it is apparent that whether the matter of fact be such as it is adjudged or not, it is not traversable, but the plaintiff is concluded, and shall not falsify the judgment. It is objected, that though the matter is within the defendants' jurisdiction, yet it is not certainly alleged: whereas, by the opinion of Coke, 8 Rep. 121., it ought to be certainly alleged, so that issue may be taken upon it, it being traversable; and that is the reason why it shall be traversable, because the party grieved has no remedy by error or attaint. But I am of a contrary opinion; *i. e.* that it is not traversable; that a man convict by the defendants, in pursuance of their judicial authority, cannot traverse the fact of which he is convict. If he could, yet the fact is certainly enough alleged here; and though there were a defect in the conviction, that would not entitle the plaintiff to an action against the defendants, being the censors, &c.

1. The fact of which the plaintiff is convict is not traversable, because the authority of the defendants is absolute to hear and determine the offence; and when, in pursuance of the said authority, they have adjudged the plaintiff guilty, he cannot arraign their judgment, but is concluded: for persons who are judges by law shall not be liable to have their judgments examined in actions brought against them. Now it is plain that the censors have judicial power. It is true that some persons have power to commit who are not judges: as the constable may commit for an affray committed in his presence, and he is liable to an action if the fact is false. The difference is, that he does not commit for punishment, but for safe custody. So commissioners of bankrupt may commit a man for refusing to be examined concerning the estate of the bankrupt: but they are not judges, and their proceedings are traversable, because their power of imprisonment is only *quousque*, &c. But where a

man has power to inflict imprisonment upon another for punishment of his offence, there he hath judicial authority. 2. To consider the particulars of their power. It extends to all physicians practising within London or seven miles around; and it is to examine, hear, convict, and punish them for any ill practice committed by them; which are all the essentials that create a judge. 3. The censors are justices of record, and that which they do is matter of record. For where there is a jurisdiction erected *de novo*, with power to fine and imprison, it is a court of record; for courts of record only can fine. Therefore it is resolved, that in recaption in the Common Pleas and judgment against the defendant, he shall be fined and imprisoned. But in the same case, if the writ is vicontiel, he shall be only amerced. It was held, 10 Co. 103. *a.*, that in debt at common law for the arrears of an account before auditors, the defendant might wage his law: and therefore, since there is no statute which, by express words, takes away wager of law in such case, the question is, why it does not lie? and there it is resolved that Westm. 2. 13 Ed. 1. st. 1. c. 11., which enacts that where the lord assigns auditors to his bailiff, and he is found in arrear, the auditors shall commit to prison. Giving power to the auditors to commit the defendant to prison does thereby make them justices of record, forasmuch as none but such can imprison; and therefore their judgment cannot be traversed, and for that reason the defendant is ousted of his law. Then, if auditors assigned by the lord to his bailiff are justices of record *a fortiori*, the censors are such, having a much larger jurisdiction; and then consequently no act of theirs can be traversed. Nor can it be assigned, for error, that judges did that which they ought not; as that they entered a verdict for the defendant, when the jury gave it for the plaintiff. And as a judge shall not be questioned at the suit of the parties, no more shall he be questioned at the king's suit before another judge. 27 Ass. pl. 18., where A. was indicted at the king's suit, for that he was justice of oyer and terminer; and several persons were indicted before him of a trespass, and he made an entry upon the record that they were indicted of felony; and judgment was demanded if he should answer, since he was a judge by commission, which is of record; and that the presentment would defeat the record, which is to aver against

that which he did as judge of record, and the indictment was held void. It is objected that Coke's opinion was, 8 Co. 121., that the cause of the fine and imprisonment is traversable; but that is an opinion *obiter*, and not pertinent to the case there; because Dr. Bonham was committed for practising without licence, and not for mal practice; and the power of commitment does not extend to practising without licence, nor can they inflict such punishment for such an offence. But Coke enlarges upon their power, and includes a commitment for mal practice. But Coke was transported; that the Doctor was a member of the university, and of his university; as one may see by his excursions in praise of it, which he looked upon as affronted by that prosecution: and as that opinion was not judicial, so it has not any authority in law for its foundation. Coke himself says that they ought to make a record of their proceedings; then they are judges of record, and therefore according to himself, 12 Co. 24., their acts are not traversable. It is objected, that the party has no remedy either by writ of error or otherwise. But he has a remedy as good as a writ of error: admit that he has not, yet that will not entitle him to a traverse. I agree that the plaintiff cannot have a writ of error, because it is a court newly instituted, empowered to proceed by methods unknown to the common law; as there is no need to have an indictment or such formal judgment as in other cases, as there is no need to say *ideo consideratum*, &c. but only *quod solvat*, &c. It may be compared to convictions before justices of the peace out of sessions, upon which, though error does not lie, a certiorari lies: for it is a consequence of all jurisdictions to have their proceedings returned here by certiorari to be examined here. Where any court is erected by statute, a certiorari lies to it: so that if they perform not their duty, the King's Bench will grant a mandamus. There was a mistake made by the commissioners of sewers, grounded upon this, that where 23 Hen. 8. c. 5. says that the commissioners in several cases there mentioned shall certify their proceedings into Chancery; afterwards, by 13 Eliz. c. 9., it is enacted, that thereafter the commissioners shall not be compelled to certify or return their proceedings, which they interpreted to extend to a certiorari; and thereupon they refused to obey the certiorari: but they were all committed. And yet the statute does not

Ante, p.lxxxiv.

give authority to this court to grant a certiorari; but it is by the common law that this court will examine, if other courts exceed their jurisdictions. So a certiorari lies upon a conviction of forcible entry upon the view of a justice of the peace; and there is no reason that this case should be different from all others.* In this case the plaintiff moved for a certiorari after the action brought, but the King's Bench did not think proper to help him in his action; and that is the reason why it was denied. If no certiorari lay, it does not follow, that because their proceedings are not examinable, that therefore they are not a court of record; for their jurisdiction is not diminished because there is no appeal from it, but it is the stronger, because so great a trust is reposed in them. So that the force of the argument must be, that because no appeal lies from them, there is the less reason that their proceedings should be traversable; and that this is no ground for a traverse appears by many precedents. As, if in a criminal case a jury gave a hard verdict, no attaint lies; nor is the judge punishable if, by misdirection, the jury gave an ill verdict. In 12 Co. 23. it appears to be the law of the Star Chamber, that if the party was acquitted against plain proof, the judge and jury should be fined; but that is now exploded. And fol. 24, 25. and Nudigate's case, fol. 25. is contrary. That juries have been fined appears by Moor, 730. 2 Leon. 132. Yelv. 23.; and it was resolved by all the judges of England, except Kelynge C. J., that juries were not finable for giving verdict against evidence. In Cro. Eliz. 309. it was held, that if the jury find according to the direction of the judge in matter of law, although he be mistaken, the jury shall not be liable to attaint; and the misdirection of the judge cannot be assigned for error: so that the party is without remedy against whom the verdict is found, and yet he is concluded by the verdict to say that is not true. It is objected, that there is not any jury here: that will not distinguish the case; for in 7 Hen. 6. 13. *a.* 8 Co. 41. *a.* it is said that *finis finem litibus imponit*, and the cause for which it is set is not traversable. A presentment in a court leet is traversable, but no action lies against the steward for awarding process upon it. Such presentment is traversable in replevin, not in

* 2 Hawk. P. C. c. 27. s. 23.

trespass, nor in an action against the judge, but when a fine is imposed, the matter for which, &c. is not traversable; for when the power vested by law in the jury is transferred to the judge, why the party should rather have his traverse to the condemnation of the judge, than to the verdict of the jury who find him guilty, there is no reason; and consequently, by this statute, the original power of the jury at common law being vested in the censors, it is equally peremptory. Hammond *v.* Howell, 1 Mod. 184. 2 Mod. 218. Hammond, being one of the jury, with Bushel, was fined and imprisoned for not finding Pen and Mead guilty of a riot; and after that judgment was given in the Common Pleas that the fine was illegal, and Bushel was discharged, Hammond brought an action of false imprisonment against Sir John Howell, Recorder of London. The defendant in his plea showed the proceedings before the commissioners of oyer and terminer: — That Pen and Mead were indicted, and pleaded not guilty; that the jury found them not guilty, against plain evidence and the direction of the court in matter of law; that the plaintiff was one of the jury and fined forty marks, and committed in execution for his fine: the plaintiff replied, *de son tort demesne absque hoc*, that they found against evidence; and it was held that the action did not lie, because the defendant, being recorder, was in the commission of oyer and terminer, and judge of record; and the present case does not differ from the said case: for here the censors have jurisdiction over the plaintiff and his profession, as the recorder had there, and the particular fact was within London, within the limits of their jurisdiction. And in Howell's case it was admitted that a writ of error would not lie upon the order for imposing the fine, but that was not esteemed a sufficient ground to maintain the action. If the defendants exceed their jurisdiction, an action will lie against them; for the judgment is *coram non judice* and void, and consequently no one concluded by it. But if the subject matter and the person are under their jurisdiction, as in this case of the censors, though they should have given a wrong judgment, it could not be examined in an action.

Admit that this conviction was traversable, yet the plea is certain enough. It is shown that the plaintiff gave the woman such unsound medicines and noxious drugs that she became worse. Now, suppose this fact to be traversed,

there is no defect in the plea; for if it had been laid more particularly, it must have been tried by a jury at last; for the judges do not understand medicines sufficiently to make a judgment whether they were sound or not, and therefore it is enough to aver generally that they were unsound and noxious drugs. As in case against a physician, it is sufficient to say that he administered physic unskilfully, &c. without showing the particular defect in his skill. There is another objection — that it is not shown under what distemper the wife laboured. But if she had not any distemper, the plaintiff's case is the worse, for then he should not have administered physic; as if a splenetic person comes to a physician, when, in fact, he is well, it would be a fault in the doctor to administer physic to him. Another objection is, that the witnesses were not examined upon oath. Where judicial power is given to persons by statute, they may, by consequence of law, administer an oath; but on this I give no positive opinion. But, admitting that they might have administered an oath, the omission of it is but an error in the proceedings, and does not make the judgment void, like the case in the Marshalsea, 10 Co. 76. b., where one process is issued instead of another.

Case against a physician.

As to the objection that they have fined the plaintiff and imprisoned him also; it is answered by the words of the letters patent, which give power to do it; and so do the justices in many cases at common law.

As to the third objection, it is well enough. For as to the *vi et armis* battery and wounding, they plead not guilty; and as to the residue, &c. which includes the assault, &c. they justify.

As to the fourth objection, that it does not appear that the doctor was a member of their body; if he was a practiser of physic in London, as he has admitted himself to be, the censors have sufficient authority over him, whether he be of their body or not, by the express words of the letters patent.

Practisers of physic.

For these reasons we all hold the plea to be good.

Judgment for the defendants.

S. C. GROENWELT *v.* BURWELL.

Salk. 144, 145. T. T. 12 W. 3. Rep. t. Holt, 184.

THE censors of the College of Physicians have power by their charter, confirmed by act of parliament, to fine and imprison for mal-practice in physic; and accordingly they condemned Dr. Groenwelt for administering "insalubres pillulas et noxia medicamenta," and fined and imprisoned him; and the question being, whether error or certiorari lay, it was held by Holt C. J.: —

1. That error would not lie upon the judgment, because the proceeding is not according to the course of the common law, but without indictment of formal judgment.

2. That certiorari lies; for no court can be intended exempt from the superintendency of the king in this court of B. R. It is a consequence of every inferior jurisdiction of record, that their proceedings be removable into this court, to inspect the record, and see whether they keep themselves within the limits of their jurisdiction. 3 Cro. 489. By the 23 Hen. 8. c. 5. the commissioners of sewers are to certify their proceedings into Chancery; and the 13 Eliz. c. 9. says, the commissioners shall not be compelled to make any certificate. Upon this, by mistake, they thought themselves not accountable on a certiorari, and refused to obey a certiorari issued out of the King's Bench; and for this the whole body of the commissioners were laid by the heels.

S. C.

Salk. 263.

IT was held in this case *per* Holt C. J., that whenever a new jurisdiction is erected by act of parliament, and the court or judge that exercises this jurisdiction acts as a court or judge of record, according to the course of the common law, a writ of error lies on their judgments; but when they act in a summary method, or in a new course different from the common law, then a writ of error lies not, but a certiorari.

S. C.

HOLT C. J. said,—Wherever a power is given to examine, hear, and punish, it is a judicial power, and they in whom it is reposed act as judges. And wherever there is a jurisdiction erected with power to fine and imprison, that is a court of record, and what is there done is matter of record. 8 Co. 60. 38. This appears from the statute West. 2. c. 11., by which it is enacted, that auditors assigned by the lord may commit the party accountant to prison for arrears. And it is held, that the very lodging of this power in them made them judges of record: "Nulla curia quæ recordum non habet potest mandare carceri." And whereas before that statute, in an action of debt for such arrears, the defendant might wage his law, since that statute he cannot, because they are a debt arising by matter of record. Salk. 200. Rep. t. Holt, 184.

S. C.

IT was held by Holt C. J. — 1. That the censors have a judicial power: for a power to examine, convict, and punish is judicial; and they are judges of record, because they can fine and imprison. Salk. 263. Rep. t. Holt, 184. 395.

That, being judges of the matter, that which they have alleged is not traversable; and the plaintiff cannot be admitted to gainsay what the censors have said by their judgment, *i. e.* that they were "insalubres pillulas et noxia medicamenta." Here a fine is set, and *finis finem litibus imponit*, by which it appears, that the cause for which a fine is set is never traversed. The matter of a verdict is not traversable; and there is no reason why the matter affirmed by the sentence of a judge should not also be untraversable, where the law entrusts him to try and determine it without a jury.

Though the pills and medicines were really "salubres pillulæ et bona medicamenta," no action lies against the censors, because it is a wrong judgment in a matter within the limits of their jurisdiction; and a judge is not answerable, either to the king or the party, for the mistakes or errors

of his judgment in a matter of which he has jurisdiction. It would expose the justice of the nation; and no man would execute the office upon pain of being arraigned by action or indictment for every judgment he pronounces. If a justice of peace record that upon his view as a force which is no force, he cannot be drawn in question either by action or indictment. 12 Co. 23. And in the 27 As. 19. a judge of *oyer* and *terminer*, when the jury found and presented a fact to be a trespass, caused their finding to be entered as a felony, and yet could not be punished by indictment or otherwise, because he was a judge of record, and the indictment against him was to defeat his record, by averring against what he did as a judge of record.

S. C.

3 Salk. 354.

THE plaintiff, *protestando* against the power set forth, for plea replied that the defendant arrested him "de injuriâ suâ propriâ, et non virtute warranti pred.;" and upon demurrer to this replication it was adjudged ill, for the traverse doth not deny that there was such a warrant, but the legality of it, and that the plaintiff was not taken by virtue thereof, which implies that he might be taken for some other cause; and if that was his case, then he should have pleaded it specially, and show for what cause he was taken. Now, by this replication it may be intended, that the warrant was after the arrest, and that there was no such warrant, therefore he should have traversed *absque hoc;* that there was a warrant; or *absque hoc*, that it issued before the arrest; and then a matter of fact, from whence a question in law might arise, would have been put in issue, and not the legality of the warrant, which is matter of law.

S. C.

Comyn's Rep. 76—82.
Carthew, 491—496.

THE same case is also stated at considerable length by these reporters; but as there is no material point mentioned by them which does not appear in some of the preceding versions of it, it is thought proper to omit their statements.

CHORLEY, M.D. *v.* BOLCOT.

4 T.R.317, 318. T.T. 31 G.3.

THE plaintiff, a physician living at D., brought his action for fees for attending, for a considerable time, on the defendant's testator, who lived at some little distance from that town; and the evidence was, that in D. and its neighbourhood there was no certain rule about fees, but the general practice was, for a physician to receive two guineas a week for his attendance. The plaintiff obtained a verdict, to set aside which a rule *nisi* had been obtained, on the ground that no action lay for a physician's fees any more than for a barrister's.

It was urged that there was no authority in the books for putting the claim of a physician's fees upon the same footing as those of a barrister. In the latter case, it might originally have been proper that no temptation should be held out to countenance injustice; but in the former it would be equally impolitic that those who are frequently put to expense in attending patients at a distance, and who are liable to make reparation to those who may suffer by their want of skill, should not be certain of a just and honourable reward. The regulation with regard to barristers is founded on grounds of public policy, as appears by the passage in Tacitus, to which Mr. J. Blackstone refers, but they are totally inapplicable to the case of physicians; and in that very passage in Tacitus it is taken for granted that the latter are entitled to a remuneration, because their situation was dissimilar to that of advocates. Besides, in this case, there is an additional reason why the plaintiff should recover, as there is understood to be a general stipulated acknowledgment for a physician's attendance at the place where this transaction arose.

Lord Kenyon C. J. I remember a learned controversy some years ago, as to what description of persons were intended by the *medici* at Rome; and it seemed to have been clearly established by Dr. Mead, that by those were not meant physicians, but an inferior degree amongst the professors of that art — such as answer rather to the description of surgeons amongst us. But, at all events, it has been understood in this country that the fees of a physician are

honorary, and not demandable of right; and it is much more for the credit and rank of that honourable body, and perhaps for their benefit also, that they should be so considered. It never was yet heard of that it was necessary to take a receipt upon such an occasion; and I much doubt whether they themselves would not altogether claim such a right as would place them upon a less respectable footing in society than that which they at present hold.

Rule absolute.

LIPSCOMBE *v.* HOLMES.

2 Campb. N.P. 441, 442. 50 G.3.

THIS was an action for work and labour as a surgeon, and for curing the defendant and several persons of his family of divers diseases and maladies, under which they had respectively laboured and languished. The defendant pleaded the general issue, and paid 3*l.* 13*s.* 6*d.* into court.

The first defence set up was, that the plaintiff was a physician, and therefore could not maintain an action for his fees. It appeared that he wrote prescriptions, was called "Doctor," and signed himself M.D.

Park said he should show, that at the time when the visits were paid for which the action was brought the plaintiff was only a surgeon, and that he had not taken out his diploma as a physician till long after.

Lord Ellenborough. If a person pass himself off as a physician, he must take the character *cum onere* when he brings an action for visits paid by him as a physician. I will give him credit for being so, and tell him he must trust to the honour of his patients. Whether the plaintiff had or had not a diploma when he attended the defendant is immaterial. Whatever he was, if at that time he wrote prescriptions, and added M.D. to his name, he must be nonsuited.

Park then produced the rule for paying money into court, which his Lordship thought removed the objection, and admitted the plaintiff's right to sue as a surgeon.

It was afterwards agreed to withdraw a juror.

FELL *v.* BROWN.

Peake, N.P.C. 131, 132. 32 G.3.

This was an action against the defendant, a barrister, for unskilfully and negligently settling and signing a bill filed by the plaintiff in the Court of Chancery; which bill was referred by the Lord Chancellor to the Master for scandal and impertinence, and the plaintiff obliged to pay the costs of that reference.

Erskine, for the plaintiff, in his address to the jury, said that he should prove this to be *crassa negligentia*, and not a mere error in judgment. If a counsel gives his opinion on any question, and happens to be mistaken, it cannot be said that he has been guilty of gross negligence; but if he is so inattentive to his duty as to blunder in the common course of business, he makes himself liable to an action, as would also a physician for such gross misconduct.

Lord Kenyon was clearly of opinion that this action could not be supported: more objections than one, his Lordship said, might be made to it. The Court of Chancery will in such cases exert a summary power, if it is found expedient so to do. But if that Court will order the counsel to pay the costs, it does not follow that an action can be maintained. If this action could be supported, it would equally lie against a counsel for inserting a count in a declaration, or putting matter in a plea which ought not to be there, and which the court should think improper and impertinent.

In a case where Lord Weymouth was a defendant, the court thought the declaration full of unnecessary matter, and ordered it to be struck out, with costs; but no one ever entertained an idea that an action could be maintained against the counsel who drew that declaration. His Lordship added, that he believed this action was the first, and he hoped it would be the last, of the kind.

On this opinion the cause was given up, and the plaintiff nonsuited, without one witness being examined; but his Lordship told the plaintiff's counsel he would take a note of the cause, that they might move for a new trial if they thought proper.

TURNER *v.* PHILLIPPS.

Peake, N.P C. 166. 32 G.3.

ASSUMPSIT for money had and received.

The plaintiff, being a party in a former cause, had given the defendant a brief to attend as one of his counsel on the trial of that cause; and the defendant not having attended the trial, the present action was brought to recover back the fee given to him on that occasion.

Lord Kenyon advised an agreement between the parties, saying, that whether Mr. Phillipps would choose to return the fee or not, was for his own consideration; but if the cause was to proceed, he should feel himself obliged to interpose, and the parties might apply to the Court if they were dissatisfied with his opinion. His Lordship alluded to the case of Chorley v. Bolcot, lately decided; and mentioned the general opinion of the profession, that the fees of barristers and physicians were a present by the client, and not a payment or hire for their labour.

Upon this the parties agreed to settle the cause out of court, but *Garrow*, who held a brief for Mr. Phillipps, said, that he had not been guilty of the negligence imputed to him; for that it never was intended that he should attend the cause, but the fee was given him as a compliment for the trouble he had taken in the former stage of it.

LIABILITY FOR NEGLECT AND WANT OF SKILL.

Jones on Bailments, 99, 100. 3 Bl. Com. 165.

Where skill is required as well as care in performing the work undertaken, the bailee for hire must be supposed to have engaged himself for a due application of the necessary art: it is his own fault if he undertake a work above his strength. I conceive, however, that where the bailor has not been deluded by any but himself, and voluntarily employs in one art a man who openly exercises another, his folly has no claim to indulgence; and that unless the bailee make false pretensions, or a special undertaking, no

more can fairly be demanded of him than the best of his ability. The case which Sadi relates with elegance and humour in his Gulistan, or Rose-garden, and which Puffendorff cites with approbation, is not inapplicable to the present subject, and may serve as a specimen of Mahommedan law, which is not so different from ours as we are taught to imagine. A man, who had a disorder in his eyes, called on a farrier for a remedy, and he applied to them a medicine commonly used for *his* patients: the man lost his sight, and brought an action for damages; but the judge said, no action lies, for if the complainant had not himself been an ass he would never have employed a farrier.

In all cases where a damage accrues to another by the negligence, ignorance, or misbehaviour of a person in the duty of his trade or calling, an action on the case will lie; as if a farrier kill a horse by bad medicines, or refuse to shoe him, or prick him in the shoeing. But it is otherwise where the law lays no duty upon him; as, if a man find garments, and by negligent keeping they be spoiled. Bul. N. P. 73.

Again, ye are to distinguish of other men-slayers, as of physicians, jurors, justices, witnesses, of idiots, madmen, and fugitives; for physicians and chirurgeons are skilful in their faculties, and probably do lawful cures, having good consciences, so as nothing faileth to the patient which to their art belongeth: if their patients die, they are not thereby men-slayers or mayhemors; but if they take upon them a cure, and have no knowledge or skill therein, or if they have knowledge, if, nevertheless, they neglect the cure, or minister that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and especially in burning and cutting off of members which they are forbidden to do, but at the peril of their patient: if their patients die or lose their members in such cases, they are men-slayers or mayhemders. Mirror, c. 4. s. 16.

It hath been anciently holden, that if a person not duly authorised to be a physician or surgeon undertake a cure, and the patient die under his hand, he is guilty of felony; but inasmuch as the books wherein this opinion is holden were written before the statute of 23 Hen. 8., which first excluded such felonious killing as may be called wilful murder of malice prepense from the benefit of clergy, it 1 Hawk. P.C. c. 31. s. 62.

Pult. 226. Crown, 27. 43 Ed.3. 33. b. Fitz. Crown, 163.

may be well questioned, whether such killing shall be said to be of malice prepense within the intent of that statute: however, it is highly rash and presumptuous for unskilful persons to undertake matters of this nature; and, indeed, the law cannot be well too severe in this case, in order to deter ignorant people from endeavouring to get a livelihood by such practice, which cannot be followed without the manifest hazard of the lives of those who have to do with them. But surely the charitable endeavours of those gentlemen who study to qualify themselves to give advice of this kind, in order to assist their poor neighbours, can by no means deserve so severe a construction from their happening to fall into some mistakes in their prescriptions, from which the most learned and experienced cannot always be secure.

4 Bl. Com. 197.

If a physician or surgeon gives his patient a potion or plaster to cure him, which, contrary to expectation, kills him, this is neither murder nor manslaughter, but misadventure; and he shall not be punished criminally, however liable he might formerly have been to a civil action for neglect or ignorance. But it hath been holden, that if he be not a regular physician or surgeon who administers the medicine or performs the operation, it is manslaughter at the least; yet Sir Matthew Hale very justly questions the law of this determination.

3 Bl. Com. 122.

Injuries affecting a man's health are where, by any unwholesome practices of another, a man sustains any apparent damage in his vigour or constitution; as by selling him bad provisions or wine; by the exercise of a noisome trade, which infects the air in his neighbourhood; or by the neglect or unskilful management of his physician, surgeon, or apothecary. For it has been solemnly resolved, that *mala praxis* is a great misdemeanor and offence at common law, whether it be for curiosity or experiment, or by neglect; because it breaks the trust which the party had placed in his physician, and tends to the patient's destruction.

Montesq. Sp. Laws, b. 29. c. 14.

The Roman laws ordained that physicians should be punished for neglect or unskilfulness. In those cases, if the physician was a person of any fortune or rank, he was only condemned to deportation; but if he was of a low condition, he was put to death. By our institutions it was

otherwise. The Roman laws were not made under the same circumstances as ours: at Rome, every ignorant pretender intermeddled with physic; but, amongst us, physicians are obliged to go through a regular course of study, and to take their degrees — for which reason they are supposed to understand their profession.

When unskilful practitioners of medicine or surgery administer drugs, or perform operations with the puncturing needle, contrary to the established rules and practice, and thereby kill the patient, the magistrates shall call in other practitioners to examine the nature of the medicine or of the wound, as the case may be, which proved mortal; and if it shall appear upon the whole to have been simply an error, without any design to injure the patient, the practitioner of medicine shall be allowed to redeem himself from the punishment of homicide, as in cases purely accidental, but shall be obliged to quit his profession for ever. If it shall appear that a medical practitioner intentionally deviates from the established rules and practice, and, while pretending to remove the disease of his patient, aggravates the complaint in order to extort more money for its cure, the money so extorted shall be considered to have been stolen, and punishment inflicted accordingly, in proportion to the amount. Staunton's Penal Code of China, 319.

If the patient dies, the medical practitioner who is convicted of designedly employing improper medicines, or otherwise contriving to injure his patient, shall suffer death by being beheaded, after the usual period of confinement.

The translator observes that, strictly speaking, the art of surgery is unknown in China, and that the term is here employed merely to point out the distinction which the Chinese make in the medical profession between external and internal operations.

Damni injuriæ actio constituitur per legem Aquiliam, cujus primo capite cautum est, ut siquis alienum hominem alienamve quadrupidem, quæ pecudum numero sit, injuria occiderit: quanti ea res in eo anno plurimi fuerit, tantum domino dare damnetur. 4 Inst. tit. 3.

S. 6. Si medicus qui servum tuum secuit, dereliquerit curationem [ejus], et ob id mortuus fuerit servus, culpæ reus erit.

S. 7. Imperitia quoque culpæ adnumeratur; veluti si

medicus [ideo] servum tuum occiderit, quia male eum secuerit, aut perperam ei medicamentum dederit.

S. 11. Liberum autem est ei cujus servus occisus fuerit, et ex judicio privato legis Aquiliæ damnum persequi et capitalis criminis.

PICKFORD *v.* GUTCH.

8 T.R. 305.

THIS was an action by a physician, for calling him a quack, without laying any special damage. To prove an averment in the declaration, "that the plaintiff had used and exercised the profession, &c. of a physician," &c., a surgeon and apothecary was called, who would have proved that the plaintiff, for several years, had prescribed, &c., and that he (witness) had acted under him as a physician. But Buller J. was of opinion that that evidence was insufficient, and that it was necessary to produce the plaintiff's diploma: on which it was produced in Court, and the plaintiff recovered.

DR. MOISES *v.* DR. THORNTON.

8 T.R. 303. 308. T.T. 39 G.3.

THE plaintiff, a physician, brought an action against the defendant for slander; for saying of him, in his profession, "He is a quack; and if he shows you a diploma, it is a forgery:" and, in the declaration, the plaintiff averred that he was a physician, and had duly taken the degree of doctor of physic.

In support of that averment he produced, at the trial before Lord Kenyon, at the sittings after last term, a diploma, purporting, on the face of it, to be granted by the university of St. Andrew's, in Scotland, and to have the university-seal appendant to it; and, in order to authenticate the instrument, the plaintiff's counsel offered to call a witness of the name of Hague, who had been sent into Scotland for the purpose (having before had no knowledge of that university, its constitution or professors), and who was ready to prove that he

attended in the public library of the university, and applied to the persons there assembled in their public capacities, of rector and professors of the university; and that the persons so assembled acknowledged to him that the signatures subscribed to the diploma, conferring the degree of doctor of physic on the plaintiff, were of their proper handwriting respectively; and that they informed him that the same was granted by the university in full senate: and in further confirmation thereof, the witness had seen each professor sign a certificate in his presence (corresponding with the handwriting of their signature to the diploma); which certificate was as follows: — "University Library, Saint Andrew's, April 13. 1798; Sederunt, Doctor Hill; Rector, Doctor Arnot, &c. (naming several other members present). The University agree to confer the Degree of Doctor of Medicine on Mr. Hugh Moises of Pimlico, late Surgeon to the West Middlesex Regiment, on testimonials from George Pearson, M.D. of the College of Physicians, London, and Lecturer on Physic; and Andrew Thynne, M.D. of the College of Physicians, London, and Lecturer of Midwifery.

"Extracted from the University Records by

"Jno. Cook, Cl. Univ.

"*At Saint Andrew's, March* 21. 1799."

"That the above is a true and faithful extract of the minute in the original record of the university; that, in consequence of the above resolution, a diploma was extended and subscribed by the rector, principals, and all the professors; and that the university-seal was appended to the said diploma, is certified by G. H." &c. (signed as before stated to have been seen by the witness.) The same witness was further informed, by the officer whose duty it was to affix the university-seal to their public acts, that the seal affixed to the diploma produced in evidence was such seal, and that he recollected to have affixed the same.

Lord Kenyon was of opinion, at the trial, that this was not sufficient evidence of the facts necessary to authenticate the instrument offered; either that the persons whose names were subscribed to the diploma had authority to grant the same, or that the seal affixed thereto was the proper seal of the university; and therefore nonsuited the plaintiff.

On showing cause against a rule *nisi*, to set aside the non-

suit, it was urged,—That the plaintiff having alleged, in his declaration, that he was duly invested with the character of doctor of physic, which he assumed, and to which the scandal imputed refers, it was incumbent on him to prove it, in the same manner as it would have been necessary for the parties themselves, whose signatures are affixed to the diploma, to have done in case it had been necessary for them to have justified any act of their own under the same authority. In such a case, they must have shown that the university had power by their constitution to grant such a diploma; and that the persons by whom it was issued were authorised to grant the same; and that the seal affixed thereto was the proper seal of the university, and affixed by a proper authority in this instance; and therefore the plaintiff, who claims under their authority, and has undertaken, by his averment, to prove himself duly invested with the character of doctor of physic, was equally bound to prove his title by the same media. But it is clear that the witness offered was himself ignorant of all these circumstances, and could only speak from the hearsay and information of others, who ought to have been called as witnesses. Nor, indeed, has the witness any knowledge of his own that the persons whom he saw sign the certificate, admitting them to be the same persons who had before signed the diploma, did, in fact, fill the characters which they assumed.

In support of the rule, it was urged that the Court are bound to take notice that Saint Andrew's is an university authorised by law to grant degrees, it being recognised as such by the Act of Union. It is equally notorious that, as a corporation, it can only speak by its seal; and, as in the case of all other corporations which are public bodies, the Court will give credit to its public acts, notified by its common seal; such has been the general practice in proving corporate acts under seal; and referred to Pickford *v.* Gutch (*ante*, p. clviii.), where it was said that Buller J. admitted evidence like the present to prove a similar allegation in a declaration. In this respect, they observed, the seal of a corporation, from its notoriety, is entitled to higher credit than the seal of a private individual. But, at any rate, the authenticity of the university-seal was put out of doubt by the evidence offered to be given by the witness, who was ready to swear that he saw the rector and professors assembled in

their public capacity, in their public place of meeting, when they individually acknowledged their subscriptions to the diploma, which they confirmed by signing the certificate mentioned in the presence of the witness, the handwriting whereof corresponded with the names appearing on the diploma. Now, the common method of proving instruments to which there are no subscribing witnesses, as in this case, is by proving the handwriting of the parties to the same. There was no occasion for the witness to have personal knowledge of the individuals so signing; for where persons are acting in an acknowledged public capacity, the Court will give them credit for being properly invested with their official characters, at least until the contrary appears. If it were necessary to prove a public act done by the Lord Mayor of London, it would be sufficient that the witness saw the act done by a person acting publicly in that character, and invested with the public insignia of the office, although the witness might have no personal knowledge of the man. The diploma is not that which confers the degree, but, like the probate of a will, is only evidence of it. The *sederunt* entered in the register of the university, is the original document of the decree having been conferred. But as the courts give credit to the probate issued out under the seal of the ecclesiastical court, in proof of a will of personalty, so the diploma is evidence, under the seal of the university, of the degree having been legally conferred. In the ordinary case of admission to the freedom of a corporation, the admission is entered in the corporation books; but a copy of it is given to the freeman, which is evidence of his right. If this had been an action against the university, upon a grant under their seal, the acknowledgment of the persons whose names were affixed, convened in their public assembly, that it was their deed, would have been sufficient against them; and, if so, it was sufficient for this purpose.

Lord Kenyon C. J. At the trial a case occurred to my recollection, that was brought some years ago by Lord Cholmondeley against a defendant for killing game on Enfield Chase, when the defendant insisted that he was qualified by his station in life, he being a doctor of laws; and in order to prove that he was so, he produced in evidence the books from the University of Oxford, which contained the act of the corporation conferring the degree. I thought that that

defendant had been properly advised to produce such evidence, because it was the best evidence of the fact; and I thought that the present case, on the part of the plaintiff, was deficient in proof, because the same sort of evidence was not given. I was of opinion that the diploma, proved as it was, and the certificate, were insufficient to prove the plaintiff's allegation, that he had duly taken the degree of doctor of physic. The latter I did not consider as a copy taken from the corporation books, but a certificate from certain persons, that there had been such an act of the university conferring the degree. It also struck me that some evidence should have been given that this was the corporate seal affixed to the diploma. These were the grounds of my opinion at the trial, and I have heard no arguments to satisfy me that I was mistaken.

Grose J. In order to prove the averment in the declaration, that the plaintiff had duly taken his degree of doctor of physic, the plaintiff produced a piece of parchment, with a seal affixed to it. Now, to make that evidence, it should be either the original act of the corporation conferring the degree, or an examined copy of it. As an original act, it should have been proved that the seal affixed to it was the seal of the university; but no such evidence was given. If considered as a copy, it should have been compared with the original book by the witness who produced it. I therefore think that the diploma offered in evidence was not properly authenticated, either as an original or an examined copy.

Lawrence J. It is not necessary to prove the seal of a corporation in the same manner as the seal of an individual, by producing the witness who saw the seal affixed: but when an instrument, having a seal affixed to it, purporting to be a corporate seal, is produced in evidence, it is necessary to prove that it is the seal of the corporation, if there be any doubt about it; otherwise any instrument, with a seal to it, might be produced in court as an instrument sealed by the corporation. The instrument produced in this case was either the original act or a copy of it. If it were produced as the original act by which the university conferred the degree, the plaintiff should have proved the instrument by legal evidence: if produced as a copy of the original act, it should have been proved, in the usual way, as a copy; for the University of St. Andrew could not, under their

seal, give evidence that the plaintiff had taken such a degree. Even if it be not necessary in general for the party to show that he has regularly taken his degree, in this case it was necessary, because the plaintiff alleged in his declaration, "that he had duly taken the degree of doctor of physic."

Le Blanc J. It was not sufficient for the plaintiff merely to produce the instrument with a seal affixed to it, without giving some evidence to show that it was the seal used by the University of St. Andrew. The instrument was not of itself evidence. If it were necessary to give in evidence some act of the corporation, in order to prove that the plaintiff had duly taken a degree, the deficiency in the evidence here was in not producing the book of the corporation, containing the entry of the degree having been conferred, or a copy of that book; and if a copy had been produced, it should have been produced as an examined copy. Therefore, I think there was no legal evidence to prove the allegation in the declaration.

Rule discharged.

REX *v.* PORDICH.

Sid. 431. M. T. 21 Car. 2.

Pordich, doctor of physic of the college in London, was appointed constable in the county of Berks, on account of a tenement which he had there; and it was moved that he was privileged from it, in respect of his avocation elsewhere, and also by the provision of 34 Hen. 8. concerning that college.

By the Court. It seems that persons of quality shall be privileged from that office; and Alderman Abdie's case was cited, and Prouse's case, Cro. El. 389. And it was ruled, that he should be discharged from the office, *nisi*, &c.

S. C. DR. POORDAGE.

1 Mod. 22.

Motion for a writ of privilege for him, he being a practising physician in town, and chosen constable in a parish.

The Court said, if the office go by houses, he must make

a deputy. But, upon consideration, the motion was refused, and a difference made between an attorney or barrister-at-law and a physician: the former enjoy their privilege because of their attendance in public courts, and not upon the account of any private business in their chambers; and a physician's calling is a private calling. Wherefore, they would not introduce new precedents.

S. C. DR. POORDAGE.

2 Keb. 578. MOTION for a writ of privilege for the defendant, being a physician, and chosen constable by reason of a house in Bradfield, where, by custom, they choose such; and albeit in these cases the party may make a deputy, yet, as Stone's case of an attorney, the Court ordered to show cause why he should not be exempted. But the Court inclined it lay not, and said it was settled at the council table that the king's servants shall watch and ward, because they may do it by deputy, unless grooms, &c.; but counsellors and attornies are bound to perpetual residence here. So are not physicians, more than gentlemen: but surgeons may be exempted; and so of counsellors.

PINDAR *v.* DARBY.

Comb. 31. IN this case Wythens said, that he could not take the case of Poordage in Siderfin to be good law.

2 Hawk. P.C. c. 10. s. 44. It seems to have been holden, that the equity of this act (32 Hen. 8. c. 40.) doth not extend to other physicians not mentioned in it; perhaps because physicians have no such special custom for their discharge as surgeons are said to have.

Ib. s. 41. It seems that a practising physician being chosen constable, in pursuance of a custom, in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private. Yet, if a practising physician be chosen constable of a town which has sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the King's Bench.

SECOND DIVISION.

Surgeons.

FIRST SUBDIVISION.

Statutes, Charters, &c.

Part of 25 Hen. 6.
Char. 24 Feb. 1 Ed. 4.
—— 5 Dec. 15 Hen. 7.
19 Hen. 7. c. 7.
Char. 12 March. 2 Hen. 8.
—— 5 Dec. 3 Hen. 8.
3 Hen. 8. c. 11.
5 Hen. 8. c. 6.
32 Hen. 8. c. 42.
33 Hen. 8. c. 12. s. 7, 18.
34 & 35 Hen. 8. c. 8.
Char. 30 Jan. 2 Jac. 1.
—— 15 Aug. 5 Car. 1.
18 Geo. 2. c. 15.
Char. 22 March. 40 Geo. 3.
—— 13 Feb. 3 Geo. 4.
Ordinances.

De Feodis Consuetis pro Barbitonsore Regis.

5 Rym. Fœd. pt. 1. p. 180.

25 H. 6. Pat. p. 2. M. 5. An. 1447.

Rex omnibus ad quos, &c. salutem:

Sciatis quod per quandam supplicationem nobis per dilectum servientem nostrum Robertum Bolley, servientem ewariæ nostræ exhibitam, accepimus qualiter ipse oppellas

barbitonsorum, ad portam hospitii nostri, ubicunque fuerit, cum tot servientibus quot pro occupatione hujusmodi oppellis prædictis necessarii fuerunt et opportuni, habuit et occupavit cum omnibus proficuis et commoditatibus eidem occupationi aliquo modo pertinentibus sive spectantibus, prout ipse tempore carissimi domini et patris nostri regis defuncti habuit.

De gratiâ nostrâ speciali concessimus prefato Roberto et Alexandro Donour valetto ewariæ nostræ opellas barbitonsorum, ad portam seu portas hospitii nostri, tenendas, habendas, et occupandas a quinto die Julii, anno regni nostri vicesimo tertio, pro termino vitæ, eorundem Roberti et Alexandri et alterius eorum diutius viventis, cum tot servientibus, in opellis prædictis servientibus et servituris, quot pro occupatione prædicta necessarii fuerint et opportuni, cum omnibus proficuis et commoditatibus occupationi prædictæ pertinentibus sive spectantibus una cum feodis Militum de Balneo quando erunt milites facti sive creati; videlicet,

De quolibet milite viginti quatuor ulnis panni linei qui erunt circa balneum, una cum uno tapet. longitudinis trium virgarum de rubeo worsted, ac etiam viginti solidis pro rasura cujuslibet militis sic creati;

Quadraginta solidis de quolibet barone, seu ejus pare, pro ejus rasura;

Centum solidis de quolibet comite, seu ejus pare, pro ejus rasura;

Et decem libris de quolibet duce, seu ejus pare, pro ejus rasura:

Et ulterius concessimus quod nullus alius barbitonsor habeat seu occupet aliquas opellas barbitonsorum, prope portam seu portas hospitii nostri, nisi prædicti Robertus et Alexander, durante vita eorum, et alterius eorum diutius viventis; eo quod expressa mentio de aliis donis et concessionibus, eisdem Roberto et Alexandro per nos ante hæc tempora factis in præsentibus facta non existit, aut aliquo statuto, actu, vel ordinatione in contrarium factis, non obstantibus.

In cujus, &c. — Teste Rege apud Westmonasterium vicesimo quinto die Julii. Per ipsum Regem, et de data prædicta, auctoritate Parliamenti.

Charter 1 Ed. 4.

For the Barbers of the City of London.

Rex omnibus ad quos &c.

Sciatis quod nos considerantes qualiter dilecti nobis probi et liberi homines Misteræ Barbitonsorum civitatis nostræ London' utentes mystera sive facultate Sirurgicorum tum circa vulnere plagas læsiones et alias infirmitates ligeorum nostrorum ibidem curand' et sanand' quam in extractione sanguinis et dentium hujusmodi ligeorum nostrorum grandes et multiplices intendentias et labores per longa tempora sustinuerunt et supportaverunt indiesque sustinere et supportare non desistunt qualiter etiam per ignorantiam negligentiam et insipientiam nonnullorum hujusmodi barbitonsorum tam liberorum hominum civitatis nostræ prædictæ quam aliorum sirurgicorum forinsecorum et non liberorum hominum ejusdem civitatis in dies ad eandem civitatem confluentium et in mistera sirurgicorum minus sufficienter eruditorum quam plurima ac quasi infinita mala diversis ligeis nostris in vulneribus plagis læsionibus et aliis infirmitatibus suis per hujusmodi barbitonsores et surgicos sanandis et curandis ob eorum defectum ante hæc tempora evenerunt quorum quidem ligeorum nostrorum alii ea de causa viam universæ carnis sunt ingressi alii autem eadem causa tanquam insanabiles et incurabiles sunt ab omnibus derelicti similiaque mala vel pejora in futurum in hac parte evenire formidatur nisi remedium congruam superhoc per nos citius provideatur Nos enim attendentes et intime advertentes quod hujusmodi mala ligeis nostris ob defectum debit supervis' scrutinii correctionis et punitionis hujusmodi barbitonsorum et sirurgicorum minus sufficienter in eisdem misteris sive facultatibus ut predictum est erudit' et instruct' evenire contingunt &c. Concessimus eis

Reciting that there was a mystery of barbers practising surgery.

Mischiefs arising from ignorance of surgery.

The necessity of superintendence.

Quod mistera illa et omnes homines ejusdem misteræ de civitate predicta sint in re et nomine unum corpus et una communitas perpetua.

Incorporates the mystery, &c.

And that they may annually elect two of their body, most expert in surgery, to be masters or governors;

Governors.

That they may have a common seal;

Seal.

That they may acquire and hold lands, and other property, to the annual value of five marks;

Lands.

Suit.

That they may sue and be sued, &c.

Company may make bye-laws.

Et quod prædicti magistri sive gubernatores et communitas et eorum successores congregationes licitas et honestas de seipsis ac statuta et ordinationes pro salubri gubernatione supervisu et correctione misterum prædictarum secundum necessitat' exigentiam quotiens et quando opus fuerit facere valeant licite et impune sine occasione vel impedimento nostri heredum vel successorum nostrorum &c. dummodo statuta et ordinationes illa contra leges et consuetudines regni nostri Angliæ nullo modo existant

Governors shall have superintendence of all surgeons

Præterea volumus et concedimus pro nobis heredibus et successoribus nostris quantum in nobis est quod magistri sive gubernatores prædictæ communitatis pro tempore existentes et eorum successores imperpetuum habeant supervisum scrutinium correctionem et gubernationem omnium

in London and its suburbs,

et singulorum liberorum hominum dictæ civitatis sirurgicorum utentium mistera barbitonsorum in eadem civitate ac aliorum sirurgicorum forinsecorum quorum cumque mistera illa sirurgica aliquo modo frequentantium et utentium infra

and may punish them.

eandem civitatem et suburbia ejusdem ac punitionem eorundem tam liberorum quam forinsecorum pro delictis suis in non perfecte exequendo faciendo et utendo mistera illa:

Survey of instruments, medicines, &c.

Necnon supervisum et scrutinium omni modorum instrumentorum emplastrorum et aliarum medicinarum et eor' recept' per dictos barbitonsores et surgicos hujusmodi ligeis nostris pro eorum plagis et vulneribus lesionibus et hujusmodi infirmitatibus curand' et sanand' dand' imponend' et utend' quotiens et quando opus fuerit pro commodo et utilitate eorundem ligeorum nostrorum Ita quod punitio

Punishment, in what manner.

hujusmodi barbitonsorum utentium dicta mistera sirurgica ac hujusmodi sirurgicorum forinsecorum sic in premissis delinquentium per fines amerciamenta et imprisonamenta corporum suorum et per alias vias rationabiles et congruas exequatur

None may practise until admitted.

Et quod nullus barbitonsor utens dicta mistera sirurgica infra dictam civitatem aut suburbia ejusdem aut alius sirurgicus forinsecus quicunque et exequend' faciend' et exercend' eandem misteram sirurgic' aliquo modo in futurum in eadem civitate vel suburbiis ejusdem admittatur nisi primitus per dictos magistros sive gubernatores vel eorum successores adhoc habiles et sufficientes in mistera illa eruditus approbetur et pro plenaria comprobatione sua in hac parte

majori civitatis prædictæ pro tempore existenti per eosdem magistros sive gubernatores ad hoc presentetur.

That the members of the company shall be exempt from all manner of juries and inquests within the city and suburbs of London. Exemption from juries.

Quod ipsi perpetuis futuris temporibus personas habiles et sufficienter eruditos et informatos in dicta misteria sirurgica et per magistros sive gubernatores mistere illius pro tempore existentes in forma prædicta approbatur et majori civitatis prædictæ pro tempore existen' ut prædictum est presentatur in eandem misteram barbitonsorum ad libertates dictæ civitatis habendum et gaudendum secundum consuetudinem dictæ civitatis admittere et recipere valeant et non alias personas quascunque neque alio modo aliquo mandato aut requisitione nostri heredum seu successorum nostrorum per literas inscriptas vel aliter qualiter cunque in contrarium fact' seu faciend' non obstante. Admission of surgeons.

With a clause of indemnity against former grants.

Charter, 5 Dec. 15 Hen. 7.

This is a mere confirmation of the preceding charter.

---

19 Hen. 7. c. 7. (*Vide ante*, p. v.)

Charter, 12 March. 2 Hen. 8.

This also is a mere confirmation of charter 1 Ed. 4.

Charter, 5 Dec. 3 Hen. 8.

This is an inspeximus and confirmation of the charter 1 Ed. 4.

5 Hen. 8. c.6.

An Act concerning Surgeons to be discharged of Quests and other Things.

Merits of the barber-surgeons.

Showeth unto your discreet wisdoms, your humble orators the wardens and fellowship of the craft and mystery of surgeons enfranchised in the city of London, not passing in number twelve persons, that whereas they and their predecessors, from the time that no mind is to the contrary, as well in this noble city of London as in all other cities and boroughs within this realm, or elsewhere, for the continual service and attendance that they daily and nightly, at all hours and times, give to the king's liege people, for the relief of the same, according to their science, have been exempt and discharged from all offices and business wherein they should use or bear any manner of armour or weapon; and with like privilege have been intreated as heralds of arms, as well in battles and fields as other places, therefore to stand unharnessed and unweaponed, according to the law of arms, because they be persons that never used feats of war, nor ought to use, but only the business and exercise of their science, to the help and comfort of the king's liege people in the time of their need; and in the aforesaid city of London, from the time of their first incorporation, when they have been many mo in number than they now be, were never called nor charged to be on quest, watch, nor other office, whereby they should use or occupy any armour or defenceable gear of war, where through they should be unready, and letted to practise their cure of men being in peril; therefore, for that there be so small number of the said fellowship of the craft and mystery of surgeons, in regard of the great multitude of patients that be, and daily chance and infortune happeneth and increaseth in the foresaid city of London; and that many of the king's liege people suddenly wounded and hurt, for default of help in time to them to be showed, perish, and so divers have done, as evidently is known, by occasion that your said suppliants have been compelled to attend upon such constableship, watches, and juries as is aforesaid; be it enacted and esta-

blished by the king our sovereign lord, and the lords spiritual and temporal, and by the commons, in this present parliament assembled, and by authority of the same, That from henceforth your said suppliants be discharged, and not chargeable of constableship, watch, and of all manner of office, bearing any armour, and also of all inquests and juries within the city of London; and also that this act in all things do extend to all barber-surgeons admitted and approved to exercise the said mystery of surgeons, according to the form of the statute lately made in that behalf, so that they exceed not ne be at one time above the number of twelve persons.

Exemption from constableship, watch, bearing arms, and juries within London.

Twelve barber-surgeons.

---

32 Hen. 8. c. 42.

For Barbers and Surgeons.

The King our Sovereign Lord, by the advice of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, by all their common assents, duly pondering, among other things necessary for the commonwealth of this realm, that it is very expedient and needful to provide for men expert in the science of physic and surgery, for the health of man's body, when infirmities and sickness shall happen, for the due exercise and maintenance whereof good and necessary acts be already made and provided; yet nevertheless, forasmuch as within the city of London, where men of great experience, as well in speculation as in practice of the science and faculty of surgery, be abiding and inhabiting, and have more commonly the daily exercise and experience of the same science of surgery than is had or used within other parts of this realm, and by occasion thereof many expert persons be brought up under them as their servants, apprentices, and others, who by the exercise and diligent information of their said masters, as well now as hereafter, shall exercise the said science within divers other parts of this realm, to the great relief, comfort, and succour of much people, and to the sure safeguard of their bodily health, their limbs and lives: and forasmuch as within the said city of London there be now two several and distinct com-

Recital.

Two companies.

panies of surgeons, occupying and exercising the said science and faculty of surgery, the one company being called the Barbers of London, and the other company called the Surgeons of London; which company of barbers be incorporated to sue and to be sued by the name of masters or governors of the mystery or commonalty of the Barbers of London, by virtue and authority of the letters patent under the great seal of the late king of famous memory, King Edward the Fourth, dated at Westminster the 24th of February in the first year of his reign, which afterward, as well by our now most dread Sovereign Lord, as by the right noble and virtuous prince King Henry the Seventh, father unto the king's most excellent highness now being, were and be confirmed, as by sundry letters patent thereof made amongst other things in the same contained more at large may appear; and the other company, called the surgeons, be not incorporate nor have any manner of corporation, which two several and distinct companies of surgeons were necessary to be united, and made one body incorporate, to the intent that, by their union and often assembly together, the good and due order, exercise, and knowledge of the said science or faculty of surgery should be, as well in speculation as in practice, both to themselves and all other their said servants and apprentices, now and hereafter to be brought up under them, and by their learnings and diligent and ripe informations more perfect, speedy, and effectual remedy should be than it hath been or should be if the said two companies of barbers and surgeons should continue severed asunder, and not joined together, as they before this time have been and used themselves, not meddling together: wherefore, in consideration of the premises, be it enacted by the King our Sovereign Lord, and by the lords spiritual and temporal, and by the commons, in this present parliament assembled, and by the authority of the same, That the said two several and distinct companies of surgeons, that is to say, both the barbers and the surgeons, and every person of them, being a freeman of either of the said companies after the custom of the said city of London, and their successors, from henceforth immediately be united and made entire and whole body corporate and one commonalty perpetual, which at all times hereafter shall be called by the name of masters or governors of the mystery and common-

Barbers incorporated.

Surgeons not incorporated.

Union of the companies.

Name.

alty of barbers and surgeons of London, for evermore, and by none other name; and by the same name to implead and be impleaded before all manner of justices, in all courts, in all manner of actions and suits, and also to purchase, enjoy, and to take to them and to their successors all manner of lands, tenements, rents, and other possessions whatsoever they may be; and also shall have a common seal, to serve for the business of the said company and corporation for ever, and by the same name peaceably, quietly, and indefeasably shall have, possess, aud enjoy to them, and to their successors for ever, all such lands and tenements, and other hereditaments whatsoever, which the said company or commonalty of barbers have and enjoy to the use of the said mystery and commonalty of barbers of London; and also shall peaceably and quietly have and enjoy all and singular benefices, grants, liberties, privileges, franchises, and free customs, and also all manner of other things at any time given or granted unto the said companies of barbers or surgeons, by whatsoever name or names they or any of them were called, and which they or any of them now have, or any of their predecessors have had by acts of parliament, letters patent of the king's highness or other his most noble progenitors, or otherwise by any other lawful means have had at any time afore this present act, in as large and ample manner and form as they or any of them have, had, might or should enjoy the same, this union or conjunction of the said companies together notwithstanding, and as largely to have and enjoy the premises as if the same were and had been specially and particularly expressed and declared with the best and most clearest words and terms in the law, to all intents and purposes; and that all persons of the said company now incorporate by this present act, and their successors, that shall be lawfully admitted and approved to occupy surgery after the form of the statute in that case ordained and provided, shall be exempt from bearing of armour, or to be put in any watches or inquests; and that they and their successors shall have the search, oversight, punishment, and correction, as well of freemen as of foreigners, for such offences as they or any of them shall commit or do against the good order of barbery or surgery, as afore this time among the said mystery and company of barbers of London hath been used and ac-

Plead.

Lands, &c.

Seal.

Lands, &c.

Former privileges, &c.

Exemption from arms, inquests, watches, &c.

Correction, &c. of surgeons,

according to their bye-laws.

customed, according to the good and politic rules and ordinances by them made, and approved by the lord chancellor, treasurer, and two chief justices of either bench, or any three of them, after the form of the statute in that case ordained and provided.

Bodies to anatomise.

2. And further be it enacted by the authority aforesaid, that the said masters or governors of the mystery and commonalty of barbers and surgeons of London, and their successors yearly for ever, after their said discretions, at their free liberty and pleasure, shall and may have and take, without contradiction, four persons condemned, adjudged, and put to death for felony by the due order of the king's laws of this realm, for anatomies, without any further suit or labour to be made to the king's highness, his heirs or successors, for the same, and to make incision of the same dead bodies, or otherwise to order the same after their said discretions at their pleasures, for their further and better knowledge, instruction, insight, learning, and experience in the said science or faculty of surgery; saving unto all persons, their heirs and successors, all such right, title, interest, and demand which they or any of them might lawfully claim or have in or to any of the lands and tenements, with the appurtenances belonging unto the said company of barbers and surgeons, or any of them, at any time afore the making of this act, in as ample manner and form as they or any of them had or ought to have had heretofore, any thing in this present act comprised to the contrary hereof in anywise notwithstanding.

Division of the business of barbers and surgeons.

3. And forasmuch as such persons, using the mystery or faculty of surgery, oftentimes meddle and take into their cures and houses such sick and diseased persons as have been infected with the pestilence, great pox, and such other contagious infirmities, do use or exercise barbery, as washing or shaving, or other feats thereunto belonging, which is very perilous for infecting the king's liege people resorting to their shops and houses, there being washed or shaven: wherefore it is now enacted, ordained, and provided by the authority aforesaid, that no manner of person within the city of London, suburbs of the same, and one mile compass of the said city of London, after the Feast of the Nativity of our Lord God next coming, using barbery or shaving, or that hereafter shall use any barbery or shaving within

the said city of London, suburbs, or one mile circuit of the same city of London, he nor they, nor none other for them, to his or their use, shall occupy any surgery, letting of blood, or any other thing belonging to surgery, drawing of teeth only except; and furthermore in like manner, whosoever that useth the mystery or craft of surgery within the circuit aforesaid, as long as he shall fortune to use the said mystery or craft of surgery, shall in nowise occupy nor exercise the feat or craft of barbery or shaving, neither by himself nor by none other for him, to his or their use; and moreover, that all manner of persons using surgery for the time being, as well freemen as foreigners, aliens and strangers within the said city of London, the suburbs thereof, and one mile compass of the said city of London, before the Feast of St. Michael the Archangel next coming shall have an open sign on the street side where they shall fortune to dwell, that all the king's liege people there passing by may know at all times whither to resort for remedies in time of necessity.

Surgeons shall have an open sign.

London and one mile round.

4. And further be it enacted, by the authority aforesaid, that no manner of person, after the said feast of St. Michael the Archangel, next coming, presume to keep any shop of barbery or shaving within the city of London, except he be a freeman of the said corporation and company.

None may practise in London until admitted.

5. And furthermore, at such times heretofore accustomed, there shall be chosen, by the same company, four masters or governors of the same corporation or company, of the which four two of them shall be expert in surgery, and the other two in barbery; which four masters, and every of them, shall have full power and authority, from time to time, during their said office, to have the oversight, search, punishment, and correction of all such defaults and inconveniences as shall be found among the said company using barbery or surgery, as well of freemen as foreigners, aliens or strangers within the city of London, and the circuits aforesaid, after their said discretions; and if any person or persons, using any barbery or surgery, at any time hereafter offend in any of these articles aforesaid, that then for every month the said person so offending shall lose, forfeit, and pay 5*l.*, the one moiety thereof to the king our sovereign lord, and the other moiety to any person that will or shall sue therefore by action of debt, bill, plaint, or information in any of the king's courts,

Governors

to have the correction, punishment, &c.

Penalties.

wherein no wager of law, essoign, or protection shall be admitted or allowed in the same.

Members shall pay scot and lot, &c.

6. Provided, that the said barbers and surgeons, and every of them, shall bear and pay lot and scot, and such other charges as they and their predecessors have been accustomed to pay within the said city of London, this act nor any thing therein contained to the contrary hereof in any wise notwithstanding.

Surgeons may be kept as domestics.

7. Provided alway, and be it enacted by authority aforesaid, that it shall be lawful to any of the king's subjects, not being barber or surgeon, to retain, have, and keep in his house, as his servant, any person being a barber or surgeon, which shall and may use and exercise those arts and faculties of barbery or surgery, or either of them, in his master's house, or elsewhere by his master's licence or commandment, any thing in this act above written to the contrary notwithstanding.

---

33 Hen. 8. c. 12. s. 7. (Abridged.)

If any person be found guilty of malicious striking, by reason whereof blood hath been shed within the king's palace or house, he shall have judgment by the lord great master or lord steward (if present), and in his absence by the treasurer, comptroller, and steward of the Marshalsea, by whom he is found guilty, to have his right hand stricken off before such judges, at such place and time, and by such person, as they shall appoint; and shall have judgment of imprisonment for life, and to pay fine and ransom at the king's pleasure.

8. And for the declaration of the solemn and due circumstance of the execution appertaining, and of long time used and accustomed in such case, the serjeant or chief surgeon for the time being, or his deputy, of the king's household, shall be then ready to sear the stump when the hand is stricken off.

9. The serjeant of the pantry, or his deputy, to give the party bread.

10. The serjeant of the cellar, or his deputy, with a pot of red wine, to give the party to drink, after his hand is so stricken off, and the stumps seared.

11. The serjeant of the ewry, or his deputy, with cloths for the surgeon.

12. The yeoman of the chandry, or his deputy, with seared cloths for the surgeon.

13. The master cook, or his deputy, with a dressing knife, and shall deliver the same to the serjeant of the larder, or his deputy, who shall hold upright the dressing knife till execution done.

14. The serjeant of the poultry, or his deputy, with a cock in his hand, ready for the surgeon to wrap about the stump when the hand shall be so stricken off.

15. The yeoman of the scullery, or his deputy, to prepare and make a fire of coals, and then to make ready searing irons for the surgeon or his deputy.

16. The serjeant or chief ferror, or his deputy, with the searing irons, to deliver the same to the serjeant or chief surgeon, or to his deputy, when they be hot.

17. The groom of the salcery, or his deputy, with vinegar and cold water, and to give attendance upon the said surgeon, or his deputy, until the same execution be done.

18. And the serjeant of the wood-yard, or his deputy, shall bring there a block, with a betil, a staple, and cords, to bind the said hand upon the block, while execution is doing.

---

34 & 35 Hen. 8. c. 8.

A Bill that Persons, being no common Surgeons, may minister Medicines, notwithstanding the Statute.

Where, in the parliament holden at Westminster, in the third year of the king's most gracious reign, amongst other things, for the avoiding of sorceries, witchcrafts, and other inconveniences, it was enacted, that no person within the city of London, nor within seven miles of the same, should take upon him to exercise and occupy as physician or surgeon, except he be first examined, approved, and admitted by the bishop of London, and other, under and upon certain pains and penalties in the same act mentioned, sithence the making of which said act, the company and fellowship of surgeons of London, minding only their own lucres, and no-

thing the profit or ease of the diseased or patient, have sued, troubled, and vexed divers honest persons, as well men as women, whom God hath endued with the knowledge of the nature, kind, and operation of certain herbs, roots, and waters, and the using and ministering of them to such as been pained with customable diseases, as women's breasts being sore, a pin and the web in the eye, uncomes of hands, burnings, scaldings, sore mouths, the stone, strangury, saucelim and morphew, and such other like diseases, and yet the said persons have not taken any thing for their pains or cunning, but have ministered the same to poor people only for neighbourhood and God's sake, and of pity and charity; and it is now well known, that the surgeons admitted will do no cure to any person, but where they shall know to be rewarded with a greater sum or reward than the cure extendeth unto, for in case they would minister their cunning unto sore people unrewarded, there should not so many rot and perish to death for lack of help of surgery as daily do, but the greatest part of surgeons admitted been much more to be blamed than those persons that they trouble.

2. For although the most part of the persons of the said craft of surgeons have small cunning, yet they will take great sums of money, and do little therefore, and by reason thereof they do oftentimes impair and hurt their patients, rather than do them good; in consideration whereof, and for the ease, comfort, succour, help, relief, and health of the king's poor subjects, inhabitants of this realm, now pained or diseased, or that hereafter shall be pained or diseased,

3. Be it ordained, established, and enacted, by the authority of this present parliament, that at all time, from henceforth, it shall be lawful to every person being the king's subject, having knowledge and experience of the nature of herbs, roots, and waters, or of the operation of the same, by speculation or practice, within any part of the realm of England, or within any other the king's dominions, to practise, use, and minister in and to any outward sore, uncome, wound, apostemations, outward swelling, or disease, any herb or herbs, ointments, baths, pultess, and emplaisters, according to their cunning, experience, and knowledge in any of the diseases, sores, and maladies beforesaid, and all other like to the same, or drinks for the stone, strangury, or agues, without suit, vexation, trouble, penalty, or loss of their goods,

the foresaid statute in the foresaid third year of the king's most gracious reign, or any other act, ordinance, or statute, to the contrary heretofore made, in any wise notwithstanding.

Charter, 30 Jan. 2 Jac. 1.

This charter introduces several regulations for the election of officers, the government of members, the survey of medicines, surgical instruments, &c., and purports to grant further exemptions and privileges, and to extend the jurisdiction of the company to the circuit of three miles around London. But as it is exceeded by the charter of Charles the First, and is not expressly confirmed by statute 18 Geo. 2. c. 25., it is unnecessary to introduce its long and prolix clauses, or even an abridgment of them, in this place.

Charter, 15 Aug. 5 Car. 1.

Reciting, 32 Hen. 8. c. 42., that the company had divers lands, privileges, liberties, customs, &c. under that and other acts of parliament, and divers charters, the necessity of suppressing the practice of impostors and ignorant persons, &c. confirms such lands, court leets, privileges, liberties, customs, &c. Reciting charter 2 James 1. as to the superintendence of the faculty and other powers, &c.; and the great increase of the population in the neighbourhood of London, and of surgeons, grants, "That all and singular, as well freemen of the said society as foreigners, whether they be native subjects of this our kingdom of England, or aliens, professing and exercising the mystery or art of barber and surgeon, or either of them, within our cities of London and Westminster, the liberties and suburbs thereof, and in other towns, hamlets, and places whatsoever, within the distance of seven miles of the said city of London, as well within the liberties as without, for their own private lucre and profit (physicians duly approved of by the president and commonalty of the college of physicians, London, and admitted and allowed

A. All surgeons within seven miles of London

to practise physic, being only excepted), shall and may, from time to time, for ever hereafter, be subject and tied down to the power, supervisal, scrutiny, examination, government, summons, convocation, ordination, swearing, correction, and all impositions, taxes, and collections whatsoever, of the aforesaid masters or governors of the mystery and commonalty of barbers and surgeons of London, and their successors, masters, or governors, of the said corporation, and to all and all manner of pecuniary payments, charges, fines, amerciaments, imprisonments, pains and penalties whatsoever, by the aforesaid masters or governors of the mystery and commonalty aforesaid, for the time being, from time to time inflicted or imposed: and that all and singular such persons professing or exercising the aforesaid arts of barbers and surgeons, or either of them, within our said cities of London and Westminster, or in whatsoever towns, hamlets, and places, within seven miles of our said city of London (except before excepted), shall be holden and subject to and by the same laws, ordinances, oaths, impositions, taxes, fines, imprisonments, distresses, penalties, prescriptions, and constitutions, to and by which the barbers and surgeons of the said city of London, by any acts of parliament whatsoever, or by any charters or letters patent whatsoever of any of our progenitors or predecessors heretofore to the aforesaid masters or governors of the mystery and commonalty aforesaid, by whatsoever names, made and granted, may or ought to be holden."

subject to the company.

A council house,

That they may have a council house, and therein hold assemblies of the masters or governors, and assistants.

assemblies in,

That, so assembled, they shall have authority to treat of pry into and consult about all things touching the mystery and the good rule and state of government thereof.

B. to make ordinances, &c.

That they may revoke former ordinances, and frame such new reasonable ordinances, constitutions, &c. as, "according to their sage discretions, shall seem to be good, wholesome, profitable, honest, and necessary, for the good order, correction, and government of all and singular, as well the freemen of the said commonalty as of foreigners, whether they be natives of this our kingdom of England, or aliens, professing and exercising the aforesaid art of barbers and surgeons, or either of them, for their own lucre, within our cities of London and Westminster, the liberties and suburbs

thereof, or within seven miles of the said city of London (except before excepted), and for the suppressing of impostors or other unskilful persons, by whose unacquaintance with, and ignorance of, the art, our people may suffer any mischief, danger, or grievance, in their bodies, and for the declaring in what manner and order the masters or governors of the mystery and commonalty aforesaid, and the assistants and freemen and officers of the same commonalty, and all others whosoever professing or exercising the aforesaid mysteries or arts of barbers and surgeons, or either of them, within our cities and precincts aforesaid, may, in their said offices, mysteries, and businesses, behave and carry themselves, and also," as to their lands and other property, &c., and any other things touching the society; and that they "as often as they shall ordain and make such laws, statutes, and ordinances, in form aforesaid, shall and may take such reasonable pains and punishments, by imprisonment, or impose and assign fines and amerciaments, or both of them, toward and upon delinquents against the aforesaid laws, statutes, and ordinances, or any of them," as and which to them shall seem reasonable, &c. "And also shall and may, by the proper servants of the said masters or governors of the mystery and commonalty aforesaid, levy and have such fines and amerciaments," to their use, "by distress or action in any court of record, or not of record, to be held in our said city of London, or by any other means, or in any other court whatsoever, as to them shall seem more convenient." Such bye-laws to be approved by the chancellor, &c.

Then follow several clauses relative to the election and amotion of officers. Elections, &c.

Then several clauses as to the election, &c. of examiners.

C.

None may practise surgery

"That no person or persons whatsoever, for the future, whether he or they be a freeman or freemen of the said society, or a foreigner or foreigners, and whether he or they be a native subject or subjects of this kingdom of England, or an alien or aliens, shall use or exercise the said art or science of surgery within our said cities of London and Westminster, or either of them, or within the distance of seven miles of the said city of London, for his or their private lucre or profit (the aforesaid physicians [*ante*, p. clxxix A.] so as aforesaid approved of and admitted being only excepted), unless the said person or persons be first tried and

within seven miles of London, except physicians, until admitted,

examined, in the presence of two or more of the masters or governors of the mystery and commonalty aforesaid, who for the time shall be, by four or more of the examiners of the same society for the time being, so as aforesaid elected and appointed, and by the public letters testimonial of the same masters or governors, under their common seal, approved of and admitted to exercise the art or science of surgery, according to the laws and statutes of this our kingdom of England, on pain of forfeiting the sum of 5*l.* for *every time* wherein, without such allowance and admission, he or they shall practise surgery, or exercise the said art or science of surgery; and that the masters or governors of the mystery and commonalty aforesaid, for the time being, may levy and recover such penalties and forfeitures, and shall and may have one moiety thereof for us, our heirs and successors, and the other moiety to the public use of the commonalty and society, from time to time, to be applied, and to be prosecuted by distress or action in any court of record, or not of record, to be held within our said city of London, or by any other lawful means whatsoever, or in any other court whatsoever, as to them more expedient."

with testimonials.

Penalty.

That every freeman of the said society, experienced in the said art of surgery, and duly admitted, may "make, prepare, compound, apply, administer, and use all and singular emplasters, ointments, compositions, medicines, and other medicaments, belonging to the art of surgery, which by such men, or any of them, so experienced, approved, and admitted, as aforesaid, have heretofore been had, used, or frequented, or which by them, or their successors, or any of them, shall hereafter be esteemed to be fitting, wholesome, and convenient for the better and more speedy recovery of the healths of their patients in cases of surgery; that is to say, in the curing of wounds, ulcers, fractures, dislocations, tumours, beside and contrary to nature, and of other external infirmities, as to them shall seem more expedient, any statute notwithstanding."

Freemen may practise; in what respects,

That every of the said freemen and surgeons so admitted, &c. "may freely and lawfully use and exercise the same art, and practise surgery, as well within our said cities of London and Westminster, the liberties and suburbs thereof, as in any other cities, towns, boroughs, and places whatsoever, of this our kingdom of England, as well within the

throughout the king's dominions.

liberties and franchises as without, without any hinderance," &c."

That no freeman or foreigner exercising the art within London and its precinct shall take any person as an apprentice for a less term than seven years, "and that no such apprentice be decrepid, deformed, or have any corrupt or pestilential disease, &c." and that every person who shall be bound as an apprentice with any one by profession a surgeon shall read and understand the Latin tongue, and for this purpose be presented before one of the masters, &c. Apprentices.

That they may have a public lecture, &c. Lecture.

That every surgeon within the precinct of London who shall take into his care any person so sick or wounded that he shall be in danger of his life or of the loss of any limb, shall within twenty hours consult the masters of the company who are skilled in surgery, or one of them, and proceed under his directions. Care of patients.

"That whensoever any empiric hereafter, or any such person whether being a native subject of this kingdom of England or an alien and ignorant of the art and science of surgery and not approved of or lawfully admitted to practise surgery, shall affix or put out any pictures, bills, writings, or signs upon posts, outsides, or walls, or other conspicuous places within our said cities of London or Westminster, or either of them, the suburbs and limits thereof, or within seven miles of the said city of London, to call in any persons passing by, travellers, or other persons whatsoever, to have any thing done there which according to our royal intention above declared belongs to a skilful, allowed, and admitted surgeon; then it shall and may be lawful for the masters or governors of the mystery and commonalty aforesaid for the time being, by themselves or any of their officers whatsoever, to take away, blot out, demolish, and totally cancel all such pictures, bills, writings, and signs, lest our people by any such impostor may be deceived or deluded." Empirics exhibiting bills, &c.; punishment of.

And whereas for the supplying of the fleets and shipping of us, our heirs, &c. "That the masters or governors of the mystery and commonalty aforesaid for the time being shall and may have full power and authority by themselves, or any one or more of them, or by any other or others under the common seal of the society aforesaid for this purpose especially to be appointed, to choose, take, and authorize so Navy surgeons.

many and such barbers and surgeons, and their servants, as well within our cities of London and Westminster aforesaid, the suburbs and liberties thereof, as in any other city, town, hamlet, or place whatsoever within this our kingdom of England, as well franchised and privileged as not franchised nor privileged, as and who for those expeditions and services respectively shall be necessary to us, our heirs and successors, to serve for surgeons of our several ships so to be sent out to sea," — And that they might take from the then insufficient barbers and surgeons such emplasters, ointments, medicaments, instruments, and surgeons' chests, as should be necessary for such service, on paying their value, &c.

Supervisal of navy surgeons' chests, &c.

That the said masters, &c. " shall have the supervisal and the accommodation, ordering, and allowance of all and singular the emplasters, ointments, medicaments, simples, compounds, and medicines, and other necessaries whatsoever to such surgeons' chests respectively belonging," &c.

Surgeons in navy and merchant ships, &c. ;

That " no one, whether a freeman of the mystery and commonalty aforesaid or a foreigner, and whether he be a native of this our kingdom of England, or any alien who within our cities of London or Westminster aforesaid, the suburbs or liberties thereof, or within seven miles of the said city of London, doth for his private lucre exercise the art of surgery (except before excepted), shall presume to

their apprentices, &c. ;

go out from our port of London, or to send out any apprentice, servant, or other person whomsoever from the same port, to execute or undertake the place or office of a surgeon for any ship, whether in the service of us, our heirs and successors, or in the service of any merchant or others, unless he and such his apprentice and servant so to be sent out from the port of London be first examined, and for their knowledge in the art of surgery be by such two masters or

their instruments, &c.

governors," &c. skilled in surgery, " duly allowed, and also unless their emplasters, ointments, and medicines, simple and compound, medicaments, instruments, and surgeons' chests, together with all other the necessaries belonging to such offices and services, be first brought to the common hall of the said society or other convenient place by the said two masters or governors to be appointed, and there looked over, inspected, and allowed, as well in respect of the quality of the aforesaid medicaments, instruments, and other necessaries, that they be good, wholesome, and sufficient, as in

respect of the quantity thereof being competent and sufficient for such services and business to which they are destined, on pain that every one so going out from the port of London aforesaid, or so sending out from thence any his apprentice or servant, shall forfeit the sum of 5*l.* for every time that shall happen to be done without such examination," &c. recoverable by distress or action, as *ante*, p. clxxxi.

A confirmation of former privileges, charters, &c. Privileges, &c.

Provided that it shall in no wise affect the privileges of the College of Physicians. Physicians.

Provided also that it in no wise affect the statute 34 H. 8. c. 8. 34 Hen. 8.

---

18 Geo. 2. c. 15.

An Act for making the Surgeons of London and the Barbers of London two separate and distinct Corporations.

Reciting charter 1 Ed. 4., stat. 32 Hen. 8., and charter 5 Car. 1., and that the barbers belonging to this corporation had for many years been engaged in a business foreign to and independent of the practice of surgery, and that the surgeons belonging to the same corporation had become a numerous and considerable body, and found their union with the barbers inconvenient, and in no degree conducive to the progress or improvement of the art of surgery: enacted, that the said union and incorporation should from the 24th of June 1745, be dissolved, vacated, and declared to be void and of no effect; and that such of the members of the dissolved company who were freemen of the company, and admitted and approved surgeons within the rules of the said company, &c. should be constituted a distinct body corporate, &c. by the name of the master, governors, and commonalty of the art and science of surgeons of London, and by that name sue and be sued, purchase, &c. lands, &c. not exceeding the annual value of 200*l.* Union of the companies dissolved. New name, &c.

2. That such company might elect one principal master or governor, two other governors or wardens, ten examiners of surgeons, and twenty-one assistants, &c. Members.

3. That they might hold courts, &c. and that the said master and governors and court of assistants so assembled, Ordinances, new, &c.;

or the major part of them, might make, ordain, constitute and establish, ratify, confirm, annul, revoke or abrogate, from time to time, such bye-laws, ordinances, rules, and constitutions as to them should seem requisite, profitable, and convenient for the regulation, government, and advantage of the said company or corporation, &c. to be approved, &c.

former. 4. That the ordinances, &c. for the regulation of the united company, so far as the same related to the art and science of surgery only, and then in force, should continue in force until repealed, &c. under this act.

Members. 5, 6. Appointed the modern master, wardens, and assistants.

Day of election. 7. Appointed that the master, governors, and assistants should meet annually, on the first Thursday in July, to elect out of their own body a master and two wardens, and to fill up the vacancies among the examiners out of their own body, and the vacancies among the assistants out of the freemen of the company.

Former privileges. 8. That the said company of surgeons, and their successors, and all persons who should be freemen of the same company or corporation, should and might, from time to time, and at all times for ever thereafter, have, hold, and enjoy all and every such and the same liberties, privileges, franchises, powers, and authorities, as the members of the said united company or corporation, being freemen of the said company, and admitted and approved surgeons, within the rules of the said company and corporation, could or might respectively have had, held, and enjoyed, by virtue of the said recited act of union or incorporation, and the said letters patent of his said late majesty king Charles the first respectively, and other the royal grants, charters, and patents therein mentioned and referred to, so far as the same related to the art or science of surgery only, and not otherwise; and that in as full, ample, and beneficial manner, to all intents and purposes, as if the same had in and by this

Practice. act been expressly repeated and re-enacted; and that they, and all such who already had been, or thereafter should be, examined and approved, pursuant to the rules of the said company, should be entitled to practise freely, and without restraint, the art and science of surgery throughout all and every his majesty's dominions; any law or custom to the contrary notwithstanding.

Army surgeons.

9. That from and after the said 1st of July 1745, the examiners of the company of surgeons established by this act should, from time to time, upon request to them made, examine every person who shall be a candidate to be appointed to serve as a surgeon, a surgeon's mate of any regiment, troop, company, hospital, or garison of soldiers in the service of his majesty, his heirs, or successors, in like manner as they did or should examine any surgeon or surgeons to be appointed to serve on board any ship or vessel in the service of his majesty, his heirs, or successors.

Exemption from offices, &c.

10. That all and every person and persons, being freemen of the said company and corporation of surgeons established and incorporated by this act, and who already had been, or thereafter should be, examined and approved pursuant to the rules and orders of the said company, and every of them, for so long time as he and they should use and exercise the said art or science of surgery, and no longer, should and might, at all times thereafter, be freed and exempted from the several offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and of and from the being put into or serving upon any jury or inquest: and if at any time thereafter, any such person or persons using and practising the said art or science of surgery, and being qualified as aforesaid, should be chosen and elected into any of the said offices, or returned, required, or appointed to serve on any jury, leet, or inquest, or be disquieted or disturbed by reason thereof; that then such person or persons producing a testimonial, under the common seal of the said corporation, of such his examination, approbation, and freedom, to the person or persons by whom he should be so elected or appointed, or by or before whom he should be summoned, returned, or required to serve or hold any of the said offices or duties, should be absolutely discharged from the same; and such nomination, election, return, and appointment, should be utterly void and of no effect; any order, custom, law, or statute to the contrary in any wise notwithstanding.

Physicians.

11. Provided always, that this act or any thing therein contained should not extend or be construed or taken to prejudice, abridge, or infringe any of the privileges, authorities, powers, rights, liberties, or franchises theretofore granted by any act or acts of parliament, or by any letters

patent, charters or charter of any of his majesty's royal predecessors, kings or queens of England, to the president and college, or commonalty of the faculty of physic in London.

Public act.

22. This is a public act to be judicially noticed without being specially pleaded, &c.

The remainder of the act relates to the barber's company.

Charter, 22d March. 40 Geo. 3.

Recital.

Reciting charter 4 Ed. 1. stat. 32 Hen. 8. charter 5 Car. 1. and stat. 18 G. 2.

"And whereas we are informed that the said corporation of master, governors, and commonalty of the art and science of surgeons of London, hath become, and now is, *dissolved*: And whereas it is of great consequence to the commonweal of this kingdom, that the art and science of surgery should be duly promoted: And whereas it appears to us, that the establishment of a college of surgeons will be expedient for the due promotion and encouragement of the study and practice of the said art and science; we, at the humble petition of James Earle, Esq. the late master, and divers other members of the aforesaid late corporation of surgeons,

Grants to members of late company;

have willed, ordained, constituted, declared, given, and granted, and by these presents, for us, our heirs, and successors, do will, ordain, constitute, and declare, give and grant, unto the aforesaid James Earle, and unto *all the members of the said late company or corporation* of master, governors, and commonalty of the art and science of surgeons of London; having been admitted and approved surgeons,

and persons since admitted;

within the rules of the said company; and also unto all such persons, who upon, or since, the dissolution of the said corporation, shall have obtained letters testimonial, under a seal purporting to be the seal of the said late dissolved corporation, authorizing them to practise the art and science of surgery; that they, from henceforth for ever hereafter,

that they shall *remain* a corporation.

shall be and *remain* by virtue of these presents, one body corporate and politic, by the name of the Royal College of

Surgeons in London, and by the same name shall and may have perpetual succession, and a common seal, with power to break, alter, and make anew, the said seal, from time to time, at their will and pleasure; and by the same name shall and may implead, and be impleaded, before all manner of justices, in all courts, and in all manner of actions and suits; and shall be at all times for ever hereafter persons able and capable in law to take, purchase, possess, hold, and enjoy, and shall and may take, purchase, possess, hold, and enjoy, a hall or council-house, with its appurtenances, situate within the cities of London or Westminster, or within one mile of either of them, for the use and purposes of the said college; and also any other lands, tenements, rents, or hereditaments wheresoever situate, lying, and being; not exceeding, together with the aforesaid hall or council-house, and its appurtenances, the yearly value of 1000*l.* in the whole; without incurring any of the penalties in any statute of mortmain, or any thing, in any statute of mortmain, to the contrary notwithstanding.

Name.

Seal.

Council-house.

Lands, &c.

Yearly value.

That nothing in these presents shall be construed to give the corporation of the city of London any power or jurisdiction over the said college hereby established and incorporated; and that no person, by virtue of these our letters patent, constituted or ordained, or hereafter to be admitted a member of the said college, shall be thereby entitled to any franchise belonging to the freemen of the city of London.

City of London has no jurisdiction over college.

Members not to enjoy franchises of London.

We do hereby, so far as we lawfully can or may, grant and ordain, that the said Royal College of Surgeons hereby incorporated, shall and *may exercise and enjoy* all and singular other the gifts, grants, liberties, privileges, and immunities, possessions, real and personal, whatsoever and wheresoever, herein before-mentioned, or by any act or acts of parliament, or by any letters patent, of our royal predecessors, kings and queens of England; given, granted, and confirmed unto, or otherwise lawfully acquired by, and belonging to the said late master, governors, and commonalty of the art and science of surgeons, or any of them, and not hereby altered, taken away, changed or abridged, made void or annulled.

Former privileges, &c. confirmed.

The College of Surgeons hereby established shall be liable to, and shall perform, such duties as the late dissolved corporation of surgeons was at any time heretofore liable to and did perform by virtue of 25 G. 2. c. 37.

Duties under 25 G. 2.

To provide place for dissecting bodies of murderers.

The said college shall purchase or provide a proper room, house, or building, with suitable conveniences, within four hundred yards, at the farthest, from the usual place of execution for the county of Middlesex, or the city of London, and the suburbs thereof; for the purpose of more conveniently dissecting and anatomising the bodies of such murderers as shall at any time hereafter be delivered to them, by virtue of the last-mentioned act.

21 Assistants; of whom 10 examiners, of whom one principal master, two governors.

The said college, hereby established and incorporated, from time to time in the manner hereinafter mentioned, may elect, choose, and appoint twenty-one persons to be the court of assistants of the said college; of which court of assistants ten persons shall at all times be constituted and appointed examiners of surgeons for the said college; and of such ten persons one shall be principal master, and two others shall be governors; to be respectively qualified and admitted in such manner, and to continue in the said offices respectively, for such time or times as by these our letters patent is hereinafter ordered and appointed. And the master and governors of the said college, or one of them, together with ten or more of the members of the said court of assistants for the time being, when and as often as to any one of the master or governors shall seem meet, may hold courts and assemblies, in order to treat and consult about, and concerning the rule, order, state, and government of the said college. And also that the said master and governors, and court of assistants so assembled, or the major part of them, may make, ordain, confirm, annul, or revoke, from time to time, such bye-laws, ordinances, rules, and constitutions, as to them shall seem requisite and convenient, for the regulation, government, and advantage of the said college; so as such bye-laws, ordinances, rules, and constitutions be not contrary to law; and in all such cases as shall be necessary, be examined, approved of, and allowed, as by the laws and statutes of this realm is provided and required: and also to transact and ordain all such other matters and things as the master, governors, and court of assistants, of the late dissolved company or corporation of the master, governors, and commonalty of the art and science of surgeons of London, might heretofore lawfully do, transact, or ordain."

Courts to treat on government.

Bye-laws.

Other business.

Officers.

Then appoints the modern master, governors, examiners, and assistants, and states the duration of the office of such master and governors.

" The persons so before named and constituted examiners of surgeons of the said college, and their successors in that office, duly chosen, nominated, or appointed, and the persons so before named and constituted assistants of the said college, established by these our letters patent, and their successors in that office, duly chosen, nominated, or appointed, shall respectively hold and enjoy their said offices during their natural lives, or until they shall be lawfully removed out of the said offices for any reasonable cause.

Duration of office of examiners and assistants.

The two principal serjeant surgeons to us, and to our heirs and successors, and the surgeon general to our forces, and to the forces of our heirs and successors, if they or any of them, at the times of their appointments respectively, shall not be members of the courts of assistants and examiners of the said college, shall be from time to time admitted members of the said court of assistants, and also examiners of the said college hereby incorporated, when and so soon as any vacancy shall happen, from time to time, after the appointment of every such serjeant surgeon, or surgeon general respectively, in preference to all other persons.

Serjeant surgeons, and surgeon general.

The master and governors of the said college, hereby incorporated and established, or one of them, together with the assistants of the said college hereby nominated, or the major part of them, shall, within thirty days next after the date of these our letters patent, meet at such place at which the persons, members of the said late corporation, shall have usually held their meetings, for the space of six months next before the day of the date of these presents, or at such other place within the cities of London or Westminster, or within one mile of either of those cities, as the master or governors, or any two of them, hereby constituted, shall in that behalf, by notice to be by them given and published in the London Gazette, fourteen days before the day of holding such meeting for that purpose, appoint; and shall then and there hold a court of assistants for carrying into effect these our letters patent; and at such court the said master and governors, examiners and assistants, or such of them as shall be then present, shall administer unto each other respectively, and each of them shall take the respective oaths following, that is to say, the said master and governors shall take the following oath: — " You do swear that, according

Court to accept charter, and admit officers.

Oath of the

master and governors.

to the best of your skill and knowledge, you will discharge the several trusts and powers vested in you as master (or governor, as the case may be) of the Royal College of Surgeons in London; and that you will diligently maintain the honour and welfare of the said college; and in all things, which shall in any sort concern your office, you will act faithfully and honestly, without favour or affection, prejudice or partiality, to any person or persons whomsoever. — So help you God."

of examiners and assistants.

And that each of such examiners and assistants shall take the following oath, that is to say — "You do swear that so long as you shall remain in the office of examiner (or assistant, as the case may be) of the Royal College of Surgeons in London, you will diligently maintain the honour and welfare of the said college; and in all things relating to your office, and with all manner of persons, act equally and impartially, according to the best of your skill and knowledge. — So help you God."

No person to act until sworn.

And no person hereby appointed or hereafter to be elected master, governor, examiner, or assistant of the said college, hereby established and incorporated, shall proceed to act in the execution of such office, until he and they shall have taken the respective oath and oaths herein before mentioned, which shall be duly administered to them respectively, at a court of assistants to be holden in pursuance of these our letters patent.

Election of master and governors.

The master, governors, and assistants, for the time being, of the said college, hereby made and established, shall, upon the first Thursday in the month of July next after the date of these our letters patent, or within one month then after, and upon the first Thursday in July in every succeeding year, or within one month then after, meet in the place which shall from time to time be used or appointed to be used as their hall or council-house, or as near to such hall or council-house as conveniently may be; and then and there elect, choose, and appoint out of the examiners, by the majority of votes of such of the court of assistants as shall be then present, one person to be principal master, and two other persons to be governors of the said college, for the then succeeding year; and then and there also, in like manner, choose and appoint one or more of our principal serjeant surgeons, or the surgeon general of our forces, if not already

Examiners.

an examiner or examiners of surgeons of the said college; or otherwise, shall choose and appoint out of their own body some other person or persons, to be examiner or examiners of surgeons for the same college, in the place and stead of such examiner or examiners as shall have happened to die, or have been removed from the said office of examiner in the then next preceding year, unless such vacancies in the office of master or governor, and in that court, shall have been previously filled up within the then preceding year, which it shall be lawful for the said court of assistants to do at any special court to be held for that purpose. And also in like manner choose and appoint, out of the members of the said college established by these presents, some person or persons to be of the court of assistants of the same college, in the place of such person or persons who shall have happened to die in, or have been removed from the said office of one of the court of assistants in the then next preceding year, unless such vacancies in that court shall have been previously filled up within the then preceding year; which it shall be lawful for the said court of assistants to do, at a special court to be held for that purpose.

And assistants:

The master, or one of the governors, together with ten assistants at the least, shall be at all times sufficient to constitute a court of assistants for the purpose of such elections, or for the purpose of transacting any other business belonging to the said court. But no court of assistants shall be holden for the special purpose of electing any person to be master, governor, examiner, or assistant; without seven days' previous notice to be given for that purpose, by summons to the members of the court of assistants for the time being.

who may constitute a court.

Notice.

If at any time or times hereafter, it shall happen that the master and both the governors of the said college hereby established, shall die, or become incapable of acting before the election of a new master and governors, according to the provisions herein-before contained, the senior member of the court of assistants, who shall be capable of attending, may summon, convene, and hold a court of assistants, which shall be held as soon as may be next after the death or incapacity of the last of such of them the said master and governors, who shall be so dead or incapable of acting; and that at such court, a master and governors of the said college shall be elected for the remainder of the then current year; and the

Who may convene on death or incapacity of master and governors,

within what time;

for election of master and governors.

senior assistant of the said college, who shall be then present, may preside at and hold such court, and administer to the new master and governors, who shall be then and there elected, the oath appointed to be taken by the master and governors of the said college as aforesaid: and in case it shall so happen that on the day appointed for the ordinary election of master and governors for the ensuing year, the master and both the governors shall be dead, or incapable of attending, the senior member of the court of assistants, who shall be present at the court of assistants to be held for the purpose of such election, shall preside at, and hold such court, and administer to the new master and governors, who shall then and there be elected, the oath appointed to be taken by the master and governors of the said college as aforesaid: and in case it shall at any time happen, that the persons who shall assemble at the day and place appointed for any court of assistants to be holden in pursuance of these our letters patent, shall not be capable of holding such court, by reason of the absence of any of the members of the said court whose presence shall be required for that purpose, the senior member present may adjourn such court to a future day; provided that no such adjournment shall be made until after the expiration of one hour, at the least, from the hour appointed for holding such court.

Court of assistants, president of,

adjournment of.

Members.

After the day of the date of these presents, no person except those who before the day of the date of these presents were members of the late corporation of surgeons, established by 18 Geo. 2. c. 15.; and also excepting such persons as shall have received such letters testimonial as aforesaid, under a seal purporting to be the seal of the late dissolved company or corporation of surgeons, shall be capable of becoming a member of the said college hereby established, unless he shall have obtained letters testimonial of his qualification to practise the art and science of surgery, under the common seal of the college hereby established; but every person who shall hereafter obtain such letters testimonial, under the common seal of the college aforesaid, shall thereby, by virtue of such letters testimonial, become and be constituted a member of the said college, subject to all the regulations, provisions, and bye-laws of the said college.

Examination of army and navy surgeons, &c.

From and after such day on which the court of assistants of the college hereby established shall first meet, in the

manner before-mentioned, the examiners of the college of surgeons hereby established, shall, from time to time, upon request to them made by the commander in chief of our forces, and by the lord high admiral or commissioners for executing the office of lord high admiral, or any other officer of us, our heirs or successors, properly authorised to examine every person who shall be a candidate to be appointed to serve as a surgeon or assistant surgeon in any regiment, troop, company, hospital, or garrison of soldiers, in the service of ourselves, our heirs, or successors, or to serve as a surgeon or surgeon's mate, appointed on board any ship or ships in the service of ourselves, our heirs, or successors, or any other service in which we, our heirs, or successors shall think fit to employ any persons to act in any such capacities, and shall accept and receive for each such examination, from the persons so examined respectively, such fee or reward as shall from time to time be allowed by such officer or officers of us, our heirs or successors, as shall be authorised to require such examinations, to be had respectively, and no more; and shall also in like manner examine all surgeons' instruments to be used in our service, which they shall be required in like manner to examine, and shall return such instruments, when examined, to such person or persons as shall be appointed to receive the same, with such certificate, in such form, and properly sealed up, or otherwise authenticated in such manner as the officer or officers, from time to time to be appointed by us for such purposes, shall require; and taking for the same examination such fee or reward as shall be allowed from time to time by such our officer or officers respectively, and no more.

on certain fees;

and their instruments;

return of.

Fees.

The fees or rewards from time to time to be appointed as aforesaid, for the examination of any such person or instruments as aforesaid, shall not be less than the fees or rewards heretofore paid for the like examinations respectively.

No court or courts for the examination of any person or persons touching their skill in surgery, shall ever be held but in the presence of the master or one of the governors, and five of the members, at least, of the court of examiners of the said college, hereby established and incorporated as aforesaid.

Court of examiners.

The members of the said late corporation and such other persons who, since the dissolution thereof, shall have ob-

Members, acceptance of first

tained such letters testimonial, under a seal purporting to be the seal of the late dissolved company or corporation as aforesaid, and who shall be willing to become and be members of the said college hereby established and incorporated, shall testify their acceptance of these our letters patent, and their consent to become members of the said college, by signifying such their acceptance and consent in writing to the court of assistants, within six calendar months after the date of these our letters patent, who shall cause such acceptance and consent to be entered in certain books to be kept for that purpose, at the hall or council house of the said college; and the said court of assistants are hereby required to keep such books, and have such entries made therein accordingly.

to be entered.

Such and so many of the members of the said late corporation, and of such persons as shall have obtained such letters testimonial as aforesaid, as shall not, within the time aforesaid, signify in manner aforesaid their acceptance of these our letters patent, shall not be deemed or be members of the said college, unless they shall be duly admitted to be members thereof by the said court of assistants, upon special application made to them for that purpose.

Persons not accepting charter,

If any of such persons shall happen to be beyond the seas at the date of these our letters patent, it shall be lawful for such persons respectively to signify their acceptance thereof, in manner aforesaid, within six calendar months after they shall return respectively to this kingdom.

if beyond seas.

Nevertheless, the master, governors, and assistants of the college hereby established, and herein-before specially named and appointed, shall and may proceed to hold a court for the purpose of carrying these our letters patent into execution, as aforesaid, without having testified their assent to, and acceptance of such letters patent, by any writing, or by any entry to be made in manner aforesaid.

Court to effectuate charter before acceptance.

Charter, 13th Feb. 3 Geo. 4.

Reciting charter 22 March, 40 Geo. 3.

We, do will, ordain, constitute, declare, and grant, unto the said Royal College, that the said Royal College of Sur-

geons in London shall and may take, purchase, possess, hold and enjoy any lands, tenements, rents, or hereditaments, wheresoever situate, lying and being, not exceeding, together with the aforesaid hall or council-house, and its appurtenances, and the lands, tenements, rents, or hereditaments now held by them, the yearly value of 2000*l.* in the whole, without incurring any of the penalties in any statute of mortmain, or any thing in any statute of mortmain to the contrary notwithstanding. Lands, value of.

And we do hereby also for us, our heirs and successors, give and grant our especial licence, full power, and lawful and absolute authority, to any person or persons, bodies politic or corporate, their heirs and successors respectively, to grant, alien, sell, convey, and dispose of in mortmain, in perpetuity or otherwise, to or to the use and benefit of, or in trust for, the said Royal College of Surgeons any lands, tenements, rents, or hereditaments whatsoever, not exceeding, together with the aforesaid hall or council-house, and its appurtenances, and the lands, tenements, rents, or hereditaments now held by them, the yearly value aforesaid of 2000*l.* in the whole.

The said college shall not be hereafter required to purchase or provide a proper room, house, or building, as herein-before mentioned within four hundred yards at the farthest from the said usual place of execution, but in lieu thereof, it shall be sufficient for the said college, and by these presents they are required, to purchase or provide such room, house, or building, with suitable conveniences, within half a mile at the farthest from the said usual place of execution, for the purpose in the said letters patent mentioned. Room for dissecting murderers.

The names, styles, and titles of office of the principal master, governors, and court of assistants, of the said royal college shall be altered respectively in manner following; that is to say, the principal master shall in future be called and denominated the president of the said royal college; the governors shall in future be called and denominated the vice-presidents of the said royal college; and the court of assistants shall in future be called and denominated the council of the said royal college. President. Vice presidents. Council.

If any person who shall at any time hereafter be appointed one of the two principal serjeant-surgeons to us or Serjeant-surgeon, &c.

to our heirs and successors, or surgeon general to the forces of us our heirs and successors, shall be at the time of such appointment, or shall at any time thereafter be chosen a member of the council of the said college, he shall in that case, when, and so soon as any vacancy shall happen in the court of examiners of the said college, be admitted a member of the said court, in preference to each and every other member of the council: and such principal serjeant-surgeons and surgeon-general shall not have any other preference whatever, either in respect of admission to the said council, or the court of examiners of the said college, any thing in the said letters patent to the contrary notwithstanding.

to be examiner, if of council.

No other privilege.

Mace.

The said college may have a mace.

A SELECTION FROM THE ORDINANCES.

Examiners, court of.

The court of examiners shall be authorised to hold such courts, and to make such adjournments, as may by them be judged expedient.

The president, or in his absence the senior vice-president, or, in his absence also, the junior vice-president, may direct a special court of examiners to be holden on any emergency.

Every person upon whose application and account any such court shall be holden, and every other person examined at such court, shall severally pay five guineas; and shall also, upon being approved, pay the same sum as if he had been examined and approved at a stated court of examiners.

Members, admission of.

No person under 22 years of age shall be admitted a member of the college.

No person shall be admitted to an examination for the diploma, without producing to the court of examiners satisfactory evidence of his anatomical and chirurgical education.*

* Regulations respecting the Professional Education of Candidates for the Diploma, — *29th October*, 1829.

I. Candidates will be required to bring proof.

1. Of being twenty-two years of age.

The diploma of the college shall be in the form following, or in such other form as the council may at any time judge proper: —

"Know all men, by these presents, that we, the court of examiners of the Royal College of Surgeons in London, have deliberately examined Mr. A. B., and have found him to be fit and capable to exercise the art and science of surgery: we, therefore, admit him a member of the college; and authorise him to practise the said art and science accordingly. In witness whereof, we have subscribed our names, and have caused the common seal of the college to be affixed hereunto. Dated the —— day of ——, in the year of our Lord, 18—."

---

2. Of having been engaged six years in the acquisition of professional knowledge.
3. Of having studied anatomy, by attendance on lectures and demonstrations, and by dissections, during two anatomical seasons.

   An anatomical season is understood to extend from October to April inclusive.
4. Of having attended two courses of lectures on surgery, each course comprising not less than sixty lectures.
5. Of having attended lectures on the practice of physic, on chemistry, and on midwifery during six months; and on botany and materia medica during three months.
6. Of having attended during twelve months the surgical practice of a recognised hospital in London, Dublin, Edinburgh, Glasgow, or Aberdeen; or for six months in any one of such hospitals, and twelve months in any properly constituted provincial hospital, acknowledged by the council as competent for the purposes of instruction.

It is earnestly recommended that candidates shall have studied anatomy, by attendance on lectures and demonstrations, and by dissections, for one anatomical season prior to their attendance on the surgical practice of an hospital.

II. Members and licentiates in surgery of any legally constituted college of surgeons in the United Kingdom; and graduates in surgery of any university requiring residence to obtain degrees; will be admitted for examination on producing their diploma, licence, or degree.

N. B. All certificates recognised by the Royal Colleges of Dublin and Edinburgh, or by the Universities of Glasgow and Aberdeen, as to attendance on hospitals or lectures in these places respectively, will be received.

The common seal shall be affixed to the diploma of every member of the college.

The diploma of every member of the college shall be signed by the members of the court of examiners present at the time of his examination and admission.

Every person, prior to his being admitted a member of the college, shall take the following oath :—

" You swear, that while a member of the Royal College of Surgeons in London, you will observe the bye-laws thereof; that you will obey every lawful summons issued by order of the council, or court of examiners of the said college, having no reasonable excuse to the contrary ; that you will demean yourself honourably in the practice of your profession ; and, to the utmost of your power, maintain the dignity and welfare of the college. — So help you God."

The oath shall be administered in the presence of the court of examiners.

Every person, upon his admission as a member, shall subscribe his name to a copy of the bye-laws, in testimony of having engaged himself to the observance thereof.

Every person examined and approved for the diploma, shall, prior to his admission, pay twenty guineas, over and above all charges of stamps.

Every person who has obtained the certificate of qualification of principal surgeon in any service, and who shall afterwards be admitted a member of the college, shall have the amount of the sum paid for such certificate allowed in the sum required (by the last section) to be paid by a member prior to his admission.

If, at any time after the admission of a member, he shall be found to have violated any bye-law of the college, relating to candidates for the diploma, or to have been guilty of any fraud, false statement, or imposition, in any matter required by the college, his admission shall be wholly null and void.

The college will, at all times, protect and defend every member who may be disturbed in the exercise and enjoyment of the rights, privileges, exemptions, and immunities, acquired by him as a member thereof.

Misconduct.

No member of the college shall advertise a secret method or process of cure relating to his practice as a surgeon, or put forth or publish, in whatever way, any indecent advertisement or notification relating to the said practice; and any member of the college who may in any manner offend herein, shall be liable to removal by the council from being a member of the college; and every member of the college who shall thereupon be removed, as aforesaid, shall forfeit all his rights and privileges as a member thereof.

No member of the college shall advertise or publish any matter or thing prejudicial to the interest or derogatory to the honour of the college, or disgraceful to the profession of surgery; and any member of the college who may in any manner offend herein, shall be liable to removal by the council from being a member of the college; and every member of the college who shall thereupon be removed, as aforesaid, shall forfeit all his rights and privileges as a member thereof.

Should a member of the college render himself, in the judgment of the council, disgraceful to the college, his name may be omitted in the printed lists of the members thereof.

Resignation.

Any member of the college desirous of ceasing to be a member thereof, shall tender his resignation to the council; and, upon the acceptance of his resignation, he shall pay ten guineas, over and above all charges of stamps.

No resignation shall be complete and valid until an instrument, under the seal of the college, declaratory thereof, be delivered to the member resigning.

Testimonial of qualification.

No person shall be admitted to an examination for a testimonial of qualification in any service, without producing to the court of examiners satisfactory evidence of his professional education.

Certificate of diploma and testimonial.

A certificate of the diploma shall not be granted to or for any person whomsoever, without the authority of the court of examiners; which certificate shall be signed by the president and vice-presidents; and for which five guineas shall be paid, over and above all charges of stamps.

The court of examiners may also direct a certificate,

signed by the secretary, of the testimonial of qualification obtained by any person, to be sent to such public office as may require the same.

Communications and transactions.

All communications on subjects relating to anatomy or surgery shall be made to the board of curators.

A volume of anatomical and chirurgical communications, to be entitled, "Transactions of the Royal College of Surgeons in London," shall be printed and published at such periods as the board of curators may judge proper.

The manuscript of any communication, which may be considered more proper for reference in the library than for publication in the transactions, shall be preserved for that purpose.

Lectures.

Lectures on anatomy, founded by Arris and Gale, shall be annually delivered.

Twenty-four Museum Lectures shall be annually delivered; the subjects of which shall be illustrated by preparations from the Hunterian collection, and from the other contents of the museum.

Officers.

No officer or servant of the college shall receive, directly or indirectly, any fee, reward, or gratuity, in money or otherwise, for or on account of service done or to be done in any concern of the college, except the remuneration which shall be granted or authorised by the council.

No officer or servant of the college shall practise, directly or indirectly, as principal or as agent, for emolument or otherwise, any profession or vocation whatever; but every officer and servant shall devote himself wholly to the discharge of the duties of his station.

SECOND SUBDIVISION.

Cases.

SHARPE, *qui tam*, *v.* LAW.

UPON a case reserved at *Nisi Prius*,

The Court held that the statute of 32 Hen. 8. c. 42. continued in force as to the barbers, notwithstanding that of 18 Geo. 2. c. 15. which separates them from the surgeons. The latter statute only means to dissolve the union between the two companies. 4 Burr. 2133. M. T. 8 G. 3.

REX *v.* MASTER AND WARDENS OF THE COMPANY OF SURGEONS IN LONDON.

ON a return to a mandamus directed to the defendants, reciting a custom in the said city, that every freeman exercising the science of surgery therein hath a right to take apprentices of the age of fourteen years or upwards, to be educated in the said science for seven years, which apprentices have been accustomed to be admitted and bound in the presence or with the consent of the master and wardens, or some of them, and that R. G., a freeman of the said city, and also of the said company, being desirous of taking M. G., aged fifteen years, to be his apprentice for seven years, &c., had offered the said M. G. to be admitted and bound before the said master and wardens, or some of them, &c. according to the said custom, and that the said M. G. had often offered himself to them, or some of them, to be admitted and 2 Burr. 892—7. M. T. 33 G. 2.

bound, &c., and that the said master and wardens had not permitted the said M. G. to be bound, &c., but altogether refused, and still refuse so to do, and commanding them immediately, in due manner, to permit the said M. G. to be admitted and bound, &c., according to the said custom, or signify cause to the contrary.

The return admits the custom and facts as alleged. But they further certify and return, that long before the said R. G. offered the said M., or the said M. offered himself, &c., and after the making of 18 Geo. 2. c. 15. to wit, on the 7th April, 1748, at Stationers' Hall, in London aforesaid, J. F. being master, and W. P. and L. S. being two of the governors of the said company duly elected, &c., and also certain persons, being nine and more of the assistants of the said company duly elected, &c., did hold a court, &c., and that the said, &c., being master, governors, and nine and more of the assistants duly assembled, &c. did make, &c. a certain ordinance for the regulation, &c. in the words following: to wit, "item, it is ordained, that no member of the said company shall take any person into his service, as his apprentice, to be instructed in the art or science, for any shorter time than seven years, which person shall understand the Latin tongue, his ability wherein shall, before his being bound, be tried by the governors, or one of them; and every freeman of this company, or foreign brother, shall, within one month next after his entertainment of any person in order to being his apprentice, present such person before the governors, or two of them, at a court to be by them held, and there bind such person to him before the said governors, by indenture, upon pain of forfeiting 20*l.*; and the clerk of the said company shall not bind any person who has not been so represented and examined, upon pain of forfeiting the sum of 10*l.*, and being liable to be removed from his said office."

That the said ordinance, &c. was approved, &c.

That the said ordinance, &c. hath continued, and now is in full force, &c.

That after, &c. and before the issuing of this writ on, &c. at a certain court, &c. by, &c. came the said R. G., and offered the said M., and the said M. did then and there offer himself, &c.; that the said M. G. being so offered, was examined touching his knowledge in the Latin tongue, and his ability therein, in pursuance of the ordinance aforesaid, and

was then and there fairly, candidly, and impartially tried by the said E. N., one of the governors, and that the said M. G. upon such his examination, &c. was found not to understand the Latin tongue, but to be wholly ignorant thereof, and was then and there so adjudged and declared to be by the said E. N. on such trial. Wherefore, the said court could not consent, but did then and there refuse to permit the said M. G. to be admitted and bound, &c., until such time as the said M. G. should understand the Latin tongue, as by the aforesaid ordinance required.

That the said M. G. when so offered, &c. did not understand the Latin tongue, but was utterly ignorant of the same, and that the said M. G. hath not at any time, before or since, offered himself, or been presented, to the said company or governors thereof, or any of them, to be tried, &c. as to his ability in the Latin tongue.

And, therefore, they cannot permit the said M. G. to be admitted and bound, &c.

Field, for the King. This is an insufficient return; for the bye-law is a bad one, being made in restraint of a natural, general, and common right. The first restriction of the common right, that every person has of learning and exercising any art in any place, except where it happened to be restrained by custom, is 5 Eliz. c. 4. The city of London have, indeed, by custom, a power over the youth of their city, and a power of excluding foreigners from exercising trades within their city. 11 Rep. 53. shews the general law to be, that a person ought not to be restrained in his lawful mystery. Private companies cannot make laws contrary to the general law, or to the customs of great cities, though great cities and towns may do so, 6 Mod. 123. and 1 Lord Raym. 496. This bye-law, therefore, is not good without a particular custom to support it, for it restrains a common law right. The return does not aver, that the understanding the Latin tongue is a necessary qualification of a surgeon, and their art may certainly be performed without it. At least it is no objection to a young person's being put out to learn the art, whatever it may be to the permission of a man to practise it. Besides, "understanding the Latin tongue" is a very indefinite and vague expression; and a very different idea of it would be conceived by different persons, as by Dr. Bentley, and by a warden of the surgeons' company.

Bad consequences may arise from this bye-law, and if so it shall not prevail, Godbolt, 254. The bye-law does not expressly forbid such a person to be admitted; it is not mandatory, only directory.

Hewitt, rising to speak in support of the return,

Lord Mansfield said it was too plain to argue.

Return allowed.

GREMAIRE *v.* LE CLERC BOIS VALON.

2 Camp. N. P. 144—146. 49 G. 3.

Assumpsit for work and labour, &c.

Plea, the general issue.

The parties were French emigrant priests, resident in London; the plaintiff had cured the defendant of the lues venerea, after a long attendance, in the course of which he had applied medicines to external sores, and performed several surgical operations. An acknowledgment by the defendant was given in evidence, that, for this cure, he owed the plaintiff 20*l.*

Clifford, for the defendant. The action can not be maintained, as the plaintiff is not a member of the college of surgeons. 3 Hen. 8. c. 11. § 1. (*ante*, p. vi.). For 34 & 35 Hen. 8. c. 8., as appears from its preamble, exempts only gratuitous practice, (*ante*, p. clxxvii.). Thus it clearly appears that the plaintiff, in acting as a surgeon for profit, is guilty of a breach of the law, and therefore cannot maintain an action to recover a compensation for what was illegal.

Garrow, *contrà*. There being no absolute prohibition of persons unlicensed acting as surgeons, they may maintain an action against persons whom they have attended and cured. By paying the penalty of 5*l.* a month, they satisfy the statute. Besides 34 & 35 Hen. 8. seems to have been framed for this very case, and being silent as to any reward to be received for such cure, the law must raise a promise on the part of the patient to pay his surgeon upon a *quantum meruit*, and never can annul an express promise, which has here been given in evidence.

Lord Ellenborough. I am of opinion that the action is maintainable. Verdict for the plaintiff, 20*l.*

In the ensuing term, a rule *nisi* was obtained to set aside the verdict, on the ground that the plaintiff's conduct in practising as a surgeon was illegal, and that he could not be entitled to recover a compensation for his labour on the very same evidence which would convict him in the penalty of 5*l.* a month. *Per Cur.* — It has not been proved that the plaintiff is not regularly licensed as a member of the college of surgeons, which he may be, although he is a French emigrant priest.

Rule discharged.

TUSON *v.* BATTING.

3 Esp. N.P. 192.
40 G. 3.

Assumpsit by a surgeon, for attending the defendant's wife.

The dispute was as to the *quantum* of payment.

The defendant lived out of town, and the attendances had been made there; the plaintiff claimed as a customary charge one guinea per mile for each attendance, in addition to his fee, in the whole 200*l.*; but he had delivered a bill without a specific charge, leaving a blank for the sum he was to receive.

The defendant paid 70*l.* into court; this was taken out, and the plaintiff went for a further sum.

Several surgeons were called by the plaintiff, who proved that it was customary and usual for surgeons to make this charge when the attendance was out of town.

Lord Kenyon. Though professional men are entitled to a fair and liberal compensation for their assistance, there are certain claims which they affect to set up, which, if unreasonable or improper, it is for the jury to control; and this appears to be one of them.

It has been said, that surgeons and physicians are on the same footing; if it is so, it is of modern introduction. Dr. Mead and Dr. Conyers Middleton, early in the century, were of a different opinion, hardly ranking surgeons as a liberal profession; and considering physicians in a very different point of view. Surgeons' bills have been the frequent subjects of actions. I remember an action brought by a

Mr. Sharp, for attending a patient at Hampstead; Mr. John Hunter was examined, and said, when told the patient's complaint, "I cannot conceive why the plaintiff went there so often." So that the necessity of those frequent attendances may become matter of enquiry. But a physician can maintain no action for his fees; they are *quiddam honorarium*, for which no action is maintainable. In the present case, the plaintiff delivered a bill, leaving a blank for his attendances. I am of opinion, that it is considering his demand in the light of a *quiddam honorarium*, and leaving it to the generosity of the person he attends; and that person having paid money into court to a certain amount, it is to be taken as the sum which he considers as a fair remuneration for the plaintiff's services, which the plaintiff had left open in his bill; and that he cannot recover any more.

It appearing afterwards that the defendant had made an offer to pay at a certain rate, and thereby waived the blank bill, Lord Kenyon left it to the jury to say, whether the 70*l.* paid into court was not sufficient to satisfy the whole of the plaintiff's demand?

Verdict for the defendant.

DUFFIT *v.* JAMES. N. P. 1788.

Cited in Basten v. Butter, 7 East, 480. T. T. 46 G. 3.

This was an action to recover the amount of a surgeon's bill. Lord Kenyon permitted the defendant to give evidence of unskilful treatment of him by the plaintiff; taking the distinction where the demand was for skill, where the question might be, whether the plaintiff were entitled to any thing or nothing; and where the action was for goods sold and delivered, or other certain thing of value not depending on skill, and considering the case in judgment before him as a mixed question, where the demand was in part for skill as well as for medicine.

KANNEN *v.* M'MULLEN.

Peake's N. P. C. 83, 84. 31 G. 3.

For work and labour as a surgeon and apothecary, and medicines administered.

The plaintiff's case being proved, the defendant called Mr. Cline and Dr. Lettsom, who said, that from the plaintiff's bill it appeared that the defendant had been very improperly treated, as medicines perfectly inconsistent with each other had been administered. They admitted that disorders would sometimes take a sudden turn, and that they could not judge so well as they should have been able to do had they attended the defendant.

Erskine, in his reply. In this action a very different question is to be tried than in an action by the patient against the surgeon, for improper treatment. Lord Mansfield has held, that the defendant can in no case make improper treatment a ground of defence, because the plaintiff cannot have proper notice of that defence, and be prepared to answer it, as in an action against him. Lord Kenyon has laid it down, that where plain misconduct appears, the plaintiff shall not be permitted to recover any damages; but this must be a plain and certain misconduct, not one on which the minds of the jury can by possibility doubt.

Lord Kenyon. In a case where the demand is compounded of skill and things administered, if the skill, which is a principal part, is wanting, the action fails, because the defendant has received no benefit. Many cases may be imagined where great mischief would happen were the law otherwise. If a man is sent for to extract a thorn, which might be pulled out with a pair of nippers, and through his misconduct it becomes necessary to amputate the limb, shall it be said, that he may come into a court of justice to recover fees for the cure of that wound which he himself has caused? I do not say that this case amounts to that put, but where shall the line be drawn? If the medicines applied had been given under the direction of a physician, however improper they might be, the action should be supported, because the skill would not in that case be the ground of the action.

His Lordship, after commenting upon the evidence, left it to the jury to consider, whether or not the plaintiff had misconducted himself, for upon that must their verdict depend.

Verdict for the plaintiff for the money charged for medicines.

SEARE *v.* PRENTICE.

8 East, 347—353.
E. T. 47 G. 3.

ACTION on the case against a surgeon, for negligently, ignorantly, and unskilfully reducing a dislocated elbow and fractured arm, of which he had undertaken the cure. A verdict had been given for the defendant under the direction of the judge.

Gurney moved for a rule *nisi* to set aside the verdict, and for a new trial, upon the ground that there was evidence laid before the jury of the *unskilful* treatment of the plaintiff by the defendant; but that they were told by the learned judge, that unless *negligence* were proved, they could not examine into the want of skill. He admitted that the evidence did not substantiate the charge of negligence, though it proved the want of skill, but insisted that an action lay against a surgeon for ignorance and unskilfulness in his profession, referring to Slater *v.* Baker, (*v. post*, ccxiii.), and Bull N. P. 73. (*v. ante*, p. clv.)

Rule *nisi* granted.

Upon the judge's report being read, it appeared, that the plaintiff's brother-in-law proved, that on the 2d April, 1805, the defendant attended the plaintiff, who had fallen from a horse, and told the defendant that his arm was broken; the defendant said, that he thought the arm, which was swollen, was not broken, and applied vinegar to it, and bound it with tape. That the plaintiff was under the defendant's care for ten weeks, without being cured; he could not bend his arm or work at his trade. That he then applied to K., another surgeon, and after some time could work and put his arm to his head. On cross-examination he proved, that the defendant was first sent for at night, and came directly; that he regularly attended the plaintiff every day but one, till the latter applied to Mr. P., another sur-

geon, who, about nine or ten days after the accident, attended and assisted with the defendant in setting the elbow. Mr. K. the surgeon then proved, that in July, 1805, the plaintiff was brought to him a cripple in his arm, one bone of which was broken obliquely below the elbow. That the plaintiff's arm was almost straight, he could not turn his wrist, and had no motion in the elbow. That the witness broke the callous, and set it again, and made (what the witness himself described as) a very fine cure, which was spoken of about the country. He imputed the failure of the defendant, in his attempt to cure the plaintiff, to negligence and carelessness: an apprentice boy (he said) might have known better; that the bone might have been set within five hours after the accident; though he admitted that the swelling, if much, must first be reduced, which might take a fortnight. And he recommended the plaintiff to bring an action. He also spoke to a conversation with the defendant, who considered it a very difficult dislocation to reduce, and said that he would make a compensation to the plaintiff. The learned judge told the jury, that the gist of the action was negligence, of which direct evidence might be given; or it might be inferred by the jury, if the defendant had proceeded without any regard to the common ordinary rules of his profession; that unskilfulness alone, without negligence, would not maintain the action; and that he was at a loss to state to the jury what degree of skill ought to be required of a village surgeon. But that whether or not his direction were accurate, in this respect, at any rate, the witness K. imputed only negligence and carelessness to the defendant and P., in not discovering the fracture of the bone of the arm when they reduced the dislocated elbow, which, there was no doubt, was properly reduced; and that, considering all the circumstances of the case, he did not think that such gross negligence was imputable to the defendant as to make him liable in damages to the plaintiff. The report concluded by stating, that the jury found a verdict for the defendant, much to the judge's satisfaction, who intimated that the vaunting language of the witness K. must have diminished his credit with the jury.

On appearing to show cause, all the court seemed to be satisfied that the action well lay for unskilfulness in the profession of a surgeon; yet, upon a revision of the

evidence as reported, they asked of the plaintiff's counsel, what evidence there was of want of skill in the defendant; K. the surgeon only imputing to him negligence and carelessness, which the learned judge had stated to be a ground of action, and had left to the jury for their consideration, but which the jury had negatived, as indeed the evidence well warranted them in doing.

Gurney, in support of the rule. It is to be collected from the whole of K.'s evidence, that he imputed want of skill to the defendant, and that is shown by the expression used by him, that an apprentice boy might have known better. So much skill, at least, is required of a surgeon as to be able to tell whether or not an arm is broken, or an elbow dislocated. But it is enough that the question of want of skill was wholly withdrawn from the consideration of the jury.

Lord Ellenborough C. J. The surgeon who was examined specifically imputed the failure of the cure to negligence car e lessness, whatever other expressions he may have used in the manner of giving his evidence, upon which the learned judge has commented; therefore, however we may differ from him, as I certainly do, in thinking that an ordinary degree of skill is necessary for a surgeon who undertakes to perform surgical operations, which is proved by the case in Wilson, and indeed by all analogous authorities, in the same manner as it is necessary for every other man to have it in the course of his employment, — as the farrier who undertakes to cure my horse must have common skill, at least in his business, and that is implied in his undertaking; and although I am ready to admit that a surgeon would be liable for *crassâ ignorantiâ*, and would be justly responsible in damages for having rashly adventured upon the exercise of a profession without the ordinary qualification of skill, to the injury of a patient, yet the question did not arise upon the evidence in this case, for no want of skill was imputed to the defendant, and therefore the opinion of the learned judge upon that point does not affect the merits of the verdict upon the evidence in the cause.

The other judges concurred, and Grose J. referred to 3 Bl. Com. 365. as confirming the general doctrine.

Rule discharged.

SLATER *v.* BAKER AND STAPLETON.

2 Wils. 359. 362. M.T. 8 G.3.

ACTION upon the case. Plaintiff declares that Baker being a surgeon, and Stapleton an apothecary, he employed them to cure his leg, which had been broken and set, and the callous of the fracture formed; that in consideration of being paid for their skill and labour, &c., they undertook and promised, &c., but the defendants, not regarding their promise and undertaking, and the duty of their business and employment, so ignorantly and unskilfully treated the plaintiff, that they ignorantly and unskilfully broke and disunited the callous of the plaintiff's leg after it was set and the callous formed, whereby he is damaged. The defendants pleaded not guilty, whereupon issue was joined and a verdict found for the plaintiff, damages 500*l*. On the trial a surgeon showed, that the plaintiff having broken both the bones of one of his legs, the witness set the same; that the plaintiff was under his hands nine weeks; that in a month's time after the leg was set he found it was healing, and in a good way; the callous was formed; there was a little protuberance, but not more than usual: upon cross-examination, he said he was instructed in surgery by his father; that the callous was the uniting of the bones, and that it was very dangerous to break or disunite the callous after it was formed.

Latham, an apothecary, swore that he attended the plaintiff nine weeks, who was then well enough to go home; that the bones were well united; that he was present with the plaintiff and defendants, and at first the defendants said the plaintiff had fallen into good hands: the second time he saw them altogether the defendants said the same; but when he saw them together a third time there was some alteration: he said the plaintiff was then in a passion, and was unwilling to let the defendants do anything to his leg; he said he had known such a thing done as disuniting the callous, but that had been only when a leg was set very crooked, but not where it was straight.

Another witness swore that when the plaintiff came home he could walk with crutches; that Baker put upon the plaintiff's leg a heavy steel thing that had teeth, and would

stretch or lengthen the leg; that the defendants broke the leg again, and three or four months afterwards the plaintiff was still very ill and bad of it.

Another witness swore that Stapleton was first sent for to take off the bandage from the plaintiff's leg: when he came, he declined to do it himself, and desired that Baker might be called in to asssist: when Baker came, he sent for the machine that was mentioned; plaintiff offered to give Baker a guinea, but Stapleton advised him not to take it then, but said they might be paid altogether when the business was done; that the third time the defendants came to the plaintiff, Baker took up the plaintiff's foot in both his hands and nodded to Stapleton, and then Stapleton took the plaintiff's leg upon his knee, and the leg gave a crack, when the plaintiff cried out to them and said, "You have broke what nature had formed." Baker then said to the plaintiff, "You must go through the operation of extension;" and Stapleton said, "We have consulted, and done for the best."

Another surgeon swore, that in cases of crooked legs after they have been set, the way of making them straight is by compression, and not by extension; and said he had not the least idea of the instrument spoken of for extension: he gave Baker a good character, as having been the first surgeon of St. Bartholomew's hospital for twenty years; and said he had never known a case where the callous had deossified.

Another surgeon swore, that when the callous is formed to any degree, it is difficult to break it; and the callous in this case must have been formed, or it would not have given a crack: that the extension was improper, and if the patient himself had asked him to do it, he would have declined it; and if the callous had not been hard, he would not have done it without the consent of the plaintiff; that compression was the proper way, and the instrument improper: he said that Baker was eminent in his profession.

Another surgeon swore, that if the plaintiff were capable of bearing his foot upon the ground, he would not have disunited the callous if he had been desired by him; but in no case whatever without the consent of the patient: if the callous was loose, it was proper to make the extension to bring the leg into a right line.

Another witness swore that the plaintiff had put his foot upon the ground three or four weeks before this was done.

The defendants' counsel relied upon the good character which was given Baker, and that there was no evidence to affect Stapleton.

Wilmot C. J. thought there was such evidence against both the defendants as ought to be left to a jury, as the nodding, and advising Baker not to take the guinea offered to him by the plaintiff, the apothecary having first proposed sending for Baker. The plaintiff was in no pain before they extended his leg, and he only sent to Stapleton to have the bandage taken off: and he asked the jury whether they intended to find the damages against both the defendants. They found against them jointly, and he said he was well satisfied with the verdict.

It was moved to set aside the verdict.

Per Curiam, without hearing counsel for the plaintiff: 1st, It is objected that this is laid to be a joint undertaking, and therefore it ought to be proved, and we are of opinion that it ought; the question therefore is, whether there is any evidence of a joint undertaking: we are of opinion there is. Stapleton declines acting alone; but, in concurrence with Baker, attends the plaintiff every time any thing is done, and assists jointly with Baker; this appears in evidence and is sufficient, for there is no occasion to prove an express joint contract, promise, or undertaking: when an offer is made to Baker of a guinea, Stapleton says, "You had better be paid all at last;" they both attended plaintiff together every time, and Stapleton said, "We have consulted, and done for the best." When the plaintiff complained of what they had done, Stapleton considered himself as one of the persons to join in the cure of the leg, for he put his hand on the knee when Baker nodded, and the bone cracked; he is the original person aiding in this matter, and there is no ground for this objection. When we consider the good character of Baker, we cannot well conceive why he acted in the manner he did; but many men, very skilful in their profession, have frequently acted out of the common way for the sake of trying experiments. Several of the witnesses proved that the callous was formed, and that it was proper to remove plaintiff home; that he was free from pain, and able to walk with crutches. We cannot conceive what the

nature of the instrument made use of is. Why did Baker put it on, when he said the plaintiff had fallen into good hands, and when plaintiff only sent for him to take off the bandage? It seems as if Baker wanted to try an experiment with this new instrument.

2dly. It is objected that this is not the proper action, and that it ought to have been trespass *vi et armis*. In answer to this, it appears from the evidence of the surgeons, that it was improper to disunite the callous without consent; this is the usage and law of surgeons: then it was ignorance and unskilfulness in that very particular to do, contrary to the rule of the profession, what no surgeon ought to have done; and, indeed, it is reasonable that a patient should be told what is about to be done to him, that he may take courage and put himself in such a situation as to enable him to undergo the operation. It was objected, this verdict and recovery cannot be pleaded in bar to an action of trespass *vi et armis*, to be brought for the same damage; but we are clear of opinion it may be pleaded in bar. That the plaintiff ought to receive a satisfaction for the injury, seems to be admitted; but then it is said the defendants ought to have been charged as trespassers *vi et armis*. The court will not look with eagles' eyes to see whether the evidence applies exactly or not to the case: when they can see the plaintiff has obtained a verdict for such damages as he deserves, they will establish such verdict if it be possible. For any thing that appears to the court, this was the first experiment made with this new instrument; and if it was, it was a rash action, and he who acts rashly acts ignorantly: and although the defendants in general may be as skilful in their respective professions as any two gentlemen in England, yet the court cannot help saying that in this particular case they have acted ignorantly and unskilfully, contrary to the known rule and usage of surgeons.

Judgment for the plaintiff.

REX *v.* POND.

Com. 312.
M.T. 5 G.1.

INDICTMENT against a surgeon for refusing to be constable. It was moved by the Attorney General that a *nolle prosequi* might be granted; on statute 5 H. 8. c. 6. (*ante*, p. clxx.), and 32 H. 8. c. 42. (*ante*, p. clxxi.), and the charter 2 Jac. 1., by which they are exempt.

And though it was holden that physicians are not exempt (*v. ante*, p. clxiii.), yet it is said by Keble, that surgeons may be exempt; and by the equity of those statutes and custom of the realm, all surgeons have been allowed the same privilege *, and therefore a *nolle prosequi* was allowed, unless cause; and no cause was shown as ever I heard.

REX *v.* CHAPPLE.

3 Camp. N.P. 91.
32 G.3.

AN indictment for refusing to undertake the office of constable for a precinct in the city of London.

The defendant, a trunk-maker, claimed an exemption from serving this office as a member of the Barbers' Company. And it was contended, that upon the construction of 3 Hen. 8. c. 11., 5 Hen. 8. c. 6., and 32 Hen. 8. c. 42., the exemption from serving offices of this sort originally granted to the Surgeons' Company, not exceeding twelve, was extended to all the members of the Barbers' Company, when the two were united.

Lord Ellenborough C. J. was of opinion that the exemption was confined to such as had been examined by the Bishop of London, or Dean of St. Paul's, and licensed to practise surgery according to the provisions of the statutes cited.

Verdict, Guilty.

* 2 Hawk. P. C. c. 10. s. 43.

HAYWARD *v.* YOUNG.

2 Chit. 407.

MOTION to set aside a verdict for the plaintiff, on a bond conditioned not to set up as surgeon or man-midwife in the town of Aylesbury, or within twenty miles, on the ground that this bond was void, as in restraint of trade.

Abbott C. J. May not the business of an apothecary extend for twenty miles? and might not the setting up within that distance be injurious to him? The principle so luminously laid down and commented upon in Mitchell v. Reynolds, 1 Peere Williams, 181., where Lord C. J. Parker said, that it was quite out of the question to argue it in such a case, is completely applicable to the present.

Judgment for the plaintiff.

DAVIS *v.* MASON.

5 T.R. 118—120.
H.T. 33 G.3.

DEBT on bond for 200*l*. The condition (after reciting that plaintiff had taken defendant as an assistant in the business of a surgeon, apothecary, and man-midwife, and that defendant had agreed not to exercise the business on his own account, within ten miles of T., where plaintiff resided, for fourteen years,) was, that defendant would not exercise the business, &c. within that distance, &c. Plea, that before the execution of the bond it was agreed, that defendant should become an assistant to plaintiff "for so long as it should please plaintiff," and that defendant should not exercise that business, &c.; that defendant, in pursuance of such agreement, should execute the bond; that the defendant accordingly entered into the plaintiff's service in July 1789; that in August 1791, plaintiff, without the consent of, or any misconduct or default in or by, defendant, and against his will, dismissed defendant, &c.; wherefore he exercised, &c., concluding that the agreement and bond were void in law. Plaintiff replied. To this there was a special demurrer. The Court said that the pleadings were entirely

beside the question, and desired the counsel to confine themselves to arguments on the validity of the bond.

Lawes, for the defendant, admitted that bonds which restrain a person from exercising a particular trade in a particular place are not necessarily void, but contended that such bonds ought to be founded on a reasonable and adequate consideration: that this bond was unreasonable both in the duration and limits of the prohibition. The duration is much longer than in any of the decided cases; the limits are also too extensive: the bond has either been confined to the limits of a parish, or to some short distance, as half a mile. Another argument against this bond may fairly arise from the nature of the defendant's employment, in which the public health is materially interested. It is repugnant to every principle of justice, that a medical man should be restrained from giving his assistance even in the greatest extremity, and when there is no time to wait for other help. But, above all, the consideration is inadequate; for although the defendant was to become bound to the extent above stated, the contract is so unequal, that the moment after the defendant had executed the bond the plaintiff might have dismissed him. Had the plaintiff engaged to instruct the defendant in his profession, or to pay wages, or to retain him for any certain time, either of these might have been a sufficient and legal consideration.

Lord Kenyon C. J. (stopping Dampier, for the plaintiff.) This question has been at rest ever since the case of Mitchell *v.* Reynolds. A bond in restraint of trade cannot be arbitrarily taken, and without consideration: some consideration must appear. But here, the plaintiff being established in business as a surgeon at T., the defendant wished to act as his assistant with a view of deriving a degree of credit from that situation; on which the former stipulated that the defendant should not come to live there under his auspices and steal away his patients: this seems to be a fair consideration for the bond. Then it was objected that the limits within which the defendant agreed not to practise are unreasonable; but I do not see that they are necessarily unreasonable, nor do I know how to draw the line: neither are the public likely to be injured by an agreement of this kind, since every other person is at liberty to practise as a surgeon in this town.

Judgment for the plaintiff.

ALLISON *v.* HAYDON.

3 Car. & P. 246.
8 G. 4.

ASSUMPSIT for medicines furnished to and attendances on the defendant, labouring under the typhus fever. The plaintiff was a member of the College of Surgeons, but was not entitled to practise as an apothecary.

Burrough J. directed a nonsuit.

On showing cause against a rule to set aside the nonsuit, it was contended that the plaintiff was precluded from recovering these charges by 55 Geo. 3. c. 194. § 21., as typhus fever was not a case which came within the province of a surgeon.

In support of the rule it was urged, that sec. 29. excepts the College of Surgeons from the operation of the act; that the business of an apothecary is to sell drugs and medicines, and not to attend the sick; that the amount was a balance of plaintiff's bill, and claimed for attendances, and not for medicine; that the statute did not intend to prevent the regular surgeons from acting both as surgeons and apothecaries.

Park J. I take it that an apothecary is not merely to make up medicines; he is to possess competent skill for the administering of them. There are four degrees in the medical profession: physicians, surgeons, apothecaries, and chemists and druggists.

Gaselee J. May not the exception in the statute apply only to matters ancillary to surgical practice? There may be some small medicines necessary in the case of a manual operation, which a surgeon would be justified in administering.

Best C. J. We best consult the honour of this profession, and, what is of higher importance, we secure the health of the people, by strictly enforcing the laws which provide that those who practise any branch of this art should be regularly educated in that branch. I cannot admit that the legislature intended to give surgeons the privilege of practising in physic as well as surgery; nor do I consider that the business of a surgeon is confined to manual occupations. The exception only allows surgeons to administer medicines in surgical cases. For some disorders relief is sought from medicine,

for others from topical applications. A different education is necessary to prepare men to undertake the cure of either of these descriptions of complaints. To attain a proper proficiency in either branch requires undivided attention. The first description belongs to the physician and apothecary; the second to the surgeon. The professors of each branch of medicine must sometimes go beyond their proper limits. It may be necessary for the apothecary to use the lancet, and the surgeon to administer medicines, either to prevent the necessity of an operation, to prepare the patient for it if necessary, or to recover him from its effects when performed. In these cases the apothecary cannot be considered as infringing the laws made for the regulation and protection of surgeons, or the surgeon such as relate to the apothecary. The exception was introduced into this act to protect surgeons in such cases, and in such cases only. In some neighbourhoods there is not sufficient business to support both a surgeon and an apothecary. The same person must, in such places, act in both characters; and, from the necessity of the case, patients must be satisfied with the skill and knowledge in each which such a practitioner can acquire. In these cases the practitioner must be educated as a surgeon and as an apothecary, and before he is permitted to practise, he must obtain certificates of his competency from the proper authorities in each profession. A typhus fever is not a disease that belongs to the surgeon's branch of medicine: the plaintiff cannot, therefore, recover for his attendances.

Park J. The object of the act of parliament was to keep the practice of an apothecary distinct from any other. A chemist could not recover for advice and administering medicine. The plaintiff, being only a surgeon, was called in to act as an apothecary, and is not in a situation to recover.

Rule discharged.

——— *v.* J. MORTON.

TRESPASS on the case against a surgeon. The writ showed that whereas the plaintiff's hand had been wounded, defendant undertook to cure it, and by his negligence the hand

H.T. 48 Ed.3, 6 a. 15.

became worse, whereby he was maimed, &c. Plea (among others), that defendant did not undertake the cure.

Candish. It is not *mayhem* in him, inasmuch as another inflicted the wound; so that if he recover damages against the defendant, he may afterwards have an appeal against him who maimed him.

Hemming. If I deliver my horse to a smith to shoe, and he prick it, I shall have a writ of trespass against him; or if my horse be wounded in shoeing, and I deliver it to a farrier to cure it, and my horse be maimed by his negligence in the cure, I shall have the same writ in this case.

Candish. That is true; for the horse cannot have an action, that is, appeal of *mayhem*, against him who shod it: but in this case the person shod may have appeal of *mayhem* against the shoer; and if a person undertake to cure my horse, and by his negligence, or delay to cure him in time, the horse be injured, he is guilty. But if he do all he can, and apply all his diligence to the cure, it is unreasonable that he should be guilty, although it is not cured; for there is a great difference in the two cases.

The writ was abated on a defect in not setting forth where the undertaking was made.

T.T. 46 Ed.3. 19 a. 19.

TRESPASS against a farrier, for that he pricked plaintiff's horse, whereby plaintiff lost the profits of the horse for a long time.

Persay. The writ is bad; it should have been *vi et armis*.

Finchden. It is on the case, and good.

Persay. It should have been *vi et armis*, or *malitiose* pricked, and he has not declared that he delivered the horse to the defendant to be shod. Afterwards the writ was held good, and issue taken that he shod the horse, without that he pricked the horse.

W. DE WALDON *v.* J——.

M.T. 43 Ed.3. 33 a.

ACTION against a farrier, for that he had undertaken to cure the horse of the plaintiff, and so negligently set about the cure that the horse died.

Kirton excepted to the writ, for that it was *contrà pacem*, and the count was on negligence; and the justices were of opinion that it was bad. Afterwards the writ was read, and it had not the words *contrà pacem*, on which it was held good.

Kirton excepted that the writ should have been in covenant.

Belknap. That cannot be without deed.

Kirton. It might have been in trespass generally, that he had killed the horse.

Belknap. He could not have a general writ; for he did not kill it by force, but it died by default of cure; therefore the plea must be to the action, and not to the writ.

Afterwards the writ was held good; and it was said by *Thorp* J., that he had seen a case in which one M. was indicted for having undertaken to cure a man, and that he killed the man by default in his cure.

Kirton. J. did the cure as well as he could, without that he undertook to cure the horse of the disease, &c. and that cannot be received; but he is obliged to say, as well as he could: without that, the horse died by default in his cure. *Et alii e contrâ.*

Vid. et. H. T. 19 H. 6. 49. a. 9.

REX *v.* JOHN WILLIAMSON.

3 Car. & P. 635. O. B. 1807.

Indictment for murder of A. D., and charge of manslaughter on the inquisition.

The prisoner was seventy-five years of age, and had been in the habit of acting as accoucheur, though not regularly educated in that faculty.

The deceased had been delivered by prisoner of a male child. On the second day after her delivery a prolapsus uteri appeared to have taken place, which the prisoner mistook for a part of the placenta remaining. This he attempted to take off by force, and in so doing lacerated the uterus, and tore open the mesenteric artery. This caused the death of the patient, and in the opinion of several of the medical witnesses showed a great want of anatomical knowledge.

The prisoner said that he had acted according to the best of his judgment, and produced several women whom he had delivered, and treated with great kindness, attention, and, as far as they could judge, skill.

Lord Ellenborough C. J. There is not a particle of evidence which goes to convict the prisoner of the crime of murder: but it is for the jury to consider whether the evidence goes so far as to make out a case of manslaughter. To substantiate that charge, he must have been guilty of criminal misconduct, arising from the grossest ignorance or the most criminal inattention. One or other of these is necessary to make him guilty of that criminal negligence and misconduct which is essential to make out a case of manslaughter. It does not appear that there was any want of attention; and it appears that he had delivered many women at different times. From this he must have had some degree of skill. It would seem, that having placed himself in a dangerous situation, he became shocked and confounded. I think that he could not possibly have committed such mistakes in the exercise of his unclouded faculties; and I own that it appears to me that if you find the prisoner guilty of manslaughter, it will tend to encompass a most important and anxious profession with such dangers as would deter reflecting men from entering into it.

Not guilty.

REX *v.* MARTIN VAN BUTCHELL.

3 Car. & P. 629.
O. B. 10 G. 4.

INDICTMENT for manslaughter, charging the death to be by the thrusting of a "round piece of ivory into and up the fundament and against the rectum" of W. A., thereby making "one perforation, laceration, and wound, &c. in and through the said rectum of the said W. A."

Adolphus, pro Rege, stated that the deceased, labouring under a disease of the rectum, applied to Van Butchell, who passed a rectum bougie into his body, giving him some pain; that deceased, returning home, took to his bed, from which he never rose, but expired on the seventh day after the operation; and referring to 4 Bl. Com. c. 14. *ante*, p. clvi.)

1 H. P. C. 429. (*post*, p. ccxxvii.), and 4 Inst. 251., said that if one who is not a regular surgeon take upon him to cure a man, and the patient die, this is felony.

Hullock B. It is so said in Lord Coke's Institutes, undoubtedly; but there has never been any decision of the kind.

Adolphus. The gentleman at the bar has had much experience for many years; and there is reason to believe that he has had a regular education. I believe you will be told by the court that it is not essential that he should be a member of the College of Surgeons, and that we must not scrutinise too nicely as to how the operation was performed, if it was not performed with such gross ignorance as to show a wanton carelessness of human life.

A surgeon stated, that in the evening of the day on which the operation was performed he saw the patient, who said, "I feel that I have had such an injury in the bowel, that I think I shall never recover;" but that his symptoms were not then such as to lead the witness to consider him in danger of dying.

Hullock B. This evidence cannot be admitted, as the declaration does not appear to have been made under an impression of almost immediate dissolution.

The witness stated that he opened the body; that he found a portion of the ileum adherent to the rectum, and that on separating this adhesion he discovered a small hole perforated through the rectum. On cross-examination he admitted that operations would sometimes fail though most skilfully performed; that a patient of his own had died soon after an operation performed by him; on the propriety of performing which under such circumstances there existed among surgeons a difference of opinion.

Hullock B. This does not even approach to a case of manslaughter. It would be dreadful if an individual was liable to have his practice questioned every time an operation was performed.

Brodrick proposed to show that Van Butchell had received a regular education, and that his practice had in many cases been most successful.

Hullock B. This is an indictment for manslaughter. I am afraid to let the case go on, lest an idea should be entertained that a man's practice may be questioned whenever an oper-

ation fails. In this case there is no evidence of the mode in which the operation was performed; and even assuming that it caused the death of the deceased, I am not aware of any law which says that this party can be found guilty of manslaughter. It is my opinion that it makes no difference whether the party be a regular or an irregular surgeon: indeed, in remote parts of the country, many persons would be left to die if irregular surgeons were not allowed to practise. There is no doubt that there may be cases where both regular and irregular surgeons might be liable to an indictment; as there may be cases where, from the manner of the operation, even malice might be inferred. All that the law books have said has been read to you; but they do not state any decisions; and their silence in that respect goes to show what the uniform opinion of lawyers has been upon this subject. As to what is said by Lord Coke, he merely details an authority, a very old one, without expressing either approbation or disapprobation. However, we find that Lord Hale has laid down what is the law on this subject. That is copied by Mr. Justice Blackstone; and no book in the law goes further. It may be that a person not legally qualified to practise as a surgeon may be liable to penalties; but surely he cannot be liable to an indictment for felony. It is quite clear you may recover damages against a medical man for a want of skill; but, as my Lord Hale says, "God forbid that any mischance of this kind should make a person guilty of murder or manslaughter." Such is the opinion of one of the greatest judges that ever adorned the bench of this country: and his proposition amounts to this; that if a person, *bonâ fide* and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter. In the present case no evidence has been given respecting the operation itself. It might have been performed with the most proper instrument, and in the most proper manner, and yet might have failed. The witness himself told us that he performed an operation, the propriety of which seems to have been a sort of *vexata quæstio* among the medical profession; but still it would be most dangerous for it to get abroad, that if an operation, performed either by a licensed or unlicensed surgeon, should fail, that surgeon would be liable to be prosecuted for manslaughter. This prosecution cannot be sustained; and no

imputation whatever ought to be cast upon the gentleman now at the bar in consequence of any thing that has occurred.

Not Guilty.

1 Hale H. P. C. 429.

If a physician give a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a disease, and, contrary to the expectation of the patient, it kills him, this is no homicide, and the like of a chirurgeon, 3 E. 3. Coron. 163.; and I hold their opinion to be erroneous that think, if he be no licensed chirurgeon or physician that occasioneth this mischance, that then it is felony; for physic and salves were before licensed physicians and chirurgeons, and therefore if they be not licensed according to the statute 3 Hen. 8. c. 11. or 14 Hen. 8. c. 5. they are subject to the penalties in the statutes; but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter.

REX *v.* NANCY SIMPSON.

Lancaster, March 14. 1829.

Indictment for manslaughter. A sailor, discharged from the Liverpool Infirmary as cured, after undergoing salivation, was recommended by another patient to go to prisoner for an emetic to get the mercury out of his bones. Prisoner was an old woman living at Liverpool, and occasionally dealing in medicines. She gave him a solution of white vitriol, or corrosive sublimate, one dose of which caused his death. She said she had received the mixture from a person who came from Ireland and had gone back again.

Bayley J. I take it to be quite clear, that if a person, not of medical education, in a case where professional aid might be obtained, undertakes to administer medicine which may have a dangerous effect, and thereby occasions death, such person is guilty of manslaughter. He may have no evil intention, or may have a good one; but he has no right to hazard the consequence in a case where medical assistance may be obtained. If he does so, it is at his peril. It is im-

material whether the person administering the medicine prepares it or gets it from another.

Verdict Guilty.

The prisoner was discharged, on giving security to appear when called up for judgment, and in the mean time to abstain from selling medicines.

THIRD DIVISION.

Apothecaries.

FIRST SUBDIVISION.

Statutes, Charters, &c.

Pat. 19 Ed. 3.
Stat. 32 Hen. 8. c. 40. *ante*, p. xii.
—— 1 Mar. sess. 2. c. 9. *ante*, p. xv.
Char. May 30. 13 Jac. 1.
Stat. 6 & 7 W. 3. c. 4.
—— 10 Geo. 1. c. 20.
—— 55 Geo. 3. c. 194.
—— 6 Geo. 4. c. 133.
Ordinances.

DE PENSIONE APOTHECARIO SOLVENDA.

Rex thesaurario et camerariis suis salutem. Cum nos curam solicitam quam dilectus nobis Coursus de Gangeland, apothecarius Londoniæ, circa nos, nuper in partibus Scotiæ, dum gravi detinebamur ægritudine, apposuit, debite meditantes, voluntesque proinde ipsius præmiare solicitudinem, vicessimo quarto die Decembris, anno regni nostri tertiodecimo, concesserimus eidem Courso sex denarios percipiendos singulis diebus ad scaccarium nostrum ad totam vitam suam, vel quousque sibi de valore eorundem sex denariorum per diem fecerimus aliter provideri, prout in litteris nostris patentibus inde confectis plenius continetur; vobis mandamus, quod eidem Courso, vel ejus in hac parte attornato, id, quod eidem Courso de dictis sex denariis diurnis, a prædicto

Rym. Fœd. t. 5. p. 486. An. 19 Ed 3. A.D. 1345.

quarto die Decembris, a retro existit et eosdem sex denarios singulis diebus ex nunc, ad totam vitam suam de thesauro nostro solvatis, juxta tenorem literarum nostrarum prædictarum.

Teste rege apud Westmonsterium, decimo die Octobris.

Charter, May 30. 13 Jac. 1.

Recital. RECITING a grant on the 9th of April, in the —— year of his reign to the grocers' company, and the mischiefs which had arisen from the sale of improper medicines, &c. and his own wisdom and mightiness, and the propriety of separating the apothecaries' from the grocers' company, the king grants that the apothecaries shall be separate from, and constitute a company distinct from that of, the grocers, and free from their by-laws, regulations, jurisdiction, and privileges. And, to promote the full dignity of the faculty of the pharmacopolites, before sunk into disrepute and despised, he grants to certain persons therein named, and all other persons educated in the faculty of pharmacy, and practising it, being freemen of the grocers' company, or of any other company of London, that they, and all such, practising within London and its suburbs and seven miles around, shall

Name. constitute a corporation, by the name of the Master, Wardens, and Society of the Art and Mystery of Pharmacopolites of the City of London.

Lands, &c. That by that name they may be capable of acquiring and holding lands, liberties, privileges, functions, jurisdictions, goods, &c., and any estate therein, and of alienating lands, &c., and otherwise acting, and of suing and being sued.

Seal. That they may have a common seal, and break and alter it.

Members. That they may have one master, two wardens, and twenty-one assistants.

Hall. That they may have a hall or council-house within the city of London.

Court. That the master and wardens, or two of them, of whom the master to be one, may, as often as they think necessary,

convoke in such hall a court of the master, wardens, and assistants, to the number of thirteen or more, of whom the master and one of the wardens to be two.

to treat,

That such court may treat of their affairs and the regulations necessary for the government of the body.

and make ordinances.

That the master, wardens, and assistants, to the number of thirteen, of whom the master to be one, on public summons for this purpose, assembled in the hall, may make reasonable ordinances for the regulation and government of the society, and of all other persons practising as apothecaries in or within seven miles of London, and for the conduct of the apprentices, officers, and ministers of the society, and for all other matters affecting the mystery and society: Provided that on regulations relating to medicines or compositions, and their use, they call the president and four censors of the College of Physicians, or other physicians by them nominated, to advise in that behalf.

That the master, wardens, and assistants, to the number of thirteen, of whom the master to be one, may appoint such punishment, by fine and imprisonment, on the violation of such by-laws, as they may deem expedient, and of themselves, or by the aid of law, levy and recover the same to their own use without hinderance by accounting to the king or any his officers; so as such fines, &c. be reasonable, and such by-laws consonant with the law of the land.

That twenty-four persons named should be the first master, wardens, and assistants.

That the assistants should be sworn in before certain persons.

Admission.

That the master and wardens, and all future masters and wardens should be sworn in before the assistants.

Elections.

That the master, wardens, and assistants, to the number of thirteen, if so many can be conveniently assembled, may yearly, on or within eight days after the 20th of August, elect three of the society, of whom one shall be master, and the other two wardens, of the society, for one year, and until three others shall be admitted (*perfecti*).

That if any of the masters and wardens shall in the course of their year die, or be removed by the remaining members to the number of thirteen, for evil government, or other good cause, the remaining members may elect other instead, to

hold the office or offices until the following 20th of August, and until three others shall be elected masters and wardens.

That when any of the assistants shall die, or be removed for misconduct, or other reasonable cause, by the master, wardens, and assistants, to the number of thirteen, the master, wardens, and society may elect another, or others, of the most worthy of the society, in his or their stead.

Admission.

That such persons shall be sworn in, and sworn to keep the secrets of the court of assistants, before the master and wardens.

That the master and wardens may administer oaths of office to all masters, wardens, assistants, and officers of the society, after their election, on admission, and also to all apprentices and other freemen of the mystery.

Business of apothecaries, who may not carry on.

That no person, free of the grocers' or any other mystery in London, except those of the apothecaries' company, shall keep any apothecary's shop, or make, compound, administer, sell, send out, advertise, or offer for sale any medicines, distilled waters, compounded chemical oils, decoctions, syrups, conserves, eclegmas, electuaries, medical condiments, pills, powders, lozenges, oils, unguents, or plasters; or otherwise, in any manner or in any branch of it, practise the faculty of an apothecary within seven miles of London, under the penalty of 5*l.* a month, leviable by distress, and recoverable by the junior warden, by action of debt or otherwise, in any court of Westminster.

That no person shall so practise, &c. unless he has served an apprenticeship of seven years with some apothecary practising and free of that mystery, and afterwards appeared and been presented before the master and wardens, and been by them, calling to their assistance the president of the College of Physicians, or some physician or physicians assigned by him, if willing to be present, as to his knowledge and choice of simples, and as to the preparation, dispensing, application, mixture, and composition of medicines examined and approved.

Correction of apothecaries.

That the master and wardens may have the oversight, scrutiny, examination, government, and correction of all, as well free as others, practising the faculty of an apothecary, or any branch of it as aforesaid, within London, its liberties, or suburbs.

That they and each of them, or any of the assistants by them assigned, may, at seasonable times, and in convenient manner, as often as to them shall seem fit, enter any house, shop, &c. of any person using or practising as aforesaid, any where within London, or seven miles around, where any such medicines, &c. may probably be found, and examine whether such medicaments, &c., and all other things appertaining to the art of an apothecary, are proper for the health and relief of the people. Examination of medicines.

That the master and wardens, and the assistants, by the master and wardens for that purpose appointed, should have authority to examine and approve all persons who should profess, use, or exercise the art of an apothecary, or any branch of it, within London or its liberties, or seven miles around the city, as to their knowledge, skill, and science therein, and to prohibit the practice of the art to all persons whom they should find wanting sufficient skill therein. Examination of apothecaries.

That they might destroy all such medicines, &c. as they shall find false, illegal, adulterated, or otherwise unfit, &c. before the doors of the offenders, and punish them by fines as aforesaid. Bad medicines.

That all mayors, justices, constables, &c. should aid the master and wardens, and the assistants, &c. by them appointed.

That the master, wardens, and society might have and enjoy all such franchises, privileges, customs, advantages, &c., in respect of aromatics, pharmacy, drugs, and other things pertaining to their art, as they did before, when included in the grocers' company. Former privileges.

That they might acquire, as well by devise as otherwise, and hold lands, &c. within any of the king's dominions, not holden of the king *in capite*, or by knight-service, not exceeding, in clear annual value, 40*l*. Lands, &c.

That the master, wardens, or assistants, or the major part of them, might nominate and elect a proper person to be their common clerk, who should be admitted by the master and wardens, and hold his office during the pleasure of the master, wardens, and assistants, of whom the master is to be one. Clerk.

That the master, wardens, and assistants might elect a beadle, to be admitted before the master and wardens, and to hold his office as the clerk. Beadle.

Proviso for physicians, &c.

It is then provided, that nothing in this charter should interfere with the authority of the president and college of physicians in the oversight and correction of pharmacy; but that they and all physicians of the college, and the physicians of the king, queen, and princes, might, at their pleasure in all things, practise the medical art, and enjoy all their former jurisdictions, powers, and privileges; and that the president and college of physicians might call to them the master and wardens of the apothecaries, in all cases in which they might have called any of the grocers' company, for the scrutiny of medicines, &c.; and that these physicians might not, on any occasion, call any of the grocers' company to them for this purpose.

London.

And that nothing in it should prejudice the city of London, its privileges, jurisdiction, &c.

Surgeons.

And that all surgeons, experienced and approved, might exercise their art and faculty, and use and enjoy their proper practice in the composition and application of external medicines alone; so that they did not vend medicines, or expose them to sale, according to the common practice of apothecaries.

And finally granted that this charter should not be less valid, because the true value, &c. is not mentioned with the usual *non obstante*.

---

6 & 7 W. 3. c. 4.

Exempting Apothecaries from Offices and Juries.

Within London and seven miles.

Sec. 2. Every person who shall use and exercise the art of an apothecary within the city of London, and seven miles thereof, being free of the society of apothecaries of London, and duly examined of his skill in the said mystery, and approved of for the same, for so long as he shall use and exercise the said art, and no longer, shall be freed and exempted from the several offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put into or serving upon any juries or inquests; and if any such person shall be chosen or elected into any of the said offices, or returned, required, or appointed to serve in

any jury, leet, or inquest, or be disquieted or disturbed by reason thereof, such person, producing a testimonial under the common seal of the said corporation, of such his examination, approbation, and freedom, to the person or persons by whom he shall be so elected or appointed, or by or before whom he shall be summoned, returned, or required to serve or hold any of the said offices or duties, shall be absolutely discharged from the same; and such nomination, election, return, and appointment, shall be utterly void and of none effect.

In other places.

Sec. 3. Every person that shall use and exercise the said art within any other parts of this kingdom, dominion of Wales, or town of Berwick-upon-Tweed, and who shall have been brought up and served in the said art as an apprentice, by the space of seven years, according to 5 El., shall likewise be freed and exempted from the offices and duties aforesaid, within the several counties, cities, and places where he shall live and inhabit for so long as he shall use and exercise the said art, and no longer; and if any person so qualified shall be elected or chosen into any of the said offices, or returned to serve in any jury, leet, or inquest, such nomination, election, return, and appointment, shall be void, unless such person shall voluntarily consent and agree to hold such office, or to serve upon such jury, leet, or inquest.

This act is made perpetual by 9 Geo. 1. c. 8. § 1.

---

10 Geo. 1. c. 20.

An Act for the better Viewing, Searching, and Examining of all Drugs, Medicines, Waters, Oils, and Compositions used for Medicines, in all Places where the same shall be exposed to Sale, or kept for that Purpose, within the City of London, and Suburbs thereof, or within Seven Miles' Circuit of the said City.

This act was temporary. *Vid. ante*, p. xxviii.

55 Geo. 3. c. 194.

An Act for better regulating the Practice of Apothecaries throughout England and Wales. — July 12. 1815.

Charter confirmed.

Reciting charter 15 James 1. — That the said charter, and all and every the powers, provisions, penalties, forfeitures, regulations, clauses, matters, and things therein contained, (save and except such part or parts thereof as are hereby altered, varied, or repealed,) shall be, and the same is and are hereby declared to be in full force and virtue, and shall be as good, valid, and effectual, to all intents and purposes whatsoever, as if this act had not been made.

Power to enter the shops of apothecaries, &c. repealed.

Sec. 2. That so much of the said recited charter as directs that the said master and wardens, and their successors, or some or one of them, or some assistants, by the master and wardens to be appointed and assigned, at fit and convenient times, and in manner and form convenient and lawful, from time to time, as often as to the said master and wardens shall seem expedient, shall and may go and enter into any shop or shops, house or houses, cellar or cellars, of any persons whomsoever using or exercising the art or mystery of apothecaries, or any part thereof, within the city of London, the liberties or suburbs thereof, or within seven miles of the same city, as well within the liberty as without, where any medicines, simple or compound, wares, drugs, receipts, distilled waters, chemical oils, syrups, conserves, lohocks, electuaries, pills, powders, lozenges, oils, ointments, plasters, or any other things whatsoever which belong or appertain to the art or mystery of apothecaries as is aforesaid, are likely to be found; and to search, survey, and prove if the same medicines, simple or compound, wares, drugs, receipts, distilled waters, chemical oils, syrups, conserves, lohocks, electuaries, pills, powders, lozenges, oils, ointments, plasters, or any thing or things whatsoever belonging to the art or mystery of apothecaries aforesaid, be and shall be wholesome, medicinable, meet and fit for the cure, health, and ease of his Majesty's subjects; and also so much of the said recited charter as directs that the aforesaid master and wardens of the mystery aforesaid, and the said assistants for the time being, thereunto nominated and appointed by the

master and wardens, and their successors, from time to time, may have, and by virtue of these presents shall have, full power and authority to examine and try all and singular persons professing, using, or exercising, or which hereafter shall profess, use, or exercise the art or mystery of apothecaries, or any part thereof, within the aforesaid city of London, the liberties or suburbs thereof, or within seven miles of the same city, as well within liberties as without, touching or concerning their and every of their knowledge, skill, and science in the aforesaid art or mystery of apothecaries, and to remove and prohibit all those from the exercise, use, or practice of the said art or mystery, whom hereafter they shall find either unskilful, ignorant, or insufficient, or obstinate, or refusing to be examined by virtue of these presents, in the art or mystery aforesaid; and also all and singular medicines, wares, drugs, receipts, distilled waters, oils, chemical preparations, syrups, conserves, lohocks, electuaries, pills, powders, lozenges, oils, ointments, and plasters, and all other things belonging to the aforesaid art, which they shall find unlawful, deceitful, stale, out of use, unwholesome, corrupt, unmedicinable, pernicious, or hurtful, to burn before the offenders' doors; and also to lay, impose, and exact mulcts, and other pains and penalties, by fines and amerciaments, upon such offenders, according to their sound discretions, and the ordinances by them and their successors so as aforesaid to be made and appointed, shall be and the same is hereby repealed. *V. ante*, p. ccxxxii. ccxxxiii.

Master, wardens, &c. to enter shop, &c.

Sec. 3. That in lieu and stead thereof, the said master, wardens, and society of apothecaries for the time being, and their successors, or any of the assistants, or any other person or persons properly qualified, as hereinafter is mentioned, to be by the master and wardens nominated and assigned, not being fewer in number than two persons at the least, shall and may, from time to time, and at all seasonable and convenient times, in the day-time, as often as to the said master and wardens it shall seem expedient, go and enter into any shop or shops of any person or persons whatever, using or exercising the art or mystery of an apothecary, in any part of England or Wales, and shall and may search, survey, prove, and determine if the medicines, simple or compound, wares, drugs, or any thing or things whatsoever therein contained, and belonging to the art or mystery of apothe-

caries aforesaid, be wholesome, meet, and fit for the cure, health, and ease of his Majesty's subjects; and all and every such medicines, wares, drugs, and all other things belonging to the aforesaid art, which they shall find false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious, or hurtful, shall and may burn, or otherwise destroy; and also shall and may report to the master, wardens, and assistants of the said society, the name or names of such person or persons as shall be found to have the same in their possession; and the said master, wardens, and assistants, shall and may impose and levy the following fines and penalties upon each and every person whose name shall be so reported to them, as hereinafter mentioned: for the first offence, the sum of 5*l.*; for the second offence, the sum of 10*l.*; and for the third and every other offence, the sum of 20*l.*

Qualifications of examiners.

Sec. 4. That no person to be by the master, wardens, and assistants for the time being, chosen and appointed a member of the court of examiners, or to be by the master and wardens nominated and assigned to go and enter into any shop or shops, for the purposes aforesaid, within the city of London, the liberties or suburbs thereof, or within thirty miles of the same, shall be deemed to be properly qualified, unless he shall be a member of the society of apothecaries aforesaid, of not less than ten years' standing; nor shall any person be deemed to be properly qualified to be nominated and assigned to go and enter into any shop or shops in any other part of England and Wales, for the purposes aforesaid, or to be appointed one of the five apothecaries hereinafter mentioned and directed to be appointed for the purpose of examining assistants to apothecaries in compounding and dispensing medicines, as hereinafter is mentioned, except he shall have been an apothecary, in actual practice, for not less than ten years at least, previously to his being so nominated, or assigned, or appointed.

Compounding, refusal or fraud in.

Sec. 5. And whereas it is the duty of every person using or exercising the art and mystery of an apothecary to prepare with exactness, and to dispense such medicines as may be directed for the sick, by any physician lawfully licensed to practise physic by the president and commonalty of the faculty of physic in London, or by either of the two universities of Oxford or Cambridge; therefore, for the further protection, security, and benefit of his Majesty's subjects,

and for the better regulation of the practice of physic throughout England and Wales, be it enacted, that if any person using or exercising the art and mystery of an apothecary, shall, at any time, knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale, to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, or shall deliberately or negligently, falsely, unfaithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on sale, put forth, or put to sale, to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, as directed by any prescription, order, or receipt, signed with the initials, in his own hand-writing, of any physician so lawfully licensed to practise physic, such person or persons so offending shall, upon complaint made within twenty-one days by such physician, and upon conviction of such offence before any of his Majesty's justices of the peace, unless such offender can show some satisfactory reason, excuse, or justification in this behalf, forfeit, for the first offence, the sum of 5*l.*; for the second offence, the sum of 10*l.*; and for the third offence he shall forfeit his certificate, and be rendered incapable, in future, of using or exercising the art and mystery of an apothecary, and be liable to the penalty inflicted by this act upon all who practise as such without a certificate, in the same manner as if such party, so convicted, had never been furnished with a certificate enabling him to practise as an apothecary; and such offender, so deprived of his certificate, shall be rendered and deemed incapable, in future, of receiving and holding any fresh certificate, unless the said party so applying for a renewal of his certificate shall faithfully promise and undertake, and give good and sufficient security, that he will not, in future, be guilty of the like offence.

Master and wardens may appoint deputy.

Sec. 6. That each and every of them the said master and wardens for the time being may, and they are hereby respectively empowered, by writing under his or their hands, to appoint any one or more of the said court of assistants to act as deputy-master, or as deputy-wardens, as the case may be, in all matters and things done, or authorised to be done, by the said master, or the said wardens, under and by virtue

of the said recited charter, or of this act, and to remove such deputy-master or deputy-wardens, so to be appointed from time to time, as the said master or the said wardens shall respectively think proper; and all acts, matters, and things which shall be lawfully done by the said deputy-master or deputy-wardens so to be appointed as aforesaid, as the case may be, shall be as good, valid, and effectual as if the same were done and performed by the said master and wardens respectively.

Apothecaries' company to carry act into execution.

Sec. 7. And whereas much mischief and inconvenience has arisen from great numbers of persons in many parts of England and Wales exercising the functions of an apothecary, who are wholly ignorant and utterly incompetent to the exercise of such functions, whereby the health and lives of the community are greatly endangered, and it is become necessary that provision should be made for remedying such evils; be it therefore further enacted, that the said master, wardens, and society of the art and mystery of apothecaries of the city of London, incorporated by the said recited charter of his Majesty King James the First, and their successors, shall be, and they are hereby appointed and constituted, directed and empowered for ever to superintend the execution of the provisions of this act, and to enforce and carry the several regulations and provisions thereof, in relation to the several persons practising the art or mystery, or profession, of an apothecary throughout England and Wales, and all other the purposes of this act, into full execution.

No acts of master, wardens, &c. valid, unless done at a meeting, &c.

Sec. 8. That no act of the said master, wardens, and society of apothecaries, incorporated as aforesaid, for the carrying any of the powers and provisions of this act into execution, shall be or be deemed to be good or valid, (save and except as to such acts as shall be done by the said master, wardens, and assistants, or others appointed by them, or any of them, as hereinbefore is provided, in pursuance of the powers and authorities hereinbefore given to them, to enter into shops to search for, examine, and destroy unwholesome drugs or medicines, and also save and except as to such acts as shall be done by the said court of examiners, or the major part of them present, or by the five apothecaries hereinafter mentioned, or the major part of them present, in pursuance of the authorities hereinafter given to them,) unless the same be done at some assembly or meeting to be holden by the said master, wardens, and society, in the hall of the said society;

and that all the powers and authorities by this act granted to or vested in the said master, wardens, and society as aforesaid, shall and may from time to time be exercised by the master, wardens, and assistants of the art and mystery of apothecaries aforesaid for the time being, or by the major part of them present, who shall attend at any such assembly or meeting to be holden as aforesaid, the number present at such assemblies or meetings not being less than thirteen, of which the said master for the time being shall always be one; and all the orders and proceedings of the said master, wardens, and assistants for the time being, or of such major part as aforesaid, shall have the same force and effect as if the same were made or done by the said master, wardens, and society of apothecaries incorporated as aforesaid.

A court of examiners chosen.

9. That for the purposes of this act, so far as the same regards the examination of apothecaries and assistants to apothecaries, twelve persons, properly qualified, as herein-before is mentioned, shall be chosen and appointed by the said master, wardens, and assistants for the time being (who are hereby authorised and empowered to choose and appoint such persons, and to remove or displace them from time to time, as they the said master, wardens, and assistants for the time being shall deem advisable); and such persons, when so chosen and appointed, or any seven of them, shall be and be called the court of examiners of the society of apothecaries; and such court of examiners, or the major part of them present at any meeting, shall have full power and authority, and are hereby authorised and empowered, to examine all apothecaries, and assistants to apothecaries, throughout England and Wales, and to grant or refuse such certificate as hereinafter is mentioned; and such court of examiners, or the major part of them, shall, and they are hereby required to meet and assemble in some convenient room in the hall of the said society, once at least in every week, for the purpose of such examination, and then and there to examine all persons applying to be examined, and duly qualified so to be by virtue of this act.

Chairman.

10. That at any such meetings of the said examiners a chairman shall and may be appointed; and when and so often as it shall so happen that there shall be an equal number of votes upon any one question (including the vote of the said chairman), then and in such case it shall and may be lawful

to and for the said chairman to give the casting or decisive vote.

Examiner's oath.

11. That no person shall be capable of acting as an examiner under and by virtue of this act, until he shall have taken and subscribed the following oath :—

"I A. B. do solemnly promise and swear [or, being one of the people called Quakers, do solemnly affirm], that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the trust reposed in me by the master, wardens, and society of the art and mystery of apothecaries of the city of London, as an examiner, in the examination of every person who shall come before me to be examined as to his fitness or qualification to act as an apothecary, or assistant to an apothecary, as the case may be, and that without favour, affection, prejudice, or malice. So help me God."

Which oath or affirmation the said master, wardens, or court of assistants, or the major part of them, are hereby authorised and required to administer.

Duration of office.

12. That all persons so to be chosen and appointed examiners as aforesaid, shall continue in office for the space of one year from the time of their appointment (except in case of death, or being removed or displaced by the said master, wardens, and assistants as aforesaid) : Provided always, that it shall and may be lawful to and for the said master, wardens, and assistants, to choose and appoint any such person or persons going out of office again to be an examiner or examiners as aforesaid, if they the said master, wardens, and assistants shall deem it advisable so to do.

Vacancies.

13. That in case any person or persons so to be chosen and appointed shall happen to die during the time he or they shall continue to be an examiner or examiners, or be removed or displaced as aforesaid, then it shall and may be lawful for the said master, wardens, and assistants, to choose and appoint any other person or persons, properly qualified, to be an examiner or examiners as aforesaid, in the room of the person or persons so dying, or removed, or displaced as aforesaid ; and every person or persons so chosen and appointed shall continue in office for such time, and no longer, as the person or persons, in whose room or stead he or they shall be so chosen and appointed, would have continued in office.

None to practise as apothecaries, &c. without examination.

14. 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 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 to practise as such from the said court of examiners, or the major part of them as aforesaid, who are hereby authorised and required to examine all person and persons applying to them, for the purpose of ascertaining the skill and abilities of such person or persons in the science and practice of medicine, and his or their fitness and qualification to practise as an apothecary; and the said court of examiners, or the major part of them, are hereby empowered either to reject such person or persons, or to grant a certificate of such examination, and of his or their qualification to practise as an apothecary as aforesaid: Provided always, that no person shall be admitted to such examination until he shall have attained the full age of 21 years.

Applicant's testimonials.

15. That no person shall be admitted to any such examination for a certificate to practise as an apothecary, unless he shall have served an apprenticeship of not less than five years to an apothecary, and unless he shall produce testimonials to the satisfaction of the said court of examiners of a sufficient medical education, and of a good moral conduct.

Notice.

16. That every person intending to qualify himself under the regulations of this act to practise as an apothecary in any part of England or Wales, shall give notice to the clerk of the said master, wardens, and society of apothecaries as aforesaid, of his intention so to do, who shall notify the same to the said master, wardens, and society of apothecaries as aforesaid; and the person so intending to qualify himself shall present himself at the meeting held by the said court of examiners next succeeding such notice, and shall undergo such examination by the said court of examiners as aforesaid, or at some other meeting, as shall or may be appointed and fixed upon by the said master, wardens, and

society of apothecaries, or by the said court of examiners, or the major part of them as aforesaid, for that purpose.

Assistant to apothecaries.

17. That from and after the 1st August 1815, it shall not be lawful for any person or persons (except the persons then acting as assistants to any apothecaries as aforesaid, and excepting persons who have actually served an apprenticeship of five years to an apothecary) to act as an assistant to any apothecary, in compounding or dispensing medicines, without undergoing an examination by the said court of examiners, or the major part of them, or by five apothecaries so to be appointed as hereinafter is mentioned, and obtaining a certificate of his or their qualification to act as such assistant from the said court of examiners, or the major part of them, or from the said five apothecaries, who are hereby authorised and empowered to examine all persons applying to them for that purpose, and to grant a certificate of such fitness and qualification.

Power to appoint five examiners for assistants.

18. That for the purposes of this act it shall and may be lawful to and for the said master and wardens for the time being, or to and for the said court of examiners, by writing under their hands, from time to time to appoint five apothecaries in any county or counties respectively throughout England and Wales, except within the said city of London, the liberties or suburbs thereof, or within thirty miles of the same, to act for such county or counties, or any other county or counties near or adjoining, and to remove or displace them from time to time, as the said master and wardens, or the said court of examiners, shall deem advisable; and such five apothecaries so to be appointed respectively as aforesaid, at any meeting to be held by them, as hereinafter mentioned, shall have full power and authority, and are hereby authorised and empowered to examine all assistants to apothecaries throughout the county or counties in regard of which such apothecaries shall have been so appointed as aforesaid, and to grant or refuse such certificate to every such assistant to apothecaries as hereinbefore is authorised in that behalf; and a meeting of the said apothecaries for the purposes aforesaid shall be held monthly in the county town of some one of the counties for which they shall have been appointed to act as aforesaid; and that no act of such apothecaries shall be or be deemed to be good or valid, unless the same be done at some such meeting; and that

all the powers and authorities by this act granted to or vested in such five apothecaries shall and may from time to time be exercised by the major part of them who shall attend at any meeting to be holden as above directed, the number of such apothecaries present at any such meeting not being less than three; and all the orders, directions, and certificates of the major part of such apothecaries present at any such meeting shall have the same force and effect as if the same were made, done, or signed by all the said five apothecaries for the time being; and at every such meeting of the said apothecaries a chairman shall and may be appointed, and when and so often as it shall so happen that there shall be an equal number of votes upon any one question (including the vote of the said chairman), then and in such case it shall and may be lawful to and for the said chairman to give the casting or decisive vote.

Sums for certificates.

19. That the sum of 10*l*. 10*s*. shall be paid to the said master, wardens, and society of apothecaries, for every such certificate as aforesaid, on obtaining the same, by every person intending to practise as an apothecary within the city of London, the liberties or suburbs thereof, or within ten miles of the same city; and the sum of 6*l*. 6*s*. by every person intending to practise as an apothecary in any other part of England or Wales (except the said city of London, the liberties or suburbs thereof, or within ten miles of the said city); and no person having obtained a certificate to practise as an apothecary in any other part of England or Wales (except the said city of London, the liberties or suburbs thereof, or within ten miles of the said city as aforesaid), shall be entitled to practise within the said city of London, the liberties or suburbs thereof, or within ten miles of the said city, unless and until he shall have paid to the said master, wardens, and society, the further sum of 4*l*. 4*s*., in addition to the said sum of 6*l*. 6*s*. so paid by him as aforesaid, and shall have had indorsed on his said certificate a receipt from the said master, wardens, and society, for such additional sum of 4*l*. 4*s*.; and the sum of 2*l*. 2*s*. by every assistant; and the several sums of money arising from the granting of such certificates shall be applied in manner hereinafter directed.

Penalty for acting without certificate.

20. That if any person (except such as are then actually practising as such) shall, after the said 1st August 1815,

act or practise as an apothecary in any part of England or Wales without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of 20*l.*; and if any person (except such as are then acting as such, and excepting persons who have actually served an apprenticeship as aforesaid) shall, after the said 1st August 1815, act as an assistant to any apothecary, to compound and dispense medicines, without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of 5*l.*

Not to recover charges, unless licensed.

21. That no apothecary shall be allowed to recover any charges claimed by him in any court of law, unless such apothecary shall prove on the trial that he was in practice as an apothecary prior to or on the said 1st August 1815, or that he has obtained a certificate to practise as an apothecary from the said master, wardens, and society of apothecaries as aforesaid.

Second application for certificate.

22. That if the said court of examiners, or the major part of them, having examined any person or persons applying to qualify himself or themselves to practise as an apothecary, or if they, or the said five apothecaries so to be appointed for any county or counties as aforesaid, having examined any person or persons applying to qualify himself or themselves to practise as an assistant to an apothecary, in compounding and dispensing medicines, shall see cause to refuse such certificate as aforesaid to any such person or persons so applying to qualify himself or themselves as an apothecary or assistant as aforesaid; yet it shall and may be lawful for such person or persons who shall be so refused, to apply at any future time to be again examined, so that such second application by any person or persons applying to qualify himself or themselves as an apothecary be not within six months of such first examination, and so that such second application by any person or persons applying to qualify himself or themselves as an assistant be not within three months of such first examination; and if on such re-examination he or they shall appear to the persons examining to be then properly qualified, it shall and may be lawful for the said court of examiners, or to and for the said five apothecaries in any county or counties as aforesaid, to grant such person or persons so applying such certificate as aforesaid.

23. That the said master, wardens, and society of apothecaries do make annually, and cause to be printed, an exact list of all and every person who shall in that year have obtained a certificate to practise as an apothecary, with their respective residences attached to their respective names. List of apothecaries.

24. That all and every sum or sums of money which shall be received or arise from the granting of the certificates of examination herein-before required, shall belong to and be appropriated and disposed of by the said master, wardens, and society of apothecaries as aforesaid, in such manner as they shall from time to time direct and deem most expedient. Monies arising from certificates.

25. That all sum and sums of money arising from conviction and recovery of penalties for offences committed against the authorities and provisions of this act, shall be applied and disposed of in manner following, viz. one half thereof to the informer or informers, and one half thereof to the said master, wardens, and society of apothecaries as aforesaid, to be appropriated and disposed of by them in such manner as they shall deem most expedient. Penalties.

26. That all penalties and forfeitures by virtue of this act imposed (the manner of levying and recovering whereof is not otherwise hereby particularly directed) shall, if such penalties and forfeitures shall exceed the sum of *5l.*, be recovered by action or suit at law, in the name of the master, wardens, and society of the art and mystery of apothecaries of the city of London, in any of His Majesty's courts of record in England or Wales, wherein no essoign, protection, or wager at law, or more than one imparlance, shall be allowed; and if such penalty or forfeiture shall amount to less than the sum of *5l.*, then the same shall be levied and recovered by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice of the peace acting for any county, city, town, or place where the offence shall be committed (which warrant such justice is hereby empowered and required to grant upon the confession of the party, or upon the evidence of any credible witness upon oath, and which oath such justice is hereby empowered to administer); and the overplus (if any) of the money arising by such distress and sale shall be returned upon demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and in case sufficient dis- Recovery of fines and penalties.

tress shall not be found, or such forfeitures and penalties shall not be paid forthwith, it shall be lawful for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause the offender to be committed to the common gaol for the county, city, town, or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding one calendar month, unless such penalties and forfeitures, and costs, shall be sooner fully paid and satisfied.

Distress not unlawful for want of form.

27. That where any distress shall be made for any sum of money, to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same, be deemed a trespasser or trespassers, on account of any defect or want of form in the notice or information, summons, conviction, warrant, or distress, or other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties so distraining; but the person or persons aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

Chemists and druggists.

28. That nothing in this act contained shall extend, or be construed to extend, to prejudice, or in any way to affect the trade or business of a chemist and druggist, in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinable compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business, in such manner, and as fully and amply, to all intents and purposes, as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of this act.

Saving rights

29. That nothing in this act contained shall extend, or be construed to extend, to lessen, prejudice, or defeat, or in anywise to interfere with any of the rights, authorities, privileges, and immunities heretofore vested in, and exercised and enjoyed by, either of the two universities of Oxford or Cambridge, the Royal College of Physicians, the Royal College of Surgeons, or the said society of apothecaries respectively, other than and except such as shall or may have been altered, varied, or amended in and by this act, or

of any person or persons practising as an apothecary previously to the 1st August 1815; but the said universities, royal colleges, and the said society, and all such persons or person, shall have, use, exercise, and enjoy all such rights, authorities, privileges, and immunities, save and except as aforesaid, in as full, ample, and beneficial a manner, to all intents and purposes, as they might have done before the passing of this act, and in case the same had never been passed.

Limitation of actions.

30. That no action or suit shall be brought or prosecuted against any person or persons, body or bodies politic, corporate, or collegiate, for any thing done in pursuance of this act, after six calendar months next after the fact committed; or, in case there shall be a continuation of damages, then after six calendar months next after the doing or committing such damage shall have ceased, and not afterwards; and every such action or suit shall be laid and brought in the county where the matter in dispute shall arise, and not elsewhere; and the defendant and defendants in every such action or suit shall or may, at his, her, or their election, plead specially† the general issue, and give this act, and the special matter in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear to have been so done, or if any such action or suit shall have been brought before twenty-one days' notice shall have been given, or sufficient satisfaction made or tendered as aforesaid, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuit, or suffer a discontinuance of of his, her, or their action or suit, after the defendant or defendants shall have appeared; or if a verdict shall pass against the plaintiff or plaintiffs, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff or plaintiffs; then the defendant or defendants shall have double costs, and shall have such remedy, for recovering the same, as any defendant hath for recovering costs of suit in any other cases by law.

† *Sic.*

Public act.

31. That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

6 Geo. 4. c. 133.

An Act to amend and explain 55 Geo. 3. c. 194. — July 6. 1825.

Recital.

Reciting 55 Geo. 3. c. 194. that doubts had arisen as to some of the provisions of the said act; and reciting sec. 3.; and that "there is not any form set forth in or provided by the said recited act, according to which such appointment, for the purposes aforesaid, should be made; and in consequence thereof, in some cases, the persons appointed by the said master and wardens to go and enter into the shops of persons using the art and mystery of apothecaries have met with difficulty in obtaining admission thereto, for the purpose of examining the drugs, wares, and medicines therein contained: and whereas it is expedient that such doubts should be removed, and provision should be made in relation to such appointment as aforesaid: and that the said act requires to be amended in other respects, for the more effectually carrying into execution the beneficial purposes thereof, be it enacted, that from and after the passing of this

Appointment of searching drugs,

act, all appointments which shall be made by the master and wardens of the said society of the art and mystery of apothecaries of the city of London, in pursuance of the said recited act, of any persons, to go and enter into the shops of any person or persons using the art and mystery of an apothecary in any part of England and Wales, for the purpose of searching, surveying, and proving whether the medicines, wares, drugs, or any thing or things whatsoever, in such shop or shops contained, and belonging to the art or mystery of an apothecary, be wholesome, meet, and fit for the cure, health, and ease of His Majesty's subjects, shall be in the form hereinafter stated, and shall be sealed with the common seal of the said society of the art and mystery of apothecaries of the city of London; and shall, on being produced to any person or persons at the shop, or dwelling-house having a shop therein, of any apothecary, in any part of England or Wales, by the persons therein appointed, who, in pursuance and by virtue thereof, shall require to enter such shop for the purpose of examining the medicines, drugs, wares, and other things therein contained, in pursuance of the said recited act, be deemed to be suffi-

cient evidence of the appointment of the persons in such appointment or appointments named for the purposes therein expressed: —

Form of.

"We, A. B., master of the society of the art and mystery of apothecaries of the city of London, and C. D. and E. F., the wardens thereof, do hereby, in pursuance of the power vested in the master and wardens for the time being of the said society of apothecaries, by an act passed in the 55th year of the reign of His late Majesty King George the Third, intituled 'An Act for better regulating the Practice of Apothecaries throughout England and Wales;' and also, in pursuance of an act passed in the 6th year of the reign of His Majesty King George the Fourth, intituled 'An Act to explain and amend an Act passed in the 55th year of the reign of His late Majesty King George the Third, intituled An Act for better regulating the Practice of Apothecaries throughout England or Wales;' appoint G. H. and I. K., being persons duly qualified, as required by the said recited act passed in the said 55th year of the reign of His late Majesty King George the Third as aforesaid, to enter into the shops of such persons as now carry on the art or mystery of an apothecary in ———, and in such other places in England or Wales as they shall think fit, and to examine, search, survey, and prove the medicines, wares, and drugs, and other things in such shops contained, according to the terms, provisions, and powers given and contained in and by the said act of the 55th of George the Third for that purpose. In witness whereof, the common seal of the said society is hereunto affixed, this ——— day of ———."

Assistants may be examiners.

2. And whereas doubts have arisen whether the master, wardens, and court of assistants of the said society of apothecaries, or the major part of them, can appoint or elect any person or persons who are members of the said court of assistants (although they are duly qualified according to the said recited act) to be members of the court of examiners, directed to be from time to time appointed in pursuance of the said recited act: and whereas it would be useful and expedient that a limited number of persons, being members of the said court of assistants of the said society, duly qualified pursuant to the said recited act, should be eligible to be chosen and appointed to be members of the said court of examiners; be it therefore enacted, that

from and after the passing of this act it shall and may be lawful to and for the said master, wardens, and court of assistants of the said society of apothecaries, or the major part of them, from time to time to elect and appoint any member or members of the court of assistants of the said society (not exceeding four persons in the whole), duly qualified according to the said act to be members of the court of examiners, directed in and by the said recited act to be from time to time appointed: provided always nevertheless, that the master and the wardens of the said society for the time being shall be in all cases incapable of being elected as members of the said court of examiners; and any person or persons who shall, after his or their election to be a member of the said court of examiners, be chosen and appointed to be either master of the said society of apothecaries, or senior warden or junior warden thereof, shall *ipso facto* vacate his seat in the said court of examiners, and shall be incapable of being re-elected, until he shall have ceased to be master or senior or junior warden of the said society.

Oaths to examiners.

3. And whereas doubts have arisen whether the oath or affirmation directed by the said act to be taken and subscribed by all persons who shall from time to time, in pursuance of the aforesaid act, be chosen and appointed to be members of the court of examiners, before they can act as examiners, can be administered by the master and wardens of the said society, or whether such oath or affirmation must be administered by the master, wardens, and court of assistants of the said society, or the major part of them; and it would be convenient that power should be given, as well to the master and wardens of the said society of the art and mystery of apothecaries for the time being, or to the master and one of the wardens of the said society for the time being, as to the master, wardens, and court of assistants of the said society, or the major part of them, to administer the said oath or affirmation so directed to be taken and subscribed by all persons who shall be appointed to be members of the said court of examiners, before they can act as examiners; be it therefore enacted, that from and after the passing of this act it shall and may be lawful to and for the master and wardens of the said society for the time being, or for the master and one of the wardens of the said society

for the time being, or for the master, wardens, and court of assistants of the said society, or the major part of them, and they are hereby respectively authorised, required, and empowered to administer to all persons who shall from time to time be, by the master, wardens, and court of assistants of the said society, or the major part of them, chosen and appointed to be members of the said court of examiners, by virtue of the said act, the oath or affirmation directed by the said recited act to be taken by all persons who shall in pursuance of that act be from time to time appointed to be members of the court of examiners, before they can act as examiners.

Surgeons, &c. in navy and army may practise without examination.

4. And whereas many persons who have heretofore held, and now do or who hereafter shall hold commissions in His Majesty's service, as surgeons, either in His Majesty's navy, or as surgeons or apothecaries in His Majesty's army, cannot commence practice as apothecaries in any part of England or Wales, without being examined by the court of examiners appointed in pursuance of the aforesaid act, or being liable to the penalties thereby imposed on persons who, not having been in practice as apothecaries on the 1st August 1815, shall commence to act or practise as apothecaries without having been examined, and received certificates of their qualification, pursuant to the said recited act: and whereas it is expedient to provide a remedy in that behalf; be it therefore enacted, that every person who heretofore has held, or who now holds, or hereafter shall hold a commission or warrant as surgeon or assistant surgeon in His Majesty's navy, or as surgeon or assistant surgeon or apothecary in His Majesty's army, or as surgeon or assistant surgeon in the service of the honourable the East India Company, shall be entitled to practise as an apothecary in any part of England or Wales, without having undergone any such examination, or received any such certificate, as by the said act is directed, and without being liable to any penalty or disability whatsoever imposed by the said recited act on persons who, not having been in practice as apothecaries on the said 1st August 1815, without having been examined, and received certificates in the manner directed by the said act, commenced practice as apothecaries in any part of England or Wales; and no such person shall be obliged, in order to recover in a court of law any charges

claimed by him as an apothecary, to prove that he was in practice as an apothecary on the said 1st August 1815, otherwise than as holding a commission or warrant as surgeon or assistant surgeon in His Majesty's navy, or as surgeon or assistant surgeon or apothecary in His Majesty's army, or as surgeon or assistant surgeon in the service of the honourable the East India Company; any thing in the said recited act contained to the contrary thereof in anywise notwithstanding."

5. Reciting sect. 14. 20, 21. and so much of sect. 29. as relates to those in practice before 1st August 1815: "and whereas it is expedient that the several terms or periods in the said act mentioned, after which persons not being at such times or periods in practice as apothecaries are required by the said recited act to be examined, or are thereby made subject to the penalties by the said act imposed on persons commencing practice as apothecaries, or assistants to apothecaries, contrary to the provisions thereof, or to prove their exemption from such penalties, should be accurately defined; be it therefore enacted, that the first-mentioned exception contained in the said act shall be deemed and construed to extend to such persons only who were in actual practice as apothecaries on or before the said 1st August 1815; and that the exception contained in the said act from the penalty of 20*l.* thereby imposed shall in like manner be construed to extend only to persons who were in actual practice as apothecaries on or before the said 1st August 1815; and that the exception contained in the said recited act from the penalty of 5*l.* thereby imposed, shall in like manner be construed to extend only to persons who were, on or before the said 1st August 1815, acting as assistants to apothecaries therein mentioned, or who have actually served an apprenticeship of five years to an apothecary; and that in like manner the day on which any apothecary claiming to recover any charges in any court of law or equity in England or Wales, shall be obliged to prove himself to have been in practice, so as to entitle him to recover such charges without showing that he has received a certificate of his qualification from the said court of examiners appointed in pursuance of the said recited act, shall be construed to be the said 1st August 1815; and that the saving right contained in the said act in favour of persons

As to practising as apothecaries on or before Aug. 1. 1815.

who have exercised the practice of apothecaries shall be construed to extend only to and in favour of such persons who were in actual practice as apothecaries on the said 1st August 1815."

Examiners to examine apprentices to surgeons.

6. Reciting sect. 15: "and whereas many persons who served an apprenticeship of the like period to surgeons have received a full and competent medical education to enable them to practise as apothecaries, but the said court of examiners have not any power to examine such persons; be it therefore enacted, that from and after the passing of this act it shall and may be lawful to and for the said court of examiners to examine such persons as to their fitness for or qualification to act as apothecaries, who shall produce proof of having served an apprenticeship of not less than five years to a member of the Royal College of Surgeons in London, or to a member of the Royal College of Surgeons in Edinburgh, or to a member of the Royal College of Surgeons in Dublin, or to a surgeon in His Majesty's army or navy, together with proof, to the satisfaction of the said court of examiners, of a sufficient medical education, and of good moral conduct, in like manner as by the said act is provided with regard to persons who have served an apprenticeship of not less than five years to an apothecary; any thing in the said act contained to the contrary thereof in anywise notwithstanding.

Seal of company proof of certificates.

7. And whereas the authenticating the certificates of qualification of such persons as have been or as shall be examined by the court of examiners, in pursuance of the aforesaid act, has been attended with considerable expense, and might often be difficult of proof, if such certificates were required to be authenticated in different parts of England at the same time in different actions; for remedy whereof, be it therefore enacted, that from and after the passing of this act, the common seal of the said society of the art and mystery of apothecaries of the city of London shall be deemed to be, and shall be received in every court of law or equity in any part of England or Wales as sufficient proof of the authenticity of the certificate to which such seal shall be affixed, and that the person therein named is duly qualified to practise as an apothecary in any part of England or Wales.

Certificates upon third or subsequent examinations.

8. And whereas many persons who have been examined as to their fitness and qualification to act as apothecaries in pursuance of the said act, by the court of examiners appointed under and by virtue thereof, have been rejected upon the first and also upon the second examination of such persons: and whereas there is not any power expressly given by the said act to the said court of examiners to admit persons who have been rejected upon their second examination: and whereas several persons who have been upon their first and second examinations deemed unfit to receive a certificate of qualification to act as apothecaries, have upon a subsequent examination received certificates of their qualification to act as apothecaries, and it would be expedient to provide a remedy in that behalf; be it therefore enacted, that from and after the passing of this act it shall and may be lawful to and for the court of examiners who shall be appointed from time to time in pursuance of the said act, or the major part of them, to examine any person or persons who have been rejected by the said court of examiners, on the second examination of such person or persons, from time to time, as often as such person or persons shall apply to be examined, so as such future examinations be from time to time respectively at an interval of not less than six months from the previous examination; and that all persons who have heretofore received, from the said court of examiners, certificates of their qualification to act as apothecaries, upon their third or subsequent examination, shall be deemed to have been legally examined; and that the certificates which have been granted to such persons shall be deemed and taken to be as valid as if the same had been granted by the said court of examiners on the first or second examination of such persons.

Recovering penalties of 5*l*.

9. And whereas by the said recited act the penalty of 5*l*. is imposed on persons who shall commit certain offences in the said act specified: and whereas there are not in the said recited act specified any means whereby the said penalty of 5*l*. thereby imposed can be recovered; be it therefore enacted, that all penalties of the amount of 5*l*. which are imposed by the said recited act, shall be recoverable in the name of the master, wardens, and society of the art and mystery of apothecaries of the city of London, in any of His Majesty's courts of record in England or Wales,

in the same manner, and subject to the same rules and regulations, in all respects, as are in and by the said recited act declared and provided with regard to the recovery of the penalty of 20*l.* thereby imposed on certain other offences in the said recited act mentioned.

Limitation of actions.

10. That no action or suit shall be brought or prosecuted against any person or persons, body or bodies politic, corporate, or collegiate, for any thing done in pursuance of this act, or the said recited act, after six calendar months next after the fact committed; or, in case there shall be a continuation of damages, then, after six calendar months next after the doing or committing such damage shall have ceased, and not afterwards, nor until the expiration of twenty-one days after notice shall have been given to or left for the person or persons, body or bodies politic, corporate, or collegiate, against whom such action is intended to be brought, under the hand of the party intending to bring such action, previously to the commencing such action; and every such action or suit shall be laid and brought in the county where the matter in dispute shall arise, and not elsewhere; and the defendant and defendants in every such action or suit shall or may, at his, her, or their election, plead specially, or the general issue, and give this act, and the said act, and the special matter, in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act and the said recited act; and if it shall appear to have been so done, or if any such action or suit shall have been brought before the expiration of twenty-one days after notice shall have been given or left as aforesaid, or after sufficient satisfaction shall have been made or tendered, or shall be brought in any other county or place than as aforesaid, then, and in every such case, the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuit, or shall suffer a discontinuance or non pros of his, her, or their action or suit, after the defendant or defendants shall have appeared, or if a verdict shall pass against the plaintiff or plaintiffs, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff or plaintiffs, then the defendant or defendants shall have double costs, and shall have such remedy for recovering the same

as any defendant hath for recovering costs of suit in any other cases by law.

Continuance of act expired.

11. That this act shall take effect from and after the passing thereof, and shall continue until the 1st of August, 1826.

Public act.

12. That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, by all judges, justices, and others, without being specially pleaded.

BY-LAWS.

Regulations to be observed by Students whose Attendance on Lectures commenced since January 1. 1829.

The court of examiners chosen and appointed by the master, wardens, and assistants of the society of apothecaries, of the city of London, in pursuance of a certain act of parliament "For better Regulating the Practice of Apothecaries throughout England and Wales," passed in the 55th year of the reign of his Majesty King George the Third, apprise all persons whom it may concern:

That every candidate for a certificate to practise as an apothecary will be required to possess a competent knowledge of the Latin language; and, in compliance with the 14th and 15th sections of the said act, to produce testimonials of having served an apprenticeship, of not less than five years, to an apothecary, of having attained the full age of twenty-one years, and of good moral conduct: and also testimonials of having attended

Two courses of lectures on chemistry;

Two courses of lectures on materia medica, therapeutics, and botany;

Two courses of lectures on anatomy and physiology;

Two courses of anatomical demonstrations;

Two courses of lectures on the theory and practice of medicine, to be attended subsequently to one course of lectures on chemistry, materia medica, and anatomy;

Two courses of lectures on midwifery and the diseases of women and children;

And nine months, at least, the physician's practice at an hospital (containing not less than sixty beds), or twelve months at a dispensary; such attendance to commence subsequently to the termination of the first course of lectures on the principles and practice of medicine.

Students are, moreover, earnestly recommended to attend clinical lectures, and diligently to avail themselves of instruction in morbid anatomy and forensic medicine.

The examination of the candidate will be as follows:—

1. In translating, grammatically, parts of the Pharmacopœia Londinensis, and Physicians' Prescriptions; and, after the 1st of January, 1831, candidates will be required to translate portions of the following medical Latin authors, viz. Celsus de Medicinâ, or Gregory Conspectus Medicinæ Theoreticæ.
2. In chemistry.
3. In materia medica and therapeutics.
4. In botany.
5. In anatomy and physiology.
6. In the practice of medicine.

N. B. Physicians' pupils, who intend to present themselves for examination, must appear personally at the beadle's office, in this hall, and bring with them the tickets authorising their attendance on such practice, as the commencement thereof will be dated from the time of such personal appearance.

No testimonial of attendance on lectures on the principles and practice of medicine, delivered in London, or within seven miles thereof, will render a candidate eligible for examination, unless such lectures were given, and the testimonial is signed, by a fellow, candidate, or licentiate of the Royal College of Physicians of London.

Every person intending to qualify himself under these regulations, to practise as an apothecary, may obtain, at the beadle's office at this hall (where attendance is given every day except Sunday, from nine until two o'clock), a printed form of certificate of all the lectures candidates are required to attend, and also of the physician's practice. The court request the blanks may be filled up when signed by

the respective lecturers and physicians, whose lectures or practice the student has attended.

Students are enjoined to observe, that, in future, these certificates so filled up will be required from candidates for examination, and that no other form of testimonials of attendance on lectures and medical practice will be admitted; except such certificates as have heretofore been received, if the same were obtained prior to the 1st of February, 1828: or such as bear the seal of a university or college, and the signature of the officer attached to such university or college whose duty it is to sign certificates of attendance on the lectures given therein.

Every person offering himself for examination must give notice in writing, to the clerk of the society, on or before the Monday previously to the day of examination; and must also, at the same time, deposit all the required testimonials at the office of the beadle.

The court will meet in the hall every Thursday, where candidates are required to attend at half-past four o'clock.

SECOND SUBDIVISION.

Cases.

R. *v.* HATTO.

HATTO had pleaded guilty to an indictment for imposing on the examiners of the apothecaries' company, by a forged certificate of having served an apprenticeship of five years to an apothecary. An affidavit, in mitigation, stated that he had actually served three years and three quarters, and prisoner said that his master would have given him a certificate had he asked for it. July 6. 1829.

Lord Tenterden. Then he would have subjected himself to a prosecution.

Sentence — Imprisonment for six months.

ANON.

THE prisoner was convicted of having endeavoured to obtain a certificate, from the court of examiners, by means of a forged instrument purporting to be an indenture of apprenticeship.

Sentence — Imprisonment for six months.

R. *v.* CLAPHAM.

THE indictment charged that the prisoner, with intent to impose on the court of examiners of the apothecaries' company, and to induce them to examine him, did fraudulently Car. & Paine MSS. Oct. 24. 1829.

produce a certain instrument in writing, purporting to be an affidavit that he was of the full age of twenty-one years; by means of which he obtained, from the said court of examiners, a certificate to practise as an apothecary: whereas, in truth and in fact, he was not then of the full age of twenty-one years, as he then well knew. Plea — Not guilty.

It was proved that he left such paper, purporting to be an affidavit, for the examiners, and, a certificate of baptism, though stating that prisoner was born on a certain day, being held insufficient to show the day of his birth, that he had acknowledged, in the Court of King's Bench, on his examination as a witness in the case of Cooper v. Wakeley, that he was not of the full age of twenty-one when he obtained the certificate.

Verdict, Guilty. Sentence — Imprisonment for six months.

THE APOTHECARIES' COMPANY *v.* BENTLEY.

1 Carring. & Paine, 538—540. N. P. 5 Geo. 4.

Debt, for penalties for practising as an apothecary, without the proper certificate. The declaration sought different penalties for attending different persons.

Abbott C. J. doubted whether a fresh penalty attached for every acting as an apothecary towards each different patient, and whether more than one penalty attached for a continued practising as an apothecary, though the party attended different persons as patients. No evidence was given that the defendant had not obtained his certificate.

Brougham contended that it was incumbent on the company to prove this. Had the certificate been mentioned in a separate proviso, as an exemption from the penalty, it would then be matter of this defence; but as it is incorporated in the clause which gives the penalty, it must be negatived by an averment in the declaration, and that averment must be proved.

Scarlett, contrà, admitted that it must be negatived in pleading; but contended that, as it is a negative averment, it need not be proved. In actions for penalties under the game laws, the plaintiff is obliged to aver that the defendant

is not qualified to kill game, but he is not held to prove that averment.

Abbott C. J. As it is in the negative, the proof lies on the defendant.

Verdict for the Company, for one penalty, 20*l*.

THE APOTHECARIES' COMPANY *v.* WARBURTON.

3 Barn. & Ald. 40—47. M. T. 60 Geo. 3.

DEBT, for penalties, under 55 Geo. 3. c. 194. s. 20. The declaration stated, that defendant, not then being a person who, on the 1st of August, 1815, or at any time theretofore, was actually practising as an apothecary, did, on, &c., at, &c., by attending and advising, and furnishing medicines to B., without having received such certificate as by the said act is directed, whereby, &c. On the trial, it was admitted that defendant had so acted, with respect to B., as to subject himself to the penalty. But it was contended that he came within sec. 20. as having practised before 1st of August, 1815. Long previous to that period, the defendant had attended many persons, in different complaints, and administered medicines to them; but he was unable, previously to that day, to make up a physician's prescription. In 1817, having received some instructions in Latin, he was just able to do so. There was contradictory evidence as to the defendant's having practised, independently of his father, previously to August 1st, 1815. The father, by whom he had been educated, being called as a witness, was wholly unable even to spell English words, or to read a physician's prescription. He had practised principally as a farrier, but had also attended human patients; and stated, in cross-examination, that he was ignorant of the relative proportions of weights or measures, having been in the habit of ascertaining quantities "by hand." The judge referred the jury to sec. 5. of the act, which states it to be the duty of an apothecary to prepare such medicines as may be directed by a physician; and told them, that as it appeared that, up to the 1st of August, 1815, the defendant never had or could have done so, they ought to take that clause into their consideration, in determining whether he was within the exception in sec. 20., which

required that he should be actually and *bonâ fide* practising as an apothecary previous to that period. Verdict for the plaintiffs.

A rule *nisi* was granted on the ground of misdirection; on showing cause against which, it was contended that, in order to practise as an apothecary, a party must be capable of executing the whole of an apothecary's duty, although, perhaps, not with exactness and skill; but that here there is a total incapacity as to one part of his duty, which is considered by the legislature as most important.

In support of the rule, it was contended, that the judge ought not to have referred to sec. 5.; that the exception has no reference to the *quantum* of knowledge possessed by a defendant, but only to the fact of his having practised; that, if the direction was correct, it would follow that every person, who did not possess complete skill as an apothecary, would be subject to the penalty; that sec. 7. notices that there were ignorant persons then in practice, but does not take away their existing rights, providing that, in future, no such persons should be permitted to practise. That the only question which ought to have been left to the jury was, whether, in fact, defendant had administered medicine as an apothecary previously to August 1st, 1815. That the apothecary mentioned in sec. 5. is one who has obtained his certificate.

Abbott C. J. The direction of the learned judge was correct. The point to be decided was, whether, previously to the 1st of August, 1815, the defendant had actually practised as an apothecary. To decide that question, we must determine the meaning of the words "practise as an apothecary." In order to ascertain that, it was perfectly natural and proper to look into other parts of the act itself, to ascertain the sense in which the legislature had used those words. That was done by the learned judge, he called the attention of the jury to sec. 5., where it is manifest that the legislature have considered it as a part, and a most important part, of the duty of an apothecary to make up the prescriptions of physicians. Can it be said that this defendant practised as an apothecary on or before August 1st, 1815, when he never did, nor professed to do, nor, as it appears, could have done, this important part of his duty? The jury formed a right conclusion from the evidence. It does not

appear that the judge left any question to the jury as to the degree of skill which the defendant possessed; but he left to them to determine whether his ignorance, which was proved, was not cogent evidence, from which they ought to conclude that he had never actually and *bonâ fide* practised as an apothecary at all. It appeared that he could not read the language in which prescriptions are usually written; and, even if the prescriptions had been in English, that he was not acquainted with the characters used to denote the different weights, &c. This was cogent evidence for their consideration.

Bayley J. The object of the legislature was to prevent persons from commencing the business of an apothecary without having obtained a certificate from the court of examiners; but they did not mean to interfere with persons who had been, prior to the 1st of August, 1815, in the habit of practising as apothecaries, whatever might be the degree of skill which those persons possessed. The mere act, however, of administering medicines will not be enough of itself to justify the conclusion that a person so acting practised as an apothecary. In order to ascertain what these words mean, we cannot do better than look at the different clauses of the act; therefore, the learned judge was quite right in drawing the attention of the jury to sec. 5. It certainly was not a question for the jury whether the defendant possessed competent skill, the only question was, whether he had practised as an apothecary. Now, it appears that the defendant had followed his father's steps, and his father had been principally a farrier. It is true, that he also administered medicine to the human species; but the mere occasional administering of such medicines, where it is not the principal and main business, will not be enough. In sec. 5. the legislature have described part of the duty of an apothecary, which the defendant has not proved, that he ever did or could perform; indeed, the contrary is proved. Now, the fact of his utter incapacity to do this afforded strong evidence to show that the defendant never did, prior to the 1st of August, 1815, actually and *bonâ fide* practise as an apothecary.

Holroyd J. It was admitted as a fact, that the defendant had practised so as to be liable to the penalty, unless he was protected as a person who had practised as an apothecary,

prior to August the 1st, 1815. Now, it lay upon him to show that. The judge referred the jury to sec. 5., and he was right in so doing; for, when the jury had to consider what it was to practise as an apothecary, it was surely right for them to know what were the duties of an apothecary. In 1817, this person was just able to make up a physician's prescription; the jury, therefore, might properly infer that, prior to that period, he was utterly incapable, and had never even professed to do it; and, if so, they might lawfully conclude that he had never actually practised as an apothecary. The cases of defective skill and partial incapacity are very different, and may, perhaps, be within the protection of the act; but here there is a total incapacity; and there are no grounds for setting aside the verdict.

Best J. I fully concur with the court. This is a case of great importance; for it is the duty of the court to protect, as far as they can, persons in the lower classes of life from the ignorance of these pretenders to medicine. The only question is, whether there has been any misdirection on the part of the learned judge. I think there was not: he only referred to sec. 5., in which the legislature have described what the duty of an apothecary is, in order to assist them in forming their conclusion whether this defendant had practised as an apothecary or not. Now, I am of opinion that, if he had not, prior to the time mentioned in the act, practised to the full extent of that description, he cannot be considered as having practised as an apothecary. Formerly, I believe, the only duty of an apothecary was to make up the prescriptions of physicians. In more modern times, however, they have been in the habit of attending patients, and administering medicines upon their own judgment; but it has always continued to be a most important branch of their duty to make up the prescriptions of others. Of this part of his duty the defendant was, prior to the 1st of August, 1815, wholly incapable. We might as well say, that a person who had served notices in a few cases had practised as an attorney, as that this defendant had practised as an apothecary.

Rule discharged.

APOTHECARIES' COMPANY *v.* ROBY.

5 Barn. & Ald. 949—954. T. T. 3 Geo. 4. S. C. 1 Dow. & Ry. 564.

Abbott C. J. delivered the judgment of the court. This was an action for a penalty on the statute 55 G. 3. c. 194. for practising as an apothecary without having obtained the certificate required by that act, which received the royal assent on the 12th of July 1815. At the trial before me some evidence was offered on the part of the defendant, to show that he had been practising as an apothecary in town in June and some part of July 1815, including the 12th of July in that year; but as the evidence, such as it was, did not extend to the 1st day of August, the defendant having before that day left town and become an assistant to an apothecary at Chatham, and as I was of opinion that no person was exempt from this penalty who was not in practice as an apothecary on the 1st of August, the Jury, under my direction in that respect, found their verdict for the plaintiffs. A rule to show cause why there should not be a new trial was obtained, and upon showing cause it was contended by the plaintiffs, first, that the direction was right in point of law, and if not so, then, secondly, that there was no evidence that the defendant had at any time practised as an apothecary within the meaning of this statute. It is not necessary to give any opinion upon the latter point, because we are all of opinion that the direction was right in point of law. The statute was passed on the 12th of July 1815, but it may be said generally to take its effect from the 1st of August following.

The great object of the statute, as appears by the preamble to the 7th section, was to prevent danger to the health and lives of the king's subjects by ignorant and incompetent practitioners. For this purpose, provisions were made regarding two classes of persons, viz. persons practising as apothecaries, and persons acting as assistants to apothecaries. It would be known to the legislature that some persons would be found engaged in each of those branches at the time (whatever that should be) at which the penalties imposed by the act might be made to take effect, and it was reasonable that some at least of such persons should be exempted from its enactment; and we are to learn from the language of the statute what is the precise time

at which a person must have been so engaged to be thus exempted. There are five sections in which the time is mentioned. Sec. 14. regards apothecaries, and is a prohibitory clause, vide p. ccxliii. The word "already," as there used, is of doubtful import; it may either relate to the 1st of August or to the passing of the act. Sec. 17. relates to assistants, and is the prohibitory clause as to them, vide p. ccxliv. In this clause there is no ambiguity, the word "then" plainly and obviously refers to the 1st of August. Sec. 20. is the penal clause; it embraces both the classes, apothecaries and assistants, with a difference however as to the amount of the penalty, vide p. ccxlv. In this clause also, taken by itself, there is no ambiguity; the word "then" plainly refers to the 1st of August. And this seems to indicate that the word "already," as used in sec. 14. is there used to denote the same day, unless it was intended that no apothecary should be exempt from the penalty who was not actually in practice both on the 12th of July and the 1st of August. Sec. 21. and 29. speak of apothecaries only, and do not mention assistants to apothecaries. Sec. 21. relates to the recovery of charges, vide p. ccxlvi. Now this clause relates only to the proof to be given at the trial, and the legislature might not think it expedient to require proof of the precise day, which might lead to questions as to actual employment and practice on that day, but might reasonably conclude that he who could prove himself to be in practice before the 1st of August, and was in practice and claimed charges for practice after that day, was really in practice on that day. We therefore do not see any thing in this section that may reasonably control the plain language of sec. 20., and it is not necessary to say whether the word "or" ought in sec. 21. to be read "and," which has been the construction put on that word in some other statutes, and which may perhaps be its proper construction in this place. The only remaining section to be noticed is sec. 29., the general saving clause, vide p. ccxlviii. If in this section the words "previously to the 1st of August" are to be taken in their large and unqualified sense, this saving clause will be quite irreconcilable with sec. 14., whether the word "already" there used be referred to the day of the passing of the act, or to the 1st of August, and also with sec. 20. which plainly mentions the 1st of August; and the enquiry in any proceeding on the statute may

always be, not whether the party was in practice on the 12th of July or on the 1st of August, but whether he had been in practice at any remote period of his life. It is impossible to suppose that this was intended, and it seems to us that the only mode of reconciling all the clauses, and carrying the plain object of the law into effect, is to consider those apothecaries only to be exempt from its provisions who were in practice on the day on which the act took effect, that is, the 1st of August. This construction is not inconsistent with the words of this clause; for the clause contains only a saving of the rights of those persons who were in practice before the 1st of August, except as altered or varied by the act, and that alteration is to be found in sec. 20. which imposes the penalties on persons not in practice on the 1st of August. It is not necessary to say in this case whether a person claiming the exemption must have been in practice both before and on the 1st of August. If the meaning of this saving clause be doubtful, then according to all sound rules of construction, the plain sense of the penal clause must prevail. Attending to all parts of this saving clause, it appears to have been introduced *ex majori cautelâ*, and not intended to control any previous enactment; we think the language of it too doubtful to have the effect of controlling the plain words of the penal clause, and we are consequently of opinion that the direction at the trial was right.

Rule discharged.

BLOGG *v.* PINKERS.

Ry. & Moody, 125. An. 1824.

ASSUMPSIT on a promissory note, payable to plaintiff or order, in consideration of his care and medical attendance on the maker.

Notice having been given that the consideration would be disputed: it was contended that the services, &c. must be taken to have been rendered in the character of an apothecary, and that plaintiff must bring himself within 55 Geo. 3. c. 194.

It was objected on behalf of the plaintiff, that he was not

bound to do so, for that the consideration stated did not necessarily imply services as an apothecary.

Best C. J. I shall leave it to the Jury to say whether the services for which this note was given were those of an apothecary. If the plaintiff was not a physician or surgeon, but acted in the character of an apothecary, he cannot recover upon this note without bringing himself within the provisions of that statute.

Nonsuit by consent.

WALMISLEY *v.* ABBOT.

1 Carring. & Payn. 309. 5 Geo. 4.

ACTION by a surgeon and apothecary for the amount of his bill.

A witness produced the certificate of the plaintiff's examination at apothecaries' hall, and proved that the signature of Mr. Simmons was of his handwriting, and that he acted as an examiner there; and that the certificate produced was the usual certificate given to persons who had passed their examinations.

The defendant's counsel objected, that the signatures of all the examiners ought to be proved, or some one called who was present at the examination.

Garrow B. If it is proved that this is the usual form of certificate, and there is proof of the handwriting of one of the examiners, and proof that that person acts as an examiner, I shall admit the certificate as evidence that the plaintiff has duly passed his examinations.

The items were proved.

Verdict for the plaintiff.

S. C.

3 Barn. & Cres. 218—222. T. T. 5 Geo. 4. S. C. 5 Dow. & Ry. 62.

ASSUMPSIT, for an apothecary's bill. Plea, general issue. On the trial, a witness for the plaintiff produced a certificate, bearing twelve signatures, which purported to be those of the persons constituting the court of examiners of the apothecaries' company; and also a signature, purporting to be

that of their secretary; and proved the handwriting of one of the examiners, and also of the secretary; and that another person, whose name was subscribed to the certificate, was an examiner, but he was not acquainted with his handwriting. He had frequently seen certificates granted by the court of examiners, and he believed that which was produced to be a genuine document. Another witness proved that the plaintiff was examined at Apothecaries' Hall; that he (witness) was examined on the same day, and passed, and received a certificate similar to that which was produced by the plaintiff. It was objected, that 55 Geo. 3. c. 194. ss. 9. and 21. imposed upon the plaintiff the necessity of proving the signature of at least a majority of the court of examiners; and that, for want of that proof, the certificate produced could not be received in evidence. The learned judge overruled the objection, but gave the defendant leave to move to enter a nonsuit. Verdict for the Plaintiff.

Whately showing cause against a rule *nisi* to enter a nonsuit. The question turns upon 55 Geo. 3. c. 194. ss. 9. 14. and 21. (Vide *ante*, p. ccxli., iii., vi.) It is not, by any part of that act, required that the certificate shall be signed by the court of examiners. It is to be granted by them: therefore, it is sufficient if the plaintiff gives reasonable evidence that the document produced is genuine. The certificate would have been valid without the signatures; and it would be extremely hard to cast upon the plaintiff the burden of proving the handwriting of several persons whose names are unnecessarily subscribed to the instrument. At all events, they can be only considered as witnesses of its being genuine; and then, by proving the handwriting of one, and that of the secretary also, the plaintiff clearly did sufficient to make the certificate evidence. If it were not a genuine document, the plaintiff, and those persons who were proved to have signed it, must all have been implicated in a gross fraud, and, perhaps, even a forgery. But the court will not presume that such a crime has been committed. Moises v. Thornton (*ante*, p. clviii.) is very different: there the plaintiff, not being able to prove the seal of the university of St. Andrew's, could not produce any evidence that the diploma was genuine.

Taunton for the rule. The case certainly depends upon these sections. The 14th and 21st speak of a certificate to

be granted as aforesaid: that refers to the 9th section, where the mode of granting the certificate is described, viz. by the court of examiners, or the major part of them. It is not, therefore, sufficient to prove that a certificate was granted; it must also be shown that it was granted by a majority of the court of examiners. The signature of the secretary is a mere nullity, for the act does not recognise any such officer. Then, in order to prove the granting of the certificate by a majority of the court, the plaintiff was bound to show that the persons whose names were subscribed to the document were members of the court, and that their signatures were genuine. In Moises v. Thornton, the case was stronger in favour of the plaintiff; for he produced a witness who went to the university of St. Andrew's, and saw the proper officers sign a certificate that a diploma had been granted; yet it was held insufficient.

Bayley J. That certificate did not purport to be the plaintiff's diploma; and the diploma itself was not authenticated.

Taunton. Neither is this certificate.

Bayley J. The 9th section requires that, thereafter, before any persons begin to practise as apothecaries, they shall be examined by certain officers appointed by the apothecaries' company; and declares that the court of examiners, or the major part of them, shall have power to grant or refuse certificates. The 14th section prevents any persons from thereafter commencing practice, unless they shall have received such certificate; and the 21st section prevents such persons from recovering their charges in a court of law, unless they shall have obtained such certificate. Putting a fair and reasonable construction upon those provisions, it is not incumbent on the plaintiff to prove the handwriting of all those whose names are attached to the certificate, but only to show that it was issued by the court of examiners, and that he obtained and received it from them. Of those facts there is abundant evidence. It was proved that two of the persons whose names were subscribed were members of the court of examiners, and the handwriting of one of them was also proved: then the signature of the secretary was shown to be genuine. The act does not, indeed, require the court to have a secretary; but, in fact, they have such an officer, and he signed the certificate as a genuine docu-

ment issued by the Court. One of the witnesses proved that the plaintiff had been examined; that he, the witness, was examined on the same day, and received a certificate corresponding with that which was produced. Upon such evidence, I think, we are warranted in concluding that the document was issued by those who had power to issue it as and for a genuine certificate; and I think that the plaintiff, having given that evidence, has satisfied all that the statute makes necessary, and was not bound to prove the signature of each individual constituting the court of examiners.

Holroyd and *Littledale* JJ. concurring,

Rule discharged.

SHERWIN *v.* SMITH.

ASSUMPSIT, for an apothecary's bill. Plea, the general issue. At the trial, the only evidence to show that plaintiff was entitled to practise as an apothecary, within 55 Geo. 3. c. 194. was a certificate duly granted under that act. It was objected, that such certificate was not of itself sufficient evidence; but that it was incumbent on the plaintiff to prove that he had served the apprenticeship required by secs. 14 and 15. The objection was overruled; and verdict for Plaintiff.

1 Bingh. 204, 205. 8 Moore, 30—32. S. C.

Pell S., moving for a rule *nisi* to enter a nonsuit, submitted that it was incumbent on the plaintiff to have produced testimonials of a sufficient medical education at the trial, which, as well as the due service of an apprenticeship, should have been superadded to the certificate, and must, consequently, have formed essential parts of it, before the court of examiners would allow it to be granted.

Per Cur. The certificate is of itself conclusive as to the apprenticeship; and it is incumbent on the court of examiners to enquire into that fact before they allow the certificate to be granted: if not, they are guilty of a breach of duty. This Court must presume that the proceedings before them, and on which the plaintiff obtained his certificate, were *omnia rite acta.* They are authorised to grant a certificate on the examination of the party, and no person can

be admitted to such examination unless he has served a regular apprenticeship, and can produce satisfactory testimonials of a sufficient medical education and moral conduct. It is imperative on the court of examiners to enquire into those facts before they grant the certificate, which is of itself conclusive, although they do not appear upon the face of it.

Rule refused.

CHADWICK *v.* BUNNING.

2 Carring. & Pay. 106—108. 6 Geo. 4.

ASSUMPSIT for an apothecary's bill. Plea, general issue. It was proved that the business was done, and that the charges were reasonable.

Russel. Since 6 Geo. 4. c. 133. (vide *ante*, p. cclv.), I am afraid that plaintiff must give evidence that the seal attached to his certificate is the common seal of the apothecaries' company.

Abbott C. J. I think you must prove it to be the common seal.

The beadle of the company proved that it was their common seal, and that 6*l.* 6*s.* had been paid for the certificate.

The certificate was read: it was dated October 14. 1819, and was a general certificate of the fitness of the plaintiff to practise as an apothecary, without any restriction as to place. On it was indorsed a receipt for 4*l.* 4*s.*, paid to the company for permission to practise in London; but this was paid after the action was brought. The business was all done in London.

Scarlett contended that, under these circumstances, the plaintiff was not entitled to recover, referring to 55 Geo. 3. c. 194. s. 19. (*ante*, p. cclxv.) The plaintiff had paid for his certificate 6*l.* 6*s.*, which allowed him only to practise in the country. Since the action, he had paid the other 4*l.* 4*s.*, which he may do under the latter part of the 19th section, to allow him to practise in London; but that was too late to entitle him to recover.

Abbott C. J. The prohibition in the 19th section is as to any person who "has obtained a certificate to practise as an

apothecary in any *other* part of England or Wales, except the city of London," and within ten miles. Now, that appears to contemplate certificates for the country only; but this certificate is perfectly general: it certifies the plaintiff's fitness to practise, without any regard to place. It is, indeed, shown that he paid but six guineas for it; but the words of the act are, "no person having obtained a certificate to practise in any *other* part of England or Wales except London, &c. shall be entitled to practise" in town. Now, the plaintiff had not a certificate in that limited way, but a general certificate that he is entitled to practise every where; and I think, therefore, that he is entitled to recover.

Verdict for the Plaintiff.

STEED *v.* HENLEY.

1 Carring. & Pay. 574, 575. 5 Geo. 4.

ACTION on an apothecary's bill. A witness was called to show that the plaintiff had acted as an apothecary previous to the 1st of August, 1815; he proved the sending four bottles of medicine to his wife, and some attendances, "in a friendly way," upon his son, for neither of which was any payment made; and he admitted that there were, at that time, no drugs upon the plaintiff's premises, but only *some cupping and other instruments*.

A certificate from the College of Surgeons was put in, proving that the plaintiff had passed his examinations there.

Wilde Sj. contended that the proof adduced did not give the plaintiff a character in which he might recover.

Best C. J. was of the same opinion.

Pell, Sj. contended that, at least, he was entitled to recover for the phials in which the medicine had been sent.

Best C. J. I am clearly of opinion that the plaintiff is not entitled to recover even for the phials. Without the assistance of the act of parliament, I should be of opinion that, as he acted illegally in practising, and the phials were delivered in the course of such illegal practice, he cannot recover for them; for I take it to be clear, as a general principle, that where the law directs a man not to do a thing, and he, notwithstanding, does it, he cannot recover

for any thing that takes place in the course of his doing it. But in this case, in addition to the general principle, there are the words of the statute clearly decisive against such claim; for the terms used are, that the party shall not recover "any charges."

Nonsuit.

BROWN *v.* ROBINSON.

1 Carrin. & Pay. 264. 5 Geo. 4.

Assumpsit for an apothecary's bill.

To prove that the plaintiff had practised as an apothecary before 1st of August, 1815, three witnesses stated that he had attended them as an apothecary prior to that time; but that, during the whole time of such attendance, he was an assistant in the house of another apothecary, though they always paid the plaintiff, and not the person he was assistant to.

Abbott C. J. This is nothing like proof that the plaintiff practised as an apothecary: no practice, while in the service of another, can be a practising under this act.

Nonsuited.

THOMPSON *v.* LEWIS.

Moody & Mal. 255. S. C. 8 Car. & Pay. 433. An. 1828.

Assumpsit, by an apothecary, to recover for certain draughts supplied to defendant, and for dressings applied to a *wound* in defendant's arm.

It was proved that plaintiff had attended people before the 1st of August, 1815, in cases of diseased limbs, and had supplied medicines, and effected cures. It did not appear that he had any shop till long after that day, or that he had any shop-boy to carry out medicine, or had ever made up the prescriptions of a physician; but one of the witnesses considered him capable of making up such prescriptions. It was proved by the defendant that plaintiff had agreed not to charge him any thing unless he effected a cure.

Lord Tenterden C. J. To support this action, it must be proved that plaintiff practised as an apothecary on or before the 1st of August, 1815. It is contended, on behalf of the

defendant, that the plaintiff was not an apothecary, but merely a person who went about to cure certain local complaints, no cure no pay; this would not be a sufficient acting to satisfy the act. The duty of an apothecary is to prepare the medicine directed by the prescriptions of physicians, as appears by 55 Geo. 3. c. 194. s. 5. (*ante*, p. ccxxviii.) There is no evidence that the plaintiff ever made up a prescription; indeed, it does not appear that he kept any shop till very lately. You will, therefore, say whether he was a mere curer of local complaints, or whether he was in the habit of making up the prescriptions of physicians. If the evidence convince you of the latter, there is no doubt of his having practised as an apothecary; and it will become material to consider whether he was, in this instance, to be paid only in the event of effecting a cure. One of the witnesses has proved that plaintiff agreed to take nothing if he did not effect a cure, which it appears that he has not effected. If you believe that witness, the defendant is, on that ground, clearly entitled to a verdict.

Verdict for Defendant.

TOWNE *v.* GRESLEY.

3 Car. & P. 581. An. 1829.

Assumpsit for work and labour as an apothecary, and for medicines furnished.

The plaintiff having charged for his attendances, as well as his medicines, it was objected that an apothecary has no right to charge for attendances.

Best C. J. I am inclined to think that there is something in some of the acts of parliament, on the subject of attendances; but if there is no express provision, the practice is so inveterate, that I cannot allow the plaintiff to charge in both ways. An apothecary may charge for attendances if he pleases, and then the jury will say what is reasonable for those attendances; or he may charge for the medicine he sends, but he cannot be permitted to make a charge for both. I should advise the jury, in this case, to strike off the charges for attendance and make an allowance for the medicines only.

WOGAN *v.* SOMERVILLE.

1 Moore, 102, 103. E. T. 57 Geo. 3.

ACTION for a libel.

The declaration charged the defendant with a libel on the plaintiff, in his character of surgeon and apothecary, whereby he was injured in his business. At the trial, plaintiff produced a diploma from the College of Surgeons in London, but no certificate of being an apothecary, or of having practised as such. It was proved that the plaintiff had never served the apprenticeship required by 55 Geo. 3.; but, before the passing of that act, he had filled the situation of house apothecary to the Stafford infirmary, and had never practised or been employed as an apothecary, except at the infirmary.

For the defendant, it was objected that plaintiff must be nonsuited, because he had not produced any evidence of his being a regular apothecary.

Park J. being of opinion that this act did not affect persons in practice at the time of passing it, and that the plaintiff's situation in the infirmary was within the exception in s. 20., refused the nonsuit, but saved the point. Verdict for the Plaintiff.

On moving for a rule *nisi* to enter a nonsuit, it was insisted that the plaintiff, having been merely a servant at the infirmary, and having neither served a regular apprenticeship, nor produced a certificate, was not entitled to a verdict.

Gibbs C. J. The situation the plaintiff held at the infirmary is a sufficient protection to entitle him to the exception in 55 Geo. 3. c. 194. s. 14.

Park J. It was proved at the trial that the plaintiff had practised as the house apothecary for more than three years. The stat. 55 Geo. 3. can only apply to persons who have not practised as apothecaries before the day on which it passed. The defendant entitled the plaintiff an apothecary in the libel.

Dallas and *Burrough* JJ. concurring,

Rule refused.

S. C.

ACTION on a libel. The plaintiff declared that he had been and was an apothecary, and had exercised, and still continued to exercise, the calling and business of an apothecary, and averred a libel published concerning him as such apothecary. On the trial, the plaintiff did not produce the certificate necessary under 55 Geo. 3. c. 194., but proved that he was articled as an apprentice to an apothecary for five years and a half; that he had served him for three years and a half, at the end of which time, on his master quitting his practice, the trustees of the Stafford infirmary appointed him their house apothecary, in which situation he, for four years, officiated in mixing medicines for the patients of that charity, but for no others. For the defendant, it was objected that this evidence did not prove the allegation that he was an apothecary; that under sec. 21. (v. *ante*, p. ccxlvi.) it was necessary that the plaintiff should prove the fact of his being an apothecary, by the production of his certificate, which he not only had not produced, but, upon the evidence, it appeared that he could not obtain a certificate on account of the provision of sec. 15. (v. *ante*, p. ccxliii.), he not having served an apprenticeship of five years; and that, by sec. 20., he could not, under these circumstances, practise as an apothecary without subjecting himself to a penalty of 20*l*. 7 Taun. 401, 402.

Park J. was of opinion that the plaintiff came within the exception in sec. 14. as a person already in practice as an apothecary, but reserved the point. — Verdict for the Plaintiff.

It was moved to set aside the verdict, and enter a nonsuit, upon the objection that the plaintiff had not proved himself to be an apothecary.

Gibbs C. J. I am quite clear that a person who had, four years since, been admitted to officiate as apothecary to that infirmary, comes within the proviso of the act, as a person already in practice, for whom it is not necessary to obtain any other diploma.

Rule refused.

INDEX.

ABORTION, attempt to procure, 87, 88.
ACCOUCHEURS, 74.
ALCHYMISTS, their dealing in medicine, 20.
panacea of, 21.
pressed into the king's service, 21.
statute against, 21.
commissions to protect, 22.
ANATOMY, first students of, deemed sorcerers, 26.
study of punished formerly, 26.
now legal, 26.
See DISSECTION.
APOTHECARIES, their original occupation, 18.
originally of the Grocers' Company, 19.
their first distinct incorporation, 19.
qualification before *55* Geo. 3., 19.
practice of, 67.
right to prescribe, 19. 67.
certificate first required by *55* Geo. 3., 19.
classes of, 67.
company of, 67.
constitution of, 68, 69.
freemen of, 68.
licentiates of, 68.
examiners of, 68. 70.
list of, 72.
assistants and examiners of, 68.
none can practise as, without certificate, 69. 70.
unless in practice on 1st Aug. 1815, 69—72.
who within this exception, 72. 84.
See ASSISTANTS, CERTIFICATE, EXAMINATION, APOTHECARIES' WARES.
APOTHECARIES' WARES, examination of,
by the physicians, 32. 97.
the examiners of the Apothecaries' Company, 32.
ASSISTANTS to Apothecaries, 68. 71.
examiners of, 68.

ASSISTANTS, examination of, 69, 70, 71.
who may claim, 69, 70, 71.
certificate of, 71.
payment on, 72.
ASTROLOGERS, their interference with medicine, 24.
ASYLUM. See MADHOUSES.
ATTENTION, want of. See SKILL.
AUTHORS. See COPYRIGHT.

BACHELOR of physic, degree first known, 5.
alone permitted to practise, 11.
but privilege violated, 11.
exempt from examination under 3 Hen. 8., 12.
in the country under 14 Hen. 8., 12.
not in London, 12.
degree, how obtained, 56.
BARBERS adopt surgery, 12.
succeeding the monks, 13.
company of, 13. 16.
the only regular surgeons, 13. 16.
See COLLEGE OF SURGEONS.
BERWICK-UPON-TWEED within the laws relating to physic and surgery, 31.
BILL, Apothecary's, 111.
may be for attendance as well as medicines, 117, 118.
but medicines then at chemist's charges, 118.
action to recover proof on, 115.
practice on or before 1st Aug. 1815, 115.
what practice, 116.
or certificate, 115.
but not preliminary qualification, 117.
how proved, 116.
See CERTIFICATE.
Surgeon's, 111—113.
reasonableness of, 114.
for attention and medicines, 115.
action for, 113.
whether qualification must be proved, 113.
how affected by acting as physician, 114.
by want of skill or attention, 115.
BISHOP anciently licensed physicians, 11.
may still license surgeons, 66.
See EXAMINATION and SURGEONS.
BODIES, dead,
disinterment of, whether an offence, 148—159.

BODIES, dead, disinterment of, for purposes of dissection, 155—157.
when not for scientific purpose, 159.
a trespass on the soil, 155. 157.
prejudice against, 155, 156.
formerly evidence of sorcery, 152, 153. 156.
obtaining of, endeavours to facilitate, 150, 151.
stealing winding-sheet from, 153, 154.
receiving under suspicion of violence, 159.
BYE-LAWS of College of Physicians, how made, 37.
of each college and the apothecaries must be confirmed, 5.
See Candidates, Fellows.

CANDIDATES of the College of Physicians, 39—43.
origin of the order, 43.
none can claim admission to the order, 44.
not entitled of right to be fellows, 44.
not as such merely entitled to practise, 44.
CANONS. See Lateran, Tours.
CENSORS of the College of Physicians, 32, 33. 37.
how appointed, 32, 33. 37.
vacancy during the year, 34.
jurisdiction over practisers of medicine, 91.
in case of malpractice, 91—96.
their proceedings in, 93.
liability in exceeding, 97.
abusing, 93.
jurisdiction over apothecaries, 97, 98.
in examining their wares, 97, 98.
punishing mal-practice, 99.
CERTIFICATE of Apothecaries,
none can practise without, 83.
unless in practice before 1st Aug. 1815, 83.
what is such practice, 72. 84.
evidence of, 84.
penalty for practising without, 84.
acting as assistant without, 83, 84.
payment on, 71.
how it affects an action for bill, 71.
See Bill. Apothecaries.
CERTIORARI to return Censors' convictions, 96.
CHAMPIONS' oath in trial by battle, 28.
CHARACTER. See Libel.
CHARTERS, as to physicians, of James the First, 34.
of Charles the Second, 34.
CHEMISTS. See Druggists.

COLLEGE of Physicians instituted, 12.
constitution of, 32. 37.
constitutional number of, 33.
rights of private, 36.
duties of public, 37.
in granting licences, &c., 40.
corporate meeting of, 37.
notice of, 38.
See CANDIDATES, ELECTS, FELLOWS, LICENTIATES, PHYSICIANS, &c.
COLLEGE of Surgeons,
company at first distinct from barbers, 16.
united with the barbers, 16.
trades severed, 16.
company severed from the barbers, 60.
college of, suspended, 61.
not dissolved, 61.
revived as under 18 Geo. 2., 63.
COMMUNITY of the College of Physicians, 37.
COMPANY of Surgeons. See COLLEGE OF SURGEONS.
of apothecaries. See APOTHECARIES.
CONSTABLE. See OFFICES.
CONTAGIOUS DISEASES, propagation of, 142.
See LEPROSY, PLAGUE, SMALL-POX, SYPHILIS.
COPYRIGHT, generally, 129.
in printed books, 130.
at law, 130.
in equity, 131.
in works not printed, 131.
lectures, 132.
medical works, 132.
tending to disprove Revelation, 132.

DEAD BODIES. See BODIES, DISSECTION.
DISSECTION, whether an offence, and when, 148. 150.
formerly evidence of sorcery, 26. 148. 152, 153.
as a punishment, 149.
legislative and other provisions for, 149.
See BODIES.
DOCTOR OF PHYSIC, degree first known, 6.
DRUGGISTS, practice of, 73.
may prepare medicines, 73.
DRUIDS, medical knowledge of the, 3.

ELECTS of the College of Physicians, 32, 33. 37.
mandamus to choose, 34.
EMBRYO, destroying the, 87, 88.

EMPIRICS, classes of formerly, 19.
See EXPERIMENTALISTS, &c.
EMPLOYMENT, public, of medical men, 135.
EPILEPSY, prescription for the, 25.
ERROR, writ of, none to the censors, 96.
EXAMINATION of physicians first introduced, 11.
of London licentiates, 40.
who entitled to claim, 40.
of country physicians, 40.
who entitled to claim, 40.
of surgeons by the college, 16. 65.
who entitled to claim, 16. 66.
by the ordinary, &c. 66.
of apothecaries, 69.
who entitled to claim, 70.
EXAMINERS of Apothecaries' wares, 32.
See CENSORS.
EXPERIMENTALISTS anciently superior to the regular practitioners, 20.
accused of magic, sorcery, &c. 20. 25.
See ALCHYMISTS, ANATOMY, SORCERERS, &c.
EXPERIMENTS in Medicine and Surgery, 109. 146.
what are, 109.
liability for failure, 110.
See SMALL-POX. SKILL.

FEES of Physicians, whether action lies for, 111, 112.
annuity to a physician, 9.
not forfeitable for not travelling to patient, 9.
to king's physician in 1440, 10.
FELLOWS of the College of Physicians, 34. 39. 44.
original, 34.
successors, 34.
attempts to limit number of, 35. 44.
first considered a select body, 45.
the only members, 45.
election of, 46. 49.
in the absolute discretion of the fellows, 46. 49. 52.
who may be elected, 46. 49.
none entitled to be admitted unless elected, 52.
none can be excluded by bye-law, 46. 49.
their public functions, 37.

GRATUITOUS practice of medicine, 74. 78.
GRAVES, opening. See BODIES.
GROCERS' Company. See APOTHECARIES.

HABEAS CORPUS to examine censors' convictions, 96.
HOSPITAL, Knights of the, surgeons, &c., 13.
HOSPITALS, public, 135.
See MADHOUSES.

INCANTATIONS, 152.
INFANTICIDE, 87.
INFECTIOUS diseases. See DISEASES, PLAGUE, SMALL-POX, LEPROSY, SYPHILIS.
INOCULATION. See SMALL-POX.
INSANE persons, certificate for custody of, 134.
See MADHOUSES.

JEWS, their medical knowledge, 26.
JURIES, &c. exemption of medical men, 137.

KING'S evil cured by the royal touch, &c. 25.
physicians and surgeons, their patent, 10. 12.
annuity to, 10.
See FEES.

LADIES studied surgery as well as physic, 28.
See WITCHCRAFT.
LATERAN, canon of, respecting physicians, 11.
LAZARUS, St., Knights of the order of, lepers, 13.
practised medicine and surgery, 13.
master must have been a leper, 13.
LECTURES. See COPYRIGHT.
LEPERS. See LAZARUS, ST.
LEPROSY, 143.
LIBEL on medical men, 120.
ground of action for, 120. 125.
evidence on, 121.
defence to action or indictment, 121.
want of malice, 121.
as confidential communications, 122.
fair criticism, 123—125.
to counteract improper petition to parliament, 125—128.
fair accusation before a proper tribunal, 128.
truth defence to action but not to indictment, 121.
LICENCE to practise physic,
how obtained for London, 40, 41.
mandamus to grant, 41. 43.
how obtained for the country, 53.
partial, 54.
stamp on, 54.

LICENTIATES of College of Physicians in London, orders of the, 31, 32. 38.
mere licentiates, 38, 39.
their origin, 39.
not entitled to be admitted fellows, 52.
who entitled to become licentiates, 39.
in the country, 31.
See Licence.
LUNATICS. See Insane Persons, Madhouses.

MADHOUSES, privileges of medical men concerning, 133.
certificate for reception into, 133.
form of, 133.
false, punishment for, 134.
medical attendants in, 134.
commissioners and visitors of, 135.
MAGIC, 152.
MALPRACTICE in medicine, kinds of, 86. *et seq.*
punishment at common law, 86. *et seq.*
when felony, 86.
want of attention or skill, gross, 89.
punished by College of Physicians, 91.
though practice in surgery, 92.
or as an apothecary, 92.
by persons of no degree, 92.
when remitted by pardon, as to fine, 97.
punished by the College of Surgeons, 101.
by the Apothecaries' Company, 103.
MEDICAL ROSE, by John of Gaddesden, 8. 25.
MEDICINES, selling impure, 89. 93.
See Malpractice.
MIDWIVES, 74.
MILITIA, whether medical men exempt, 141.
MISCARRIAGE. See Abortion.
MISLETOE, panacea of the Druids, 3.
MONKS, the first physicians, 5, 6. 12.
and surgeons, 12.
practised in all branches, 6.
prohibited by canon in France, 6.
confined themselves to prescribing, 7.
MURDERERS to be dissected, 149.

NORMANS, Anglo, medical learning of the, 6. 8.

OFFICES, exemption of physicians, 138.
surgeons, 139.

OFFICES, exemption of apothecaries, 140.
ORDERS of medical men,
In the twelfth century, 8.
At present, 30.

PANACEA of the Druids, 3.
or elixir vitæ, 20.
See Alchymists.
PARISH OFFICES. See Offices.
PHYSIC, degrees in. See Bachelor, Doctor.
PHYSICIANS, when first confined to prescribing, 8.
early respectability of, 9.
often ecclesiastics, 9. 11.
seldom laymen, 11.
though laymen not prohibited, 11.
surgeons, acting as. See Bill.
classes of, 31.
practice of, 30.
of the universities, 54.
act to confine practice to, not effectual, 54.
must be of the degree of bachelor, 55.
may not practise in precinct of London, 55.
may practise in all other places, 55.
See Bachelor, College of Physicians, &c.
PLAGUE, 142.
PRACTICE OF PHYSICIANS, 30.
surgeons, 56.
apothecaries, 67.
druggists, 73.
PRESCRIBING, proper province of physicians, 31.
when surgeons may prescribe, 57.
whether apothecaries may prescribe, 67.
PRESCRIPTIONS, apothecaries must compound, 67.
druggists may compound, 73.
PRESIDENT of College of Physicians, 32, 33.
PRETENDERS in the various medical sects, 27.

QUACK. See Qualification.
QUALIFICATION of physicians under 3 *H.* 8., 39.
whether now necessary, 39.
under 14 *H.* 8. for London, &c., 42.
in the country, 54.
penalty for practising without, 76, 77, 78.
although competent, 77, 78.
practice in surgery, 79, 80.

QUALIFICATION, evidence of, 78.
proceedings to recover penalty, 80, 81, 82.
of surgeons, 68. 82.
penalty for practising without, 68. 82.
of apothecaries. See CERTIFICATE.
QUARANTINE, 142.

REGISTRAR of College of Physicians, 36.
REMUNERATION of medical men. See FEES, BILL, EMPLOYMENT.
RICHARD the First, his medical attendants, 14.

SALERNO, medical school of, 5.
regulations of, 10.
SAXONS, medical knowledge of the, 4, 5.
SHIPS, surgeons of, 135.
their duties, &c., 136.
SKILL, want of,
liability for, in damages, 105.
physicians, 106, 107.
surgeons, 107, 108, 109.
apothecaries, 107, 108, 109.
private persons, 108.
punishment for, 89.
SLANDER. See LIBEL.
SMALL-POX, propagation of, 143.
by inoculation, 143. 145, 146.
exposing infected persons, 144. 147.
John of Gaddesden's prescription for, 9.
SMITHS adopt surgery, 12.
on its being relinquished by the monks, 8. 13.
prohibited, 11.
SORCERY of various kinds, 25.
the king and clergy, 25.
applied to medical purposes, 3, 4.
prohibited, 11. 28.
See DISSECTION, BODIES, WITCHCRAFT, ANATOMY.
SPIRITS may be sold in medicine without licence, 137.
SUPERSTITION, its influence in medicine, 3, 4, 5.
SURGEONS at first in low repute, 12, 16.
contract with Henry the Fifth, 14.
College or Company of. See COLLEGE OF SURGEONS.
their shops in Henry the Eighth's time, 16.
their practice, 56.
whether typhus within, 58.
may prescribe and compound, 57.

SURGEONS, who may practise as, in London, 58—64.
elsewhere, 61. 64. 66.
See Barbers, Monks, Smiths, Examination, Qualification, Bill.
SURGERY, state of, in the fourteenth century, 16.
may be practised by physicians, 30.
SYMPATHETIC cures, 20.
SYPHILIS, 143.

TESTIMONIALS to practise physic. See Licence.
required by College of Physicians. See Examination.
College of Surgeons. See Examination.
Apothecaries' company, 69.
producing false, 69, 70.
TOURS, canon of, against practice of physic, 7.

UNIVERSITIES, physicians of the. See Physicians.
UNQUALIFIED practitioners. See Qualification.

VACCINATION, 145, 146.
See Small-pox.
VICE-PRESIDENT of the College of Physicians, 38.

WALES within the laws relating to medical practitioners, 31.
WITCHCRAFT among the Britons, 4.
among the Saxons, 5.
in medicine prohibited, 11.
legislative provisions against, 152.
WITCHES, their medical practice, 4. 26.

THE END.

Printed by A. Strahan, Law-Printer to His Majesty,
Printers-Street, London.