Medical Jurisprudence.

PART I.


1. OF THE COLLEGE OF PHYSICIANS.

IT does not appear that the Professors of Physic were in any way classed, or incorporated, in England, until the year 1522, although we learn from the preamble of the Charter of Henry the Eighth, as well as from the petition of the 9th of Henry the Fifth, that other countries had long before that period established Medical Colleges, having considered such a measure not only as necessary for the encouragement of science, but as highly politic for the preservation of the public health.

England, although destined to take the lead in research and discovery at a later period, was in the sixteenth century far behind her continental neighbours in the field of Science. And with respect to the study and practice of physic, it seems probable that, until after the foundation of the College of Physicians, it had not even assumed the character and
dignity of a regular profession; for we find that the very few learned men in that branch, which the annals of the period can furnish, had acquired their knowledge in the foreign universities.

Until the auspicious period of the Reformation, various circumstances contributed to retard the progress of medical science; the first and most considerable of which may be traced to the many monastic establishments \((a)\) with which the country was infested; the Monks are known to have practised physic very extensively, and when the superstitious character of these ages is considered, we shall not feel surprised at the vulgar, and perhaps not the lower order alone, having preferred, to every other medical assistance, the aid of those who arrogated to themselves the immediate assistance of heaven in the preparation and administration of their medicines.

The Alchemists \((b)\) were another, and very numerous class to whom we may justly refer the temporary degradation of the science of medicine. Like their lineal descendants, the Empirics of modern times, their attention was directed to the discovery of an universal specific which should be equally applicable to every disease; and as presumption is ever proportionate to incapacity, we need not be surprised that they should have been eagerly followed by the ignorant of their day, as their successors are by the vulgar of our own; under such circumstances there could have been but little encouragement to men of real learning, and as we find by the recital of the act

\[(a)\] The imposition of Urine-casting owed its origin to monastic practice, where the inspection of the urine in the monastery obviated the trouble of a personal communication with the patient.

\[(b)\] In 1500, Francis Anthony was charged with killing several persons by a medicine, said to have been compounded of Gold and Mercury, which he called his \textit{Aurum Potabile}.—Goodall, \textit{Pr} 349.
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of 5 Hen. 8. c. 6. that there were but twelve regular Surgeons practising in all London, we may safely conclude that the number of legitimate physicians must have been proportionally smaller. The Universities of Oxford and Cambridge had probably from the time of their foundation conferred degrees in medicine, but these do not appear to have carried with them any general privilege or authority; their rights indeed were reserved by the concluding section of the 3d Hen. 8, c. 11, but in what those rights consisted has not been judicially determined, even though the litigation to which the Act and the subsequent Charter of the College gave rise, would naturally have produced some decision on this point, had the extent of those ancient rights ever been legally defined (a). We shall not consume any farther time upon this question, for although it might be a subject of some antiquarian curiosity, it would furnish but little matter of professional interest, or practical utility. In the present age the Universities of Oxford and Cambridge are firmly united by a communion of sentiment and interest to the College of Physicians, and physicians are rarely admitted as Fellows (b) of this learned body, unless they have previously graduated in one of the English Universities, or at Trinity College, Dublin, but even in this latter case, it is required that the candidate for admission should have been previously incorporated either into the University of Cambridge or Oxford. That a distinction founded on such a basis should have excited an angry and jealous feeling in the

(a) See however on this subject a pamphlet published at Oxford in 1721, occasioned by the case of the King v. the Bishop of Chester.
(b) The exclusion of persons, not being graduates of an English University, formed the subject of a royal letter, for which see Appendix, page 92.
excluded party is not extraordinary; and the authors of the present work hope that they shall stand excused for offering a few remarks upon a subject which they consider vitally interwoven with the best interests of the profession. The arguments which have been so repeatedly urged against the justice, as well as policy, of the Bye-law (a) which thus excludes all, but the graduates of an English University, from the honours of the Fellowship, may be easily refuted, and its salutary tendency, in relation to the interests of the public, as well as to the dignity of the profession, very satisfactorily demonstrated. For the complete knowledge of medicine, as a science, all the collateral lights of natural philosophy and erudition, are required; while for its successful practice as an art, the physician should possess those high qualifications of mind, and have received that moral cultivation which a mere technical education can never bestow. We are willing to admit that “the curative art cannot be learnt on the sequestered banks of the Cam or the Isis, as well as amid the distress and sickness of a great city;” but we assert with equal confidence, that the liberal pursuits, and wholesome discipline of an English university, can best prepare the mind for the full and extensive benefits, which the pupil is afterwards to derive from his professional studies in the metropolis; and if it be essential to encourage a liberal education amongst those who are destined to move in the higher walks of physic, we would ask whether any plan could be derived more likely to ensure our object, than that fair and honourable reward which is held out by this unjustly reviled bye-law of the College of Physicians. It has been

(a) See Lord Kenyon’s judgment, 7 Term Rep. 268, and Appendix page 124.
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urged, that the education of a physician is thus rendered materially and unnecessarily expensive; and that the delay of twelve years, which are required for the full completion of the highest medical degree, proves another great and vexatious hardship;—to all this we reply, that we should politically resist any measure that had the least tendency to divest medical education of its pecuniary sacrifices, and to open the temple to a crowd of needy and half-educated adventurers. Tissot seems to have entertained the same sentiment, and he observes that, for these reasons, no person ought to be allowed to study physic in his native city: the operation of this bye-law will therefore furnish the surest guarantee of professional respectability, and the College of Physicians will continue to enroll names distinguished for science and erudition, men who will cast a lustre on the profession, over which they preside: let then the practitioner in medicine beware how he attempts to depreciate the dignity and importance of this ancient institution, or to deny the rights and privileges to which the corporate body is legally and morally entitled, for to the College of Physicians, as it regards the whole profession of physic, we may address the same emphatic words that Cicero applied to Torquatus with reference to the state, "Tibi, nullum periculum esse perspicuo, quod quidem sejunctum sit ab omnium interitu."

Nor is the College singular or invidious, as may at first sight appear, in adopting this rule; by far the greater number, if not all, of the Bishops require a similar qualification for the Church; and the Inns of Court, though they do not exclude others, grant some indulgence to members of the University on entering their respective societies, and remit two years of the
usual term of probation to those who have taken the degree of Master of Arts or Bachelor of Laws previously to their call to the Bar.

The College of Physicians in London owes its foundation to Dr. Thomas Linacre of All Soul's, Oxford, one of the physicians to king Henry the 8th, a man of profound learning and most devotedly attached to his profession; having studied at Rome, Bologna, and Florence, (then under the government of Lorenzo de Medici, by whom he was encouraged), he naturally imbied an admiration of the medical schools with which Italy then abounded, and appears to have distinguished himself so much both by his general learning and particular science that he was called to Court as physician to the king, and entrusted by Henry the 7th both with the health and education of his son prince Arthur.

The practice of Medicine was about that time, as we have before observed, chiefly engrossed by empirics and monks, who, and especially the latter, easily obtained licences from the bishops in their several dioceses, to whom was committed the authority of examining practitioners in an art of which they could not be competent judges. Linacre, through his interest with Cardinal Wolsey, a man most highly and honorably distinguished for his munificent encouragement of learning, obtained in 1518 Letters Patent (see Appendix, p. 5,) from Henry the 8th, (a), constituting a Corporate Body of regular Physicians in London, with peculiar privileges hereafter to be spe-

(a) Henry himself appears to have added some study of Physic to his other pursuits; among the Sloane MSS. in the British Museum there are several receipts invented by the king in conjunction with Doctors Butt and Chambers; the familiarity of the former with Henry is shown by Shakespeare, Hen. 8th, Act. 4. Scene 2.
Linacre (b) (though his name is second in the Letters Patent) was elected the first President of the College, which held its meetings at his house in Knight Rider Street; he was continued in the office during his life, and bequeathed his house to the College at his death; he was distinguished both by his learning and his friendship with learned men, among whom he enjoyed the commendations of Erasmus and Melancthon. He died in 1524, in the sixty-fourth year of his age, and was buried in St. Paul's, where a monument was erected to his memory by Dr. Caius, one of the most learned and munificent of his successors. See Preface to Goodall’s Proceedings of the College: Biog. Britan.: Aikin’s Biog. Mem. of Medicine: & Aikin’s General Biography.

As it cannot be uninteresting to trace the progress of a society through the medium of its principal ornaments, and as the authors owe to Dr. Caius the foundation of that institution in which they commenced those joint chemical studies which have indirectly induced their present undertaking, they do not apologize to the reader for adding a short notice of his life, and of that of Dr. Harvey, another considerable benefactor to the College of Physicians.

Dr. John Caius, Kaye, or Key, of Gonville-hall, Cambridge, succeeded Linacre in the Presidency; like him he had travelled in Italy for his improvement in the study of Medicine, and having resided in Padua and Bologna, where he took his Doctor’s degree, and

(b) Chambre and Linacre were in holy orders, a circumstance which has been cited against the present bye-law of the College, that no priest can be admitted; it must be remembered that it is the policy of the present day to restrain the clerical encroachments, which constituted a leading feature of the Papal usurpation; our Inns of Court observe the same rule.
was for some years Greek lecturer, he pursued his travels through Germany and France. After his return to England, he was called to Court as Physician to king Edward the 6th; in 1547 he was made a Fellow of the College of Physicians, the rights and privileges of which he most strenuously asserted and augmented. In 1557 and 1558 he obtained from queen Mary, with whom he was a favourite, a licence to advance Gonville-hall into a College, under the name of Gonville & Caius College, on the condition of enlarging the institution at his own expense. Of this college he accepted the mastership in 1569, and in order that he might devote his undivided attention to his favourite project, he resigned the Presidency of the College of Physicians in 1565, and completed his new buildings at Cambridge in 1570, at an expense which was very considerable in those days. The mansion of learning, thus raised by his liberality, became the retreat of his old age, and having resigned the mastership, with a disinterestedness equalled only by his munificence, he continued to reside as a Fellow Commoner until the period of his death, which happened in 1573, in the sixty-third year of his age. The laconic epitaph on his monument in Caius College Chapel, Fui Caius, is well known. For an account of his many learned works see Aikin’s Biog. Memoirs of Medicine: 2 Aikin’s General Biog and Goodall’s Proceedings of the College.

Dr. William Harvey, of Gonville and Caius College, Cambridge, to whom we are indebted for the important discovery of the circulation of the blood, was another ornament and benefactor of the College. Like his predecessors he visited France, Germany, and Italy, in order to perfect himself in the science of Medicine; at Padua he studied under the most cele-
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brated Professors of that University, then at the height of its reputation, and in the anatomical school of Fabricius caught the first idea of his great discovery, by attributing their true office to the valves of the veins, exhibited, but not explained, by his master. From this circumstance, the envious of his own time and some foreigners to this day, have attempted to deprive our countryman of the honor of his invention (a). In 1602 Harvey took his Doctor's degree at Padua, shortly after which he graduated at Cambridge; in 1616 or 1619 he published his discovery in his Lectures before the College, and like many others suffered in his practice from the reputation of his learning, for men would not then believe that the labours of the closet and dissecting-room were the truest roads to professional skill.

He was however appointed Physician extraordinary to James, and subsequently Physician in ordinary to king Charles the 1st; by the latter he was highly esteemed and favoured, having been appointed during the residence of the king at Oxford to the Mastership of Merton College, vacant by the secession of the Warden, Dr. Brent, to the Parliamentary party; this appointment however, he did not hold long, being in turn displaced by his predecessor.

(a) Jo. Alph. Borcllus, in speaking of the pretensions of Honoratus Faber to this discovery, concludes Omnes enim scint Harveium Anno Dom 1628 Fanofurti tylis Gual. Fitzeri suam oxeriationem firimum edidisse; sciricec decem annas antiquam Fabri sanguinis circulationem docuisset. See Goodall's Proceedings of the College.

His work de Generatione Animalium, although eclipsed by his superior discovery, must be considered as a valuable acquisition to the science of Physiology; its luminous reasonings overturned the doctrine of Equivoval Generation, that had been maintained in the schools since the days of Aristotle, and established the universal principle "OMNIA EX OVO."
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Some time about 1652, the College having removed from their ancient house in Knight Rider Street to one at Amen Corner, Dr. Harvey built them a library and public hall, which he granted for ever to the College, with his library and a valuable collection of instruments. See 1 Stowe's London, 131.

In 1654 Harvey was unanimously elected President of the College of Physicians, but he excused himself on account of his age and infirmities; such however was his attachment to that body, best evinced by donationes inter vivos, that in 1656 he made over his personal estate in perpetuity for its use. He died in 1658, in the eightieth year of his age; his works were published by the College in 1766, in quarto, to which edition his life is prefixed, to which we refer, as also to Aikin's Biog. Mem. of Med.; Halleri Bibl. Anat.; Aikin's Gen. Biog. and the Preface to Goodall's Proceedings.

We should exceed our limits and wander from our purpose if we entered more fully into the biography of the many celebrated men who have since graced the College (a); it is enough for us to have directed the reader's attention by the preceding memoirs to the very rapid improvement which the science of Physic appears to have undergone immediately after its institution. The profession gained much in respectability by their incorporation, which afforded a unity of interest among its legitimate professors, at the same time that it armed them with extraordinary powers against their opponents: it also gave additional means to the learned of mutually communicating their

(a) Henry Marquii, of Dorchester, who was admitted a Fellow in 1658, left at his death in 1680, a collection of medical and other books to the College which were valued at £4000.
researches and discoveries, at a time when the comparative scarcity of printed books rendered such intercourse doubly valuable. The dissolution of the monasteries, and the consequent dispersion of a host of ecclesiastical empirics, with the destruction of their prejudices and superstitions, as inconsistent with the progress of liberal science, as degrading to religious principle, completed the triumph which the foundation of the College had begun. The consequence is evident. England, which in the beginning of the sixteenth century had been behind all the then civilized world in medical knowledge, finds herself in the commencement of the nineteenth inferior to none in any branch, superior to most in some, and taking a decided lead in all the ramifications into which the science of physic and the sister arts have divided themselves.

This effect however was not produced by the College, without some severe struggles on the part of those who were, or supposed themselves to be, aggrieved by the extraordinary powers granted to the Corporation by the Charter of Henry the 8th; it does not appear whether any of these disputes arose between the granting of the Letters Patent and their confirmation by the statute 14 and 15 Hen. 8. c. 5. at least no cases remain recorded by any sufficient authorities; it is therefore probable that the College did not attempt any exercise of their new powers until they had received the sanction of Parliament; even the king, (and no one will suspect Henry the 8th of any diffidence of royal prerogative) by using the terms “quantum in nobis est,” (see Charter) seems to have been conscious that the powers of fine and imprisonment which he professed to grant, suo jure, could only become effective by the ratification of a superior authority.
The restriction of practice to persons examined and licenced by some supposed competent authority was not new. Sir Wm. Brown in his Vindication of the College from the imputation and misrepresentation of their adversary in the case of Dr. Schomberg, mentions an Act of Parliament or Ordinance of the 9th Hen. 5. (see Appendix, p. 1.) by which the licencing of physicians is confined to the Universities, and of surgeons to persons duly qualified: and the 3d Hen. 8. c. 11. (see Appendix, p. 3.) somewhat strangely confers on the Bishop of London, and in his absence on the Dean of St. Paul's, the exclusive power or privilege of licencing physicians and surgeons in the City of London, and within seven miles in compass. It can scarcely be doubted that the provisions of this act as relating to physicians, were repeated by the Act 14 and 15 Hen. 8. c. 5 confirming the incorporation of the College, for where a power to do a specific thing is given to two distinct persons or bodies by separate Acts, it is a general rule that the last repeals the former, Quia Leges posteriores Leges priores contrarias abrogant; yet it is said that a Bishop of London has within a few years professed to grant a licence to practise physic in London and within seven miles thereof. Now, independent of the objection before mentioned, it is evident, even on the construction of the 3. Hen. 8. c. 11. from which alone the power is derivable, that such licence, if any such were granted, is bad; for the words of the statute are, "calling to him or them (the Bishop and Dean) four Doctors of Physick, 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:" Now if the Bishop cannot find four
assessors so approved, his authority must cease, for he cannot exercise it without them.

The power of the Archbishop of Canterbury (a) to confer degrees of all kinds (a relic of Papal usurpation transferred to him by statute 25 Hen. 8. c. 21) has induced a belief that the Archbishop has a power of granting licences to practise physic, and several have been granted accordingly; among others Wm. Lilly, the astrologer, was licenced to practise physic, except in London and within seven miles; for his diploma, the wording of which is curious, see the Appendix. Now though the Pope may have had the power of granting degrees and licences in physic, the concluding words of the 14th and 15th Hen. 8. confirmed by 1st Mary, are sufficient to exclude the authority either of the Pope or of the Archbishop, "that no person from henceforth be suffered to exercise or practise in Physic through all England until such time as he be examined at London by the said President and three of the said Elects, and to have from the said President or Elects

(a) This power has however been questioned; the words of the Act 25 Hen. 8. are, "All manner of Licences, Dispensations, Faculties, &c. as heretofore hath been used and accustomed to be had at the See of Rome." The term Degree does not occur in the act, yet in The King v. the Bishop of Chester, a degree of Bachelor of Divinity granted by the Archbishop was held a good qualification. 8 Mod. 364: Strange 797. This judgment was ably controverted in a pamphlet published at Oxford in 1791; we may say with the author, "As to the Archbishop of Canterbury I have no design to rob his See of any privileges belonging to it. He may give as many titles, and bestow as many honours as the Pope himself does, provided they are not admitted into the same rank with those conferred by the favour of the Crown, and they do not challenge any place in the construction of Charters and Acts of Parliament." See Serj. Hill's Law Pamphlets in fol. vol. 1. in Lincoln's Inn, Lib. A recent Act of Parliament, 55th Geo. 3. recognises only Physicians licenced by the College and by the Universities of Oxford and Cambridge.
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"Letters Testimonials of their approving and examination, except he be a Graduate of Oxford or Cambridge, which hath accomplished all things for his Form without any Grace." Then as it cannot be pretended that the Archbishop's licentiate, though he may be a graduate of Oxford or Cambridge, is one who has accomplished all things for his form (subaudi in physic) without any grace, it follows that such degree or licence is void as respects the authority of the College of Physicians.

The provisions of the Act of the 3d Hen. 8. could produce no permanent benefit, and we therefore find within seven years, that the continuance of the abuses which it was intended to remedy, was made the foundation of granting its powers to a Corporation better calculated to exercise them; what these powers are we must now investigate somewhat minutely, for it is an essential branch of Medical Jurisprudence to regulate and define the privileges and office of those who are best able to give effect to its institutions.

It may be necessary to premise that though several subsequent Charters (a) have been prepared for or offered to the acceptance of the College of Physicians (as 15 James and 15 Charles 2. for which see Sir Wm.

(a) Such subsequent Charters would not however annul the original Letters Patent. "A new Charter doth not merge or extinguish any of the ancient privileges of the old Charter. And if an ancient corporation is incorporated by a new name, yet their new body shall enjoy all the privileges that the old corporation had." Raym. 439: 4 Rep. 37. For other points as to renewed or substituted Charters, see The King v. Amery and Monk, by information in the nature of a quo warranto, 1 T. R. 575. Newling against Francis (the election of Mayor of Cambridge) 3 T. R. 189. The King against Miller, 6 T. R. 268. And more particularly Rex v. the Vice-Chancellor &c. of Cambridge, 3 Burr. 1656.

"A Corporation already existing are not obliged to accept the new
Brown's Vindication, Dr. Chas. Goodall's Collection, and other works, most of which are enumerated in Gough's Topography of London), yet the Charter and Statute of Henry the 8th is still the subsisting ground of the rights, privileges, and powers of the Corporation. By their Charter recited in, and confirmed by the 14th and 15th Hen. 8. (see Appendix, p. 7) John Chambre, Thomas Linacre, Ferdinando de Victoria, (a) physicians to the king, and Nicholas Halsewel, John Francis, and Robert Yaxley, physicians, and the rest of the faculty in and of London, are constituted a perpetual college or community, with power annually to choose a President, who is to govern and superintend the College, and all men of the faculty and their practice (omnes homines ejusdem facultatis et negotia eorum,) they are to have perpetual succession and a common seal, with power to hold lands to an amount therein limited (but which has since been enlarged by other Charters) notwithstanding the statute of Mortmain. They may sue and be sued by the name of the President and College or Community of the Faculty of Physic in London (per nomina Presidentis et collegii seu communitatis facultatis

"Charter in toto, and to receive either all or none of it. They may act partly under it and partly under their old Charter or Prescription. Whatever might be the notion in former times, it is now most certain, that the Corporations of the Universities are Lay-Corporations; and that the Crown cannot take away from them any rights that have been formerly subsisting in them under old Charters or prescriptive usage."

(a) An alien cannot now be a Fellow of the College, and there is good reason for this, as he may have judicial authority when elected to serve as Censor, &c.

By 9 J. 1. c. 5. s. 8. no Popish Recusant shall practice Law or Physic, or exercise any public office, or the trade of an Apothecary; but this Act is in part repealed by 31 Geo. 3. c. 32. There is also a considerable distinction in law between a person who is merely a Papist and one who is a Recusant.
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medicinae Lond`; they may hold meetings (congregations licitas et honestas) and make bye-laws (stat' et ordinationes) for the good government, superintend-ance, and correction (pro salubri gubernatione, supervisu, et correctione) not only of the College but of all persons exercising the faculty in the city, or within seven miles thereof, (omnia hominum eandem facultatem in dicta civitate seu per septem miliaria in circuitu ejusdem civitatis exercent). And it was grant-ed to the College that none should exercise the faculty of physic within the city, or seven miles thereof, unless they had been admitted by the President and College by letters under their common seal, under the penalty of five pounds (centum solidorum) for every month during which such unlicensed person (non admissus) should practice; one half of the said penalty to the King, and one half to the President and College. The Charter further directs that the President and College should every year elect four (censors) who should have the superintendence, cor-rection, and government of all persons exercising the faculty of medicine in any manner (aliquo modo frequentantium et utentium) in the city, or within seven miles thereof; with powers to punish for mal-practice (ac punitionem eorum pro delictis suis in non bene exequendo, faciendo, et utendo illa) and with power of superintendence and scrutiny of all medicines and their administration, provided that the punishment should be by fines, amercements, imprisonment, and other reasonable modes (per fines, amerciamenta, & imprisonamenta, corpor' suor' et per alias vias rationab' et congruas.) The Charter then directs (quantum in nobis est) that the president and fellows of the Col-lege, and their successors, should be exempt from and should not be summoned to Assizes, Juries,
Inquests, Attaints, et alii recognitionibus, by the Mayor, Sheriffs, or Coroners of the City, even by the king's writ. It was provided however by the concluding clause that nothing contained in the Charter should prejudice the City of London.

After the recital of the Charter the Statute proceeds to confirm the same "in as ample and large manner " as may be taken, thought, and construed," and directs the election of eight elects, from among whom the president is to be annually chosen.

The concluding section of this act is important, as it evidently repeals so much of the 3 H. 8. as refers to physicians, enacting, "that no person from hence-forth be suffered to exercise or practise in physic " through England (a) until such time as he be exam- " ined at London, by the said President and Three " of the said Elects; and to have from the said Presi- " dent or Elects Letters Testimonials of their approv- " ing and examination, except he be a Graduate of " Oxford or Cambridge, which hath accomplished " all Things for his Form without any Grace." (b)

(a) It is true that the College has no means of punishing the dis- obedient in the country, because the Statute is not supported by penalties; but it must be remembered that the acting in defiance of a Statute is in itself a misdemeanor. According to the opinion of Chief Justice Mansfield, a Doctor's Diploma does not itself entitle the possessor to practise in the country parts (provinces) of England. He must be an Extra-Licentiate of the Royal College of Physicians, or Medical Graduate of an English University. The provincial physician, unless thus protected, is placed under very humiliating circumstances; he is only a doctor by courtesy, and therefore cannot claim rank, or defend himself in courts of law. In a case tried at Stafford before Judge Mansfield, a physician who had graduated in Scotland, having been grossly abused in his professional capacity, sued for redress, but could obtain none, because he had not complied with the act of Henry the 8th. Middleton v. Hughes. See Harrison's Address. 62.

(b) To this Act it has been objected that it wants the Royal con- firmation, and it was suggested that Cardinel Wolsey for a sum of
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The next Act which concerns the College is the 32d Hen. 8. c. 40. (see Appendix, p. 14) by which it is enacted that the President, Fellows, and Commons of the College, should be discharged from keeping Watch and Ward in the City or its Suburbs, and that they shall not be chosen to the office of Constable, or to any other office in the City or Suburbs, any Order, Custom, or Law, to the contrary notwithstanding; By the second section of this Act the power and office of the Censors, which had been left somewhat undefined by the 14 & 15 Hen. 8. is more accurately and fully determined. They are empowered to enter the houses of all Apothecaries in the City, for the purpose only of searching and viewing their wares, drugs, and stuffs, and if any be found defective or corrupted, they may cause them to be burnt, or otherwise destroyed, and a penalty of five pounds, (a) to be recovered by any that will sue for it, is inflicted on apothecaries who obstinately or willingly refuse or deny the four Censors to enter into their houses; a penalty of forty shillings is also inflicted on any Censor, who being elected, shall refuse the oath directed to be taken, or neglect the execution of his office. The oath of the censor, is by this act, directed to be administered by the President of the College. The censors are also obliged to take the oaths of allegiance, supremacy, and abjuration in the Court of Exchequer at Westminster, hence the impropriety, if not illegality, of any Papist or Recusant being elected a Fellow of the College.

money, interpolated this among other Acts without the King's assent. The story, sufficiently improbable in itself, rests on no evidence, and the plea founded on it was overruled by C. Justice Pemberton, 2 Show 166. See also College of Physicians against Huybert. Goodall's Collect. 267, where the circumstances are more fully related.

(a) This fine is raised to ten pounds by Stat. 1 Mary, c. 9. § 5.
By the third and concluding section it is declared, that "forasmuch as the Science of Physick, doth comprehend and contain the knowledge of Surgery," any of the said Company or Fellowship of Physicians, being able, chosen, and admitted, by the said President and Fellowship of Physicians, may practice the Science of Physic in all its members, both in London and elsewhere.

The Statute 34 and 35 Hen. 8. c. 8, entitled "A Bill that Persons being no common Surgeons, may minister medicines, notwithstanding the Statute," refers to the 3d H. 8. c. 11. omitting all mention of the subsequent acts of the 14th, 15th and 32d, which were for the regulation of the Physicians of London, and as this Statute appears to have been directed against the then Surgeons of London, and for the relief of charitable persons, who had ministered to poor people, not taking any thing for their pains and cunning in certain diseases, (a) principally outward, and therefore (in its limited sense) objects of surgery rather than medicine; we shall treat of this act more at large when we enter upon the Charters and Statutes relating to the College of Surgeons. By this act, however, inward medicines are permitted

(a) Such as "Women's breasts being sore; a Pin and Web in the Eye; Uncombes of Hands; Burns; Scaldings; sore Moutlis; the Stone; Strangury; Saucelis; and Morphew, and such other like diseases."

The pin and web in the eye is alluded to by Shakespeare in Lear, Act iii. Sc. iv. "he gives the web and the pin," and again, "wishing all eyes blind with the pin and web," Winter's Tale, Act. i. Sc. ii. With respect to the precise meaning of this expression some doubts have arisen. Hanmer says the pin is a horny induration of the membranes of the eye. Skinner seems likewise to say the same, but Dr. Johnson thinks that it is an inflammation, which causes a pain like that of a pointed body piercing the eye; Web in the eye, is defined by Johnson "a kind of dusky film that hinders the sight." Uncombes of Hands is an expression still used in the North for Whitlows. Morphew signifies a cutaneous eruption in the face, Saucelis ?
to be administered by persons having knowledge and experience of the nature of herbs, roots and waters, for the stone, strangury or agues. (a) The latter clearly do not come within the description of what would now be called Surgical cases, and therefore so far the exclusive privileges of the physicians are affected by this Statute, yet it appears by the context and interpretation of the act, (See Butler v Coll. of Phys.) that such administration must be of herbs, roots or waters only, to poor persons, (R. Litt. 351,) and without fee or reward.

The acts of Henry the 8th having been found insufficient in their provisions for the search of apothecaries wares, and other matters, the Statute 1st Mary, sess. 2. c. 9, (See Appx. p. 25,) was enacted, whereby the 14th and 15th Hen. 8. c. 5, is confirmed and declared to be in full force, any Act, Statute, Law, Custom, or other thing made to the contrary notwithstanding; it was further enacted, that whenever the President of the College, or such (the Censors) as the President and College shall yearly authorise to search, examine, correct, and punish, all offenders and transgressors in the said faculty, within the said city and precinct, shall commit any such offender to prison, (the Tower of London excepted), the warden or gaoler of such prison is to receive and keep such person or persons at the charges of such person or persons, till discharged by the President and such persons as by the said College shall be authorised; under penalty of double the fine (b) such offender be assessed to pay, so that the same fine do not exceed twenty pounds. By the fifth section, it is provided, that it shall be lawful for the

(a) See Cro. Car. 257.
(b) Such penalty has been recovered from the warden of the Fleet, Goodall’s Pre. 421.
wardens of the grocers (now apothecaries) company, or one of them, to go with the Physicians in their search and view of apothecaries wares; but if the wardens refuse or delay to come, the Physicians may proceed without them; and the penalty of resisting such search is raised to ten pounds; By the concluding section, all Justices, Mayors, Sheriffs, Bailiffs, Constables, and other ministers and officers, shall assist the execution of the said acts, upon pain of running in contempt of her majesty. (a)

By these acts of Parliament, the College of Physicians is regulated to the present day; we have before stated that several Charters, some for limited and some for general purposes, have been granted to the College. In 1520, Queen Elizabeth granted by letters patent the bodies of four malefactors who had been executed for felony, to be taken by the College every year for dissection. (b) Charles the second granted six more "provided they be afterwards " buried." Charter 15 Char. 2. Goodall's Coll. p. 62. This privilege we believe has not lately been claimed, though the present scarcity of bodies for the purposes of instruction would fully justify its revival: nor is there any doubt but that the judges in the exercise of their sound discretion might select some

(a) By Statute 10 Geo. 1. c. 20, the College was empowered to examine drugs within seven miles circuit, as well as within the City of London, to which the wording, though probably not the intention, of former acts had confined them; but this Statute, though continued by 13 G. 1. c. 27, has now expired; we shall in another place suggest the policy of reviving and extending its enactments.

(b) The punishment of dissection is now added by Act of Parliament to the execution for murder only, but this does not exclude the right of the Crown to the disposal of the bodies of all executed traitors and felons. The words of the grant of Elizabeth, are "quod jure publico " hujus regni furti hominidii vel cuiuscumque felonie condemnatum et mortuum " fuerit. Charter 7 Eliz. Goodall's Collection, p. 55.
of the more atrocious criminals as proper objects for this additional severity.

In 1562 King James, by letters patent, granted to the College, for the sum of six pounds a year, that moiety of the fines to be inflicted by them to which the crown was entitled according to the several acts which we have before cited. Charter 15 Ja. Goodall's Coll. p. 37.

We do not think it necessary to trouble the reader with the Statutes and Bye Law (a) which the College have made for their own internal Government, pursuant to the power which all Corporations have of making proper regulations to bind their own members, and according to the Statute 14 and 15 Hen. 8. by which they are specially authorised so to do; these Statutes have been printed, though not under the sanction of the College.

(a) For the power of Corporations to make reasonable Bye Laws, See Kyd on Corporations; how far they may bind Strangers. ib. 103. Couper, 269: they must not be in diminution of the King's prerogative, or to restrain suits in the King's Courts; 19 Hen. 7. c. 7. nor to extend to imprisonment or forfeiture of goods. Magna Charta. 2 Inst. 47, 54. Kyd, 156. But see also 5 Mod. 320; but they may inflict a penalty to be recovered by action or distress; 5 Co. 64. Kyd, 156. And this power to make Bye Laws, is incident to all Corporations, though it be not given by any special clause. Co. Lit. 264. Ld. Hob. 211. Carth 482. 3 Leon 39. A bye-law, giving a casting vote to the senior, if the charter requires a majority, is bad. King v. Gincever. 6 T. R. 732. As to the other points, respecting elections, see the King against the Mayor of Durham, in Lord Kenyon's Reports, by Hanmer, p. 112. And generally, 1 TR 118; 2 TR 2; 6 TR 732; 736; 7 TR 543; 8 TR 356; 1 H. Blackstone 570; 12 East 22; 3 East. 186; 3 Bos and Pull 434. A bye law must be reasonable, if not it is bad, 1 Salt 148: 11 Co. R. 55: Moore 412, 576: Ld. Kenyon by Hann. 500. As to the mode of making bye Laws Ld. Raym. 496: 2 P Wms 209: Comb. 269: 1 Str. 385, we have been particular in citing authorities on this subject, as it is a continual source of litigation with all Corporations: as respects the College of Physicians, we shall have occasion in another place to refer more particularly to the case of the King, (at the instance of Dr. Stanger) against the Coll. of Phys. T. R. 282, in which this power was very ably argued and determined.
OF THE POWERS OF THE COLLEGE.

One of the first and most material of the powers and privileges granted to the College by the Acts and Charter to which we have referred (and which the reader will find recited in the Appendix,) is that of recovering from all persons who practise physic in London and within seven miles circuit, without their Licence, or Admission, the sum of five pounds for every month during which they have so practised. This power has been most minutely investigated and determined in the case of Dr. Bonham. (a) Coke's Reports, 123, (see Appendix, p. 62,) which was an action of false imprisonment brought by Thomas Bonham, a Doctor of Physic, of the University of Cambridge, (b) against the then President, Censors and some servants of the College; the Defendants justified under the Statute, (14 and 15 H. 8.) setting forth; that the plaintiff practised physic in London, and within seven miles circuit, not being admitted, &c. that being examined he was found insufficient, and forbid to practise, (c) but notwithstanding such prohibition, he afterwards practised for a month or more, whereupon they amerced him five pounds, to be paid to them at their next assembly, &c. (d) and likewise

(a) The name of Thomas Bonham also occurs about the same period among the signatures of several Surgeons. See Goodall.

(b) A degree in either of the Universities is a good addition in pleading within the Statute of Additions. 1 Hen. 5. c. 5. See 2 Inst. 668. 1 Bl. Com. 405.

(c) This forbidding is not absolutely necessary, but ex abundanti cautela is expedient.

(d) This custom of amercing for unlicenced practice appears to have been very commonly adopted by the College: (see Goodall's Proceedings,) it was undoubtedly erroneous, but as it was less expensive to the parties so fined than a suit for five pounds a month, according to the Statute, of which the defendant must have paid the costs, it was very generally acquiesced in till 1622, when the above trial took place.
injoined him to forbear practising any more until he be found sufficient, &c. upon pain of imprisonment; that he continuing still to practise was further fined and ordered to be committed; that being questioned if he would submit to the College, he replied, that he had practised and would practise without leave of the College, and denied that by the Statute they had any authority over him, as having taken his degree of Doctor of Physic within the University regularly, and so thought himself protected by that Clause in the Act; whereupon the Censors ordered him to prison, which was executed accordingly, and for this imprisonment this action was brought. In this case, Mr. Justice Daniel, thought a Doctor of Physic of either University was not within the body of the act, but suppose him to be within the body, yet he was excepted by the last clause. But Mr. Justice Warburton held the contrary upon both points. (a) Chief Justice Coke, (for whose judgment, see Appendix, 26,) said nothing as to either of those points, because all three (who were all the judges present,) agreed, that this action was clearly maintainable for two other points; and they resolved,

1. That the Censors had no power to commit the Plaintiff for any of the causes mentioned in the Bar, because the said clause which gives power to the said Censors to fine and imprison, does not extend to

(a) And this has been determined by subsequent authorities, that the exception of Graduates of the two Universities of Oxford and Cambridge, in the concluding clause, applies to persons practising in all England, except the privileged district of the City of London, and seven miles circuit, which is in the peculiar and exclusive jurisdiction of the College of Physicians, in which no person whatsoever may practise under any pretence whatsoever except by their licence. See Coll. v. West. 10 Mod. p. 353.
the said clause, viz. *That none in the said City, &c. exercise the said faculty, &c.* which prohibits every one from practising Physic in London, &c. without licence of the President and College; but extends only to punish those who practise in London, *Pro delictis suis in non bene exequendo faciendo et utendo Facultate Medicinæ*, so that their power (of fine and imprisonment) is limited to the ill and not to the good use and practice. (*a*)

2. Admitting that the Censors had power, yet they have not pursued it. 1. Because the Censors alone have power to fine and imprison, whereas here the President and Censors imposed this fine of five pounds. 2. The plaintiff was summoned to appear before the President and Censors, and for not appearing was fined five pounds, whereas the President had no authority.

3. The fines imposed by them by virtue of this act belong to the king and not to them, (*c*) and yet the fine is limited to be paid to themselves, &c. and for nonpayment they have imprisoned him.

4. They ought to have committed the Plaintiff immediately, though no time be limited in this act.

5. Their proceedings ought not to be by parol, inasmuch as their authority is by patent and act of parliament, and especially it being to fine and imprison.

6. The Act giving a power to imprison until he be delivered by the President and Censors or their successors, shall be taken strictly, or otherwise the

(*b*) For the power of punishment for Mala Praxis, *Vide Post.*

(*c*) The King is *Creditor Pena*, and therefore all fines for offences belong to him. *Viner. tit action Qui Tam* (*A*) 10. The fines are however granted to the College by the Charter of *James*. *Vide Supra.*
liberty of the subject is at their pleasure. And this is well proved by a judgment in Parliament in the same 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, because they had authority to imprison without any Court; and thereupon the Statute 1 Mary, cap. 9, was made to compel the gaoler to receive them under a penalty, and yet none can commit to prison unless the gaoler receives him; but the 14 Hen. 8, was taken so literally that no necessary incident was implied.

And it being objected, the 1 Mar. Cap. 9. had enlarged the power of the Censors, as appeared by the words of the act; it was clearly resolved, that it does not enlarge their power to fine and imprison for any matter not within the 14th Hen. 8. the words of the act of Queen Mary, being "according to the tenor and meaning of the said act." And further, "shall commit any offender, &c. for his, &c. offence or "disobedience, contrary to any article or clause con-
tained in the said grant or act to any ward, gaol, &c." And in this case, it does not appear by the record, that the plaintiff has done any thing contrary to any article or clause within the grant or act of 14th Hen. 8. and for the two last points judgment was given for the plaintiff, Nullo contradicente as to them. Michss. Term. 6 James.

The Lord Chief Justice, Sir Edward Coke, in the conclusion of his argument, observes these seven rules for the better direction of the President and Commonalty of the said College for the future.

1. That none can be punished for practising Physic within London, but by forfeiture of five pounds a month, which is to be recovered by law.
2. If any practise Physic there for less time than a month that he shall forfeit nothing.

3. If any person, prohibited by the Statute, offend in non bene exequendo, &c. they may punish him according to the Statute within the month.

4. Those whom they commit to prison by the Statute ought to be committed immediately.

5. The fines which they assess according to the Statute belong to the king.

6. They cannot impose fine or imprisonment without making a record thereof.

7. The cause for which they impose a fine and imprisonment ought to be certain, for this is traversable. (a) For though they have Letters Patents and an Act of Parliament, yet inasmuch as the party grieved has no other remedy, neither by writ of error or otherwise, and they are not made judges, nor a court given to them, but have authority only to do it, the cause of their commitment is traversable in action of false imprisonment brought against them.

Chief Justice Holt, in delivering the opinion of the Court, said that notwithstanding the opinion in Dr. Bonham’s case, the charge of male administration of physic is not traversable, and that my Lord Coke’s opinion in that case was but Obiter, and no judicial opinion: besides that he seemed to have been under some transport, because Dr. Bonham was a graduate of Cambridge, his own mother university. And he himself after in the same case says, that if the Censors do convict a man for such offence, they ought to make a record of it; and that, they cannot do unless they are Judges of Record: and then we say their proceedings are untraversable, and they unpunishable

(a) But contra, see the opinion of Chief Justice Holt.
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for what they do as judges. 12 Mod. 388. Pasc. 12 Will. 3. in the case of Doctor Grenville against the College of Physicians.

That Graduates of the two Universities have no privilege to practise in London, and within seven miles circuit, (a) has been repeatedly decided; see Doctor Levis case, Lord Raymond's Rep. 472; The Coll. of Physicians against West 10, Modd 353 and Appx. That by Graduates is meant Graduates in Physic only. See College Questions. Appx.

The case of Doctor Bonham, (b) which we have been the more particular in citing as it contains much learning on the subject of our enquiries, and is reported by the first authority of his time, having shown that the College cannot fine or imprison for unlicenced practice, but must proceed by action in the ordinary Courts for the statutable penalty of five pounds a month, we must next show by what name the College ought to sue, for upon this point much difference of opinion and practice appears to have prevailed. In the case of The President and College of Physicians v. Talbois, exceptions were taken that the action should be by the President alone. But per curiam, "being a Corporation, it is natural for "them to sue by their name of creation." 1 Lord Raymond, p. 153. Hil. Term 8 & 9, Will. 3. See also The President and College of Physicians v. Salmon, B. R. Trin. Term 13 Will. 3. 1. Ld. Raym, p. 680; 5 Mod. 327; and this appears to be the best

(a) This must be strictly laid in the declaration, for in the case of the College against Bush, 4 Mod. 47, an exception was taken to the Declaration, "that the defendant practised Physic in Westminster," without stating that Westminster is within seven miles, &c. and the defendant had judgment. See also 12 Mod. 10.

(b) For the same case see also Brownlow, part 2. Merrett's Collect. p. 79.
rule. In the previous case of *The President of the College v. Tenant*. *Hill. Term.* 11 *James*, *Bulstrode's Rep. Part.* 2, p. 185, the action was brought by the President alone, on which the Judges were divided in opinion, Haughton Justice saying, “he may here well bring the action alone in his own name,” but the Declaration being bad in other respects, the rule of the Court was, *Quod querens nil capiat per Billam.* The Entry in *Rastal*, p. 426, is in favour of the doctrine that the President may sue alone, as is also the case of Doctor Laughton *v.* Gardner, 4 *Croke*, p. 121. *Trin. Term.* 4 *James*, and more especially the consequent case of Doctor Atkins *v.* Gardner, 2 *Croke*, 169 *Pasc* 5 *James*, where Dr. Laughton having brought an action of debt on the Statute, as President of the College obtained judgment *Nisi*, but dying before execution, his successor Doctor Atkins, brought a *scire facias* against the defendant to have execution, it was therefore demurred because the *scire facias* ought to be brought by the executor or administrator of him who recovered and not by his successor; but 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. *1 Rolle Abr.* 515.

The penalties are to be recovered by action of debt in *the President and College v. Salmon*; *I Ld. Raym.*, p. 680. (a) an exception was taken that the proceeding should be by information at the suit of

(a) See same case, 5 *Mol. 327*: 2 *Salk.* 451, and cases there cited.
the king, but the Court decided that where a certain penalty is given by a statute the person to whom, &c. shall have debt by construction of law. Another exception was taken in the same case, that the action ought not to be brought tamquam, no action being given to the king. Sed non allocatur. For per curiam, the precedents are the one way and the other. See Butler v the President Cro. Car. 256. and cases there cited. (b)

The words of the Statute of Henry being strongly prohibitory, none may practise physic under any authority, in London and within seven miles without licence of the College; in the College of Physicians, v. Bush. 4 Mod. p. 47. the defendant pleaded letters patents 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. Upon demurrer the plea was held ill. For a Charter or Letters Patent cannot vary an act of Parliament.

The next material point to be considered is, what is a practising of Physic within the meaning of the statutes; this would at first sight appear to be a very simple question, but the act of the 34th Hen. 8. which gives liberty to persons not being Surgeons, to administer outward medicines in certain cases, and drinks for the Stone, Strangury, and Ague, created some difficulties; it was pleaded in the case of Doctor

Butler against the President of the College, (Cro. Car. 256,) to which plea the President replied by showing the Statute of the 1 Mary, c. 9, which confirms the Charter and Statute of the 14th Hen. 8. and appoints that it shall be in force notwithstanding any Statute or Ordinance to the contrary; on this several questions arose; those which relate to the special pleading of the case we omit, but the interpretation of the Statutes is material; it was doubted first whether the 34th Hen. 8. did repeal any part of the 14th as to Physicians, or whether as the preamble recites, it was directed against Surgeons, and next whether if it were in any degree repealed, the Statute 1st Mary did not revive the 14th and repeal the 34th. "Rich-ardson, chief Justice, conceived it was repealed by "primo Mariae, by the general words, any act or "Statute to the contrary, of the act of decimo quarto "Henrici Octavi, notwithstanding. But I" (loquitur "Croke,")) conceived that the act of tricessimo quarto "Henrici Octavi, not mentioning the Statute of decimo "quarto Henrici Octavi, was for Physicians; but the "part of the act of tricessimo quarto Henrici octavi, "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 primo Mariae. But to this point, Jones and "Whitlock, would not deliver their opinions; but "admitting the Statute 34 Hen. 8. be in force, yet "they all resolved, the defendants, (a) plea was "naught, and not warranted by the Statute; "for he pleads, that he applied and ministered

* Doctor Butler was defendant, though first mentioned in this Report, the decision being in the King's Bench, on error of a judgment in the Common Pleas for the original cause. Coll. of Phys. v Butler, See Sir W. Jones, Rep. 261: Littl. R. 168, 212, 244, 349.
"medicines, plaisters, 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 shew that he ministered potions for the Stone, Strangulation 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 naught for this cause, and that judgment was well given against him; whereupon judgment was affirmed." This case is reported more fully in Brownlow, p. 126. See also Goodall, p. 221 to p. 259.

But though this statute 34 Hen. 8th gave a very considerable latitude to unlicensed practice, the decision of the House of Lords in the case of Rose has rendered it yet more difficult to determine what is a practising of Physic within the statute 14 Hen. 8th.

This case arose on an action in the King's Bench 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 Scale (a), then sick of a certain distemper, and he having seen him, and being informed of the said distemper, did without prescription or ad-

(a) The letter of John Scale, which induced the College to bring this action, was as follows. "May the 5th, 1704. These are to certify, that I, John Scale, being sick and applying myself to this Mr. Rose the Apothecary for his directions and medicines, in order for my cure; had his advice and medicines from him a year together: But was so far from being the better for them that I was in a worse condition than when he first undertook me; and after a very expensive bill of near £50. was forced to apply myself to the Dispensary at the College of Physicians where I received my cure in about six weeks time, for under forty shillings charge in medicines." See a Pamphlet published on this case, London 1704, and other works mentioned in Gough's Topography.
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vice of a Doctor and without any fee for advice, compound and send the said John Seale several parcels of physic as proper for his said distemper, only taking the price of his drugs; and if this were a practising of physic, such as is prohibited by the Statute was the question: and after several arguments the Court at last unanimously agreed, That practising of Physic within this statute consists, 1st, In judging of the disease and its nature, constitution of the patient, and many other circumstances. 2ndly, In judging of the fittest and properest remedy for the disease. And 3dly, In directing and ordering the application of the remedy to the diseased. And that the proper business of an Apothecary is to make and compound, or prepare the prescriptions of the doctor pursuant to his directions. It was also agreed, That the Defendant's taking upon himself to send physic to a patient as proper for his distemper without taking ought for his pains, is plainly a taking upon himself to judge of the disease and fitness of the remedy, as also the executive or directing part. Et per tot. Cur. The Plaintiff had judgment. 6 Mod. 44. 16 Vin. Abr. 341. Against this judgment the Defendant Rose brought a Writ of Error to the House of Lords, "That judgment having been given in the Queen's Bench against the now Plaintiff on a special verdict, he humbly hopes the same shall be reversed for these reasons:

"That the consequence of this judgment will entirely ruin the Plaintiff in his trade, and indeed all other Apothecaries, since they can’t (if this judgment be affirmed) use their professions without the prescript or licence of a Physician.

"That the constant use and practice (a) which has

(a) It does not appear to have been made out in evidence that the constant use and practice had been with the Apothecary, on the con-
always been with the Apothecary, shall as we humbly hope be judged the best expounder of this Charter: and that selling a few lozenges, or a small electuary, to any asking a remedy for a cold, or in other ordinary or common cases, or where the medicine has known and certain effects, may not be deemed unlawful, or practising as a Physician, when no fee is taken or demanded for the same."

That the Physicians by straining an Act made so long ago, may not be able to monopolize all manner of Physic solely to themselves; and the rather, for that such a construction will not only be the undoing of the Apothecaries, but also,

1. A tax on the Nobility and Gentry, who in the slightest cases, even for their servants, can’t then have any kind of medicines, without consulting and giving a fee to one of the College.

2. An oppression to the poorer families not able to go to the charge of a fee; the suppressing of the Apothecaries being to deprive such poor people and families of all manner of assistance in their necessities.

3. A certain prejudice to all sick persons on sudden accidents, and new symptoms arising, especially in acute diseases, and in the night, wherein if the contrary, they did not commence practice (except indeed the occasional sale of some simple lozenge or electuary which was never objected to) till after the great fire, when the known residences of the Physicians having been destroyed, their patients were unable to find them, and consequently resorted to the Apothecaries, whose open shops were a sufficient guide to those who needed medical assistance. It is probable also that some laxity arose during the preceding years in which the Plague raged in London, for in times of emergency it would be unreasonable to insist on restrictions which it might be impossible and inhuman to enforce. (Merrett’s Short view of Frauds & Abuses, A.D. 1699).
"Apothecary is called, and shall dare to apply the "least remedy, he runs the hazard of being ruined, "or the Patient the danger of being lost."
"For all which, and several other errors in the "Record, it is humbly prayed," &c. &c.

It must be observed that these reasons turn on the policy and not on the law of the question, and would have been better addressed to the House of Peers in their legislative, than in their judicial capacity; the hardship of depriving the Apothecaries of all practice, and the inexpediency of too strictly enforcing the statute of Henry 8th, might have justified an application to the Legislature for an alteration of the law, but they could not warrant even the highest tribunal in the land in departing from the law established by Act of Parliament, and gravely decided by the judges; we must therefore conclude that some better arguments were adduced on the hearing than have been handed down to us by the reporters; for if seeing the patient, judging of the complaint, and administering the proper remedies for it, be not a practising of Physic within the meaning of the statute, we must confess ourselves utterly at a loss to define the practice which is. It is a futile and unworthy subterfuge to allege that no fee is taken for advice, and that the sum charged is only the price of the drugs, for the contrary is evident; the poacher might as well pretend (as has been done) that he sells the basket at his own price, and throws the hare into the bargain, as a compliment to the purchaser,—or the vender of nostrums might attempt to avoid the stamp duty by selling the bottles and giving the physic. We are very far indeed from wishing to put unfair restraints on trade, or to deprive any class of men of the free exercise of
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their professional abilities, but as the Legislature has deemed it necessary to guard the corporeal health of the people, by enacting that only persons who on examination by a competent authority have been found of sufficient ability shall practise, we have thought it our duty to point out the law as it stands, and if in doing so we are occasionally obliged to hint at defects, we do it in the hope that by drawing abler attention to a neglected subject, we may incidentally give rise to some improvements, beneficial not only to the public at large, but ultimately profitable to those who, at the first glance might think themselves injuriously affected by them.

We have noticed that the reasons alleged by Writ of Error against the judgment of the Court of King's Bench in the case of The College of Physicians against Hose, do not appear to us to have been legally satisfactory, the judgment of the King's Bench (a) however was reversed, (see 1 Brown's Parl. Ca. 78. and Appendix, 126), and consequently the greater portion of the practice of Physic has been transferred to the Apothecaries. This was for some time a very serious evil; they who had been educated as mere compounders, suddenly became prescribers of medicine; it is easy to conceive how large a portion of ignorance and empiricism was thus let loose upon the public: the mischief has indeed gradually decreased, as many men of liberal education have entered the field thus enlarged for them, and the natural effect of competition has induced improvement; still something is wanting. In large towns and among the higher and middle classes of society, talent and me-

(a) The trial having taken place in the reign of Queen Anne we should have written Queen's Bench, but the title of the Court in common use is perhaps best adapted to general comprehension.
diocery soon find their proper levels; but at a dis-
tance in the country, ignorance and imposture may
erect their stages at least with impunity, and more
than probably with success; we have ourselves heard
most lamentable accounts of the mal-practice to which
the poor and ignorant have been subjected by low
country practitioners and their assistants; for the in-
terpretation of the law which let in the Apothecary
to unrestrained practice, could not exclude the ap-
prentice, and we therefore find the shop-boy in cases
of emergency visiting and prescribing for his master’s
poorer patients.

For these, among other reasons, the Apothecaries’
Company have obtained an Act of Parliament to alter
and enlarge the powers of their Charter. “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 ut-
“ terly 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, &c.” This passage, from a
Statute solicited by the Apothecaries themselves, will
exonerate us from any imputation of illiberal remark;
we sincerely hope that the Act will produce the in-
tended benefit, though when we have occasion to
treat of it more at large under the head of the Apo-
theearies Company, we may have occasion to point
out some particulars in which we think it might be
amended.

We have thus cited the leading cases on unlicensed
practice, and the authorities which we have quoted
will enable the medical reader desirous of better in-
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formation, to pursue the enquiry to the fountain head. "Melius est petere fontes quam sectare rivulos."

The next branch of the jurisdiction of the College is yet more important, as it extends to the control and punishment of Mala Praxis (a), whether by persons licensed or unlicensed. On this head the leading case is that of Groenvelt and Burwell (b), (1 Comyns 76: 1 Salk 396; see Appendix). A complaint having been made to the College of Physicians, informing them that Dr. Groenvelt had administered Cantharides in powder, he was summoned before the Censors and by them committed for *mala Praxis*; for this imprisonment he brought his action in the King’s Bench, Trin. 12 Will. 3. from which it appears that "The Censors of the College of Physicians in London are impowered to inspect, govern, and censure all Practisers of Physic in Civitate London’ and seven miles round, so as to punish by fine, amerciament, and imprisonment. Per Holt Ch. J. 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, and being judges of the matter, what they have adjudged is not traversable."

In *mala Praxis* it matters not whether the party offending be a member of the College, a Licenciate, or an unlicensed Practitioner, for the Statute gives jurisdiction over all Physicians whatsoever, "habcant supervisum et scrutinium, correctionem et gubernare-

(a) It has been solemnly resolved, that *Mala Praxis* is a great misdemeanor and offence at common law. 3 Bl. Com. 122: 1 Lord Raym. 214.; an act of grace will include *Mala Praxis*; for the remedy of the injured party by Action on the Case, *vide post.*

(b) See also 1 Lord Raym 454. same Case: *Garth* 421. 491: *Salk* 144. 200. 263.
“tionem omnium et singulorum dictae civitatis medicorum utentium facultatem Medicinæ in eadem civitate ac aliorum medicorum forensicorum quorumcunque facultatem illam medicinis aliquo modo frequentatium et utentium infra eandem civitatem et suburbia ejusdem sive infra septem miliaria in circuitu ejusdem civitatis,” and Ch. J. Holt says, “Though a person be not one of the College, yet if he practise Physic within their jurisdiction, he ought to subject himself to the law as well as any other.” 12 Mod 393. And for those who are not Physicians but have assumed the character, they must take it cum onere, and will be estopped from pleading the illegality of their practice when punished for the irregularity of their prescriptions: it is to be wished however that the words of the Charter were more explicit in this particular.

Nor are the Censors liable to any action for error in judgment, for “though the Pills and Medicines were really Salubres Pilulæ et bona Medicamenta, yet 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 peril of being arraigned by action or indictment for every judgment he pronounces.” (1 Salk, 397).

“Holt Ch. J. said, it seemed to him that the Censors may tender an oath as a necessary consequence of their judicial power; but said he would give no positive opinion.” Dr. Grenville v Coll. of Phys. 12 Mod. 392. 16 Vin. Ab. 345. the general rule is, that where a statute confers a power, the law
supplies all necessary incidents required for its execution.

By the 10th Geo. 1. cap. 20. s. 7. Where any person is condemned by the Censors for not well executing, practising, or using the faculty of Physic, he may within fourteen days after notice appeal to the College, and the judgment given on such appeal shall be final. Sect. 3. of the same act gives a similar right of appeal to Apothecaries. But this Act, as we have before observed, has expired; should its enactments ever be revived, this right of appeal should not be omitted, for it is expedient that some control should be exercised over all summary jurisdictions. To the policy of the 3d and 6th sections we cannot so readily give our assent; the one exempts drugs in merchants warehouses from search, and the other enacts that Patentees for the sole making any medicine shall not be prejudiced thereby. By the first of these the Censors are excluded from some known manufactories of factitious drugs, and an important security is taken away from our export trade, for it is evident that foreigners would more readily buy the drugs which have passed through our hands, if they were assured that their quality had been subjected to strict and competent scrutiny. To Patent Medicines we may be allowed to avow our most decided hostility, and as it is notorious that the greater part of them are not made up according to their specifications, we may without charge of illiberal prejudice claim for the public some security that the preparations which they buy as "mild vegetable extracts," may not be clandestinely poisoned with Antimony, Mercury, and Arsenic. It may be said that the public have a remedy by the forfeiture of the Patent consequent on the falsehood of the specification, but this can only
be effected by an expensive process to which the mere purchaser of a phial of trash may not choose to subject himself, even if he have skill enough to detect the fraud practised upon him. (a)

We have thus shown by repeated precedents that none can legally practise Physic in London, or within seven miles circuit of the city, who are not either Fellows or Licenciates of the College, nor can any, except Graduates in Physic of Oxford and Cambridge, lawfully practise in the country, without a similar license; yet, as the Act of Parliament has annexed no specific penalty to the transgression, the only remedy in such case is by indictment for a misdemeanor: for where there is no punishment attached by statute to the violation of a prohibitory clause in an Act of Parliament, this indictment lies. (See 4 Term Rep. 202.)

Unfortunately the history of the College litigations does not cease with their proceedings against unlicensed practitioners; they have also had to contend, on the defensive, with their own Licenciates, who have claimed a full participation in the rights and privileges of the Fellows: (b) we hope most earnestly that the question is now at rest, and that the cases we are about to cite may serve as beacons to

(a) But query, as this protecting section has expired, are Patent Medicines now exempted from the examination of the Censors?

(b) Modes of election, unless specially pointed out by Statute or Charter, must depend on Bye-laws and usage. See the King and the Vice-Chancellor of Cambridge, ubi supra, and many other cases of Corporations. The Power of amotion or expulsion is also incident to most Corporate Bodies. See Rex v. the Mayor, Burgesses and Common Council of Liverpool, 2 Burr. R. 734: Rex v. Richardson, 1 Burr. R. 517. We do not find that the College has ever been compelled to execute this painful duty.
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avoid passed errors, not as precedents for future proceedings.

"It would require a volume," says Sir James Burrows, vol. 4. p. 2186, "to give a full and particular detail of this long contest between the Fellows and the Licenciates; which was litigated with great spirit and eagerness between several very learned and respectable gentlemen of the faculty on both sides. It must not therefore be attempted within the compass of a collection, already perhaps too faulty in this respect (a), as being in many instances more minute and circumstantial than may appear absolutely necessary, or at all agreeable to some readers."

"The substance of it ought not however to be omitted, which was as follows."

"A rule had been obtained upon the application of Doctor 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 on the President and Censors of the said College."

(a) We adopt the apology of the learned reporter both in words and substance; for we are well aware that many of our readers must be heartily tired of this long detail of litigations, which, as we hope, are not again to be required as precedents; yet we have deemed it necessary to give this account of the powers and privileges of those Corporate Bodies, to whom we must at least look for the elucidation of the medical branches of jurisprudence, and from whom we might expect the best execution of the laws respecting the public health, should they ever be in this, as they have been in most other countries, reduced to a regular system of Medical Police.
Mr. Yorke against the Rule, Sir Fletcher Norton for it.'"

'The short state of the material facts, with respect to this mandamus, was, that Doctor Letch, who practised as a Man-Midwife, was summoned by the College to be examined. He thereupon came in, and was examined thrice at the comitia minora: And after the third of these examinations, he was there balloted for 'Whether he should be approved of by them or not.' A dispute arose upon this ballot. 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 over again, but the President declared this to be an approbation by a majority of votes on the ballot. On Doctor Letch 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.'

'His Counsel insisted that having been returned sufficient by the comitia minora, he had already

(b) It is said that the College have determined not to interfere for the future with the licensing of Midwives; the policy of this resolution is very questionable, for the examination and licensing of persons in all branches of medicine is a public duty imposed upon them, which they are not at liberty to abandon or execute at their pleasure. It may be urged that this branch is rather Surgery than Physic; but as the College have once assumed the jurisdiction, it is doubtful whether they ought to relinquish it. The Surgeons might also disavow their obstetric brethren, and then the matter must revert, as of old, to the Bishops, who cannot be supposed to be the most competent judges of the necessary qualifications. Archbishop Abbot, a very conscientious divine, on a somewhat similar occasion, said 'he knew not well how children were made,' and begged time to inform himself on the subject.
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"acquired an inchoate right to admission, which the "Court would enforce the completion of, by man-
"damus."(a) For the argument and authorities vide Rex v. Askew ubi supra and Appendix.

"Lord Mansfield in his judgment laid down the "following among other rules:"

"The Court (i.e. of King's Bench) has jurisdic-
tion over Corporate Bodies to see that they act "agreeably to the end of their institution."

"Where a party who has a right has no other spe-
cific legal remedy, the Court will assist him by "issuing this prerogative writ (i.e. mandamus) in "order to his obtaining such right."

"But it is not a writ that is to issue of course, or "to be granted merely for asking."

"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."

"The judgment and discretion in determining on "skill, learning, and sufficiency to practise physic, is "trusted to the College, and the Court will not in-
terrupt 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 biased; "much less warped by resentment or personal dis-
like."

"It is possible that other causes of rejection than "insufficiency of skill may occur, as badness of morals, "for instance; of these the Court will judge."

"If they should refuse to examine the candidate at "all, the Court will oblige them to do it."

(a) A writ of certiorari will also be granted on occasion directed to the College. 2 Hawk. 406.
"The power (of admission) remains with the body; and the examination by the President and four Censors is only preparatory, and for the ease of the body at large."

"Every Fellow may examine and argue with the candidate in the comitia minora though he has no vote there."

"The delegation to the comitia minora to examine is good."

"Mr. Justice Aston followed Mr. Justice Yates in saying that Doctor Letch should rather have applied for a mandamus requiring the College to grant him a license to practise within London and seven miles of it, than for a mandamus to admit him as a member."

"The comitia majora acted with great moderation in admitting him to another examination."

"Mr. Justice Hewit declined giving any opinion (on a point started in argument) whether London Licenciates are members of the College or not; though he hinted, that the more he thought of it, the more he doubted it." 

"We should go a great way if we should say 'a Licenciate to practise within London and seven miles round is a member of the College'."

The Rule was accordingly discharged by the unanimous opinion of the Court.

But the matter did not rest here; the notion that the Licenciates were entitled to be considered as Members of the College, under the term Commonalty or otherwise, gained ground; and accordingly two terms after the original argument and judgment, Sir Fletcher Norton (afterwards Lord Eardly) moved
for a Rule upon Dr. Askew and others (the four then Censors), for them to shew cause why an information in nature of a quo warranto should not be granted against them, to shew by what authority they acted as Censors of the College of Physicians.

The objection was, that whereas the election ought to be by the whole body, these gentlemen had been elected only by a select body; namely by the Fellows, exclusive of the Licentiates, who demanded admittance; which was refused them by the Fellows, on pretence of their having no business there, upon that occasion.

After an argument on three several days, during which Sir Fletcher Norton, Mr. Morton, Mr. Wedderburn (afterwards Lord Roslyn,) (a) Serjeant Glynn, Mr. Walker, and Mr. Mansfield (afterwards Chief Justice of the Common Pleas), were heard for the Licentiates, and Mr. Yorke (afterwards Lord Chancellor), Mr. Dunning (afterwards Lord Ashburnham), Serjeant Davy, Mr. Ashurst (afterwards a Judge), and Mr. Wallace for the College, Lord Mansfield delivered his opinion. (b) "The question now before us is singly this, Whether the persons applying for the 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, then this election stands unimpeached."

(a) The unprofessional reader will infer from the rank of the Counsel the importance which was attached to the case; and from their proved ability, that its merits were fully before the Court.

(b) For which, at greater length, as also for the arguments of the other Judges, see 4 Burr. 2195.
The question is, "Whether these Licentiates are Socii, or Collegae, or Fellows," which are synonymous terms.

The facts are not disputed: and there is no doubt about the law. It has been admitted on both sides that there has been a great number of by-laws and long-usages; 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 power of examining, and admitting after examination, was not an arbitrary power, but a power coupled with a trust. They are bound to admit every person whom upon examination they think to be 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. (a) They have power not only by their charter, but by the law of the land, to make fit and reasonable by-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 Presi-

(a) A Fellowship is not in itself an office. Carth. 478.
dent was to overlook *not only* the College, but also "omnes homines ejusdem facultatis." So when the College or Corporation were to make by-laws, these by-laws were to relate *not only* to the Fellows, but to *all others* practising physic within London or seven miles of it.

Then let us see how the usage was.

In 1555 they must have had a probationary license before admission into the College. Afterwards it was to be a probation for four years before admission. The College might grant such probationary licenses, with some reason, and agreeably to their Institution. This shews that some licenses were granted to persons not Fellows of the College. The 3 H. 8 takes away all former privileges. *(a)* In 1561, a *partial* license was granted to an occulist. A person may be fit to practise in one branch who is *not* fit to practise in another. Licenses have also been granted to *women.* *(b)* *Partial* licenses have been given for above 200 years. *(c)* In 1581 notice is taken of three classes: Fellows, Candidates, and Licentiates. The licenses probably took their rise from that illegal by-law (now at an end) which restrained the number of Fellows to twenty.

This being premised, let us inquire "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 license is given to

*(a)* Query of the Pope and Archbishop of Canterbury *inter alia? Vide ante.*

*(b)* And in midwifery it is desirable that the practice may be revived.

*(c)* A limited license had been granted to one Shephard to practise upon Madmen, but with a proviso that a physician should also be called. Being summoned to answer a breach of this limitation, he appeared and submitted to the College censure. *Goodall 466*. 
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them and received by them. They cannot avail themselves of their instruments in this way: it would be a cheat upon the College. And they have acquiesced many years under this license given them by the College, as merely a license to practise.

But even supposing them to have a right to be Fellows, yet, as it is clear that the license 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."

His Lordship (but this was *obiter*) then made some comment on the statutes and by-laws of the College; and recommended their revisal under the best advice, saying, "I see a source of great dispute and litigation in them as they now stand." *(a)*

Mr. Justice Yates concurred with the Chief, as did Mr. Justice Aston on some points; but upon the construction of the Charter and Act of Parliament, he thought that in grants of this kind, the construction ought to be made in a liberal manner; and this grant includes "Omnes homines ejusdem facultatis de et in civitate prædictâ," and the application to Parliament for the Act of 14 and 15 H. 8. 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." It seemed to him that the idea was "that all persons duly qualified, who took testimonials under the College seal, were

*(a)* This prophesy, like many others, was the cause of its own fulfilment, as will be seen in the sequel. Lord Kenyon in Doctor Stanger's case took occasion to lament that it had been made.

D
to be of the community.” He should, however, give
no opinion, he said, how it might turn out upon a
mandamus.

Mr. Justice Willes, confining himself to the subject
in question, concluded, “they cannot before their ad-
mission maintain this rule.”

Lord Mansfield and Mr. Justice Yates said they
gave no opinion how it might be upon a mandamus.

The Court were unanimous in discharging the
rule.

The hint thrown out by three of the Judges was
followed up by the Licenciates. On Thursday, 17th
Nov. 1768, Sir F. Norton and Mr. Norton moved the
Court on behalf of Doctor Edward Archer, and Mr.
Walker on behalf of Dr. Fothergill, for writs of man-
damus, to oblige the College to admit these two Li-
cenciates, with an intention to try the question
“whether the Licenciates had a right to be admitted
Fellows;” and that litigation lasted till June 1771.
But they only came round to the same point which
had been already determined, as above; for these
two gentlemen had accepted licenses under the by-
law of 1737, and the Court were of opinion “that
“they ought not afterwards to desert it, and treat it
“as null and void; and set up a right of admission
“under the Charter, upon the foundation of this very
“license which they had accepted under the by-law,
“upon the supposition that the by-law was a bad one.”
So that the return was allowed, upon that objection
to their claim. And the intended question remained
unsettled. See 5 Burr. 2740, where also will be
found the form of the mandamus and the return. (a)

(a) At the conclusion of all these arguments Lord Mansfield was at
great pains to impress upon the College the propriety of enlarging their
rules for admission; some alterations consequently were made; but it
The last case on this subject is that of Doctor Stanger. (7 Term Rep. 282, which as the most recent decision, and for the luminous judgment of Lord Kenyon, we have inserted in the appendix.) This, like the cases in Burrows, was argued by the most celebrated lawyers of the day, Mr. Serjeant Adair, Mr. Law, (afterward Lord Ellenborough) Mr. Chambre, (afterward a Judge) Mr. Christian, (now Chief Justice of Ely) having argued in support of the rule; and Mr. Erskine, (afterward Chancellor) Mr. Gibbs, (Chief Justice C. P.) Mr. Dampier, (a Judge) and Mr. Warren, (now Chief Justice of Chester) against it. The rule for a mandamus was discharged; (a) it may therefore now be considered as a resolved point of law, that a Doctor of Physic, who has been licensed by the College of Physicians to practise physic in London and within seven miles, cannot claim as a matter of right to be examined in order to his being admitted a Fellow of the College. The College, who have power by their Charter (confirmed by Act of Parliament) to make by-laws, have made by-laws respecting the qualifications of persons to be admitted; by them it is ordained that no person shall be admitted into the class of candidates before admission into the College, unless he has taken a degree of M. D. at Oxford, Cambridge, or Dublin, except in two cases: in one of those cases the President may propose in every other year a Doctor of Physic of a certain standing, and if he be approved by the Col-

(a) For some controversial observations on this case see Doctor Well's letter to Lord Kenyon in his published works.
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Of the College of Physicians. he may be admitted a Fellow; in the other, any Fellow may propose a Doctor of Physic of a certain age and standing, and if approved at certain meetings he may be admitted a Fellow. And it was ruled that these were reasonable by-laws.

The following may now be considered as the legal classes of Physicians. 1st. The actual members of the College of Physicians, divided into their several denominations of President, Elects, and Fellows.

2d. Those who, being graduates of the universities of Oxford and Cambridge, are licensed to practise by the College in London and within seven miles during their respective periods of probation, previous to becoming Fellows; these are Candidates who, being Doctors of Physic, have undergone their examination for the Fellowship, and at the end of one year are capable of becoming members or Fellows of the College; and inceptor Candidates, (a) who being Bachelors of Physic aspire to the Fellowship.

(a) This class was very properly introduced to place the bachelors of Oxford and Cambridge on an equal footing, in certain respects, with the doctors of foreign universities. At Edinburgh a doctor's degree may be attained in three years, while in England the bachelor's degree requires five, and the Doctor's twelve years standing.

We have purposely avoided any discussion on the subject of the Pharmacopoeias which have from time to time been published by the authority of the College; the propriety of forming one standard for medical preparations cannot be doubted, and it is equally indisputable that the College have, both by Charter and acts of Parliament, full power to enforce their regulations; in order to give greater publicity to which, His late Majesty in Council was pleased to issue a Royal Proclamation (for which see Appendix) commanding all persons to observe and obey the directions contained in the Pharmacopoeia Londinensis of 1819. Technical objections from time to time have been raised against some of the directions of this work; as it would not fall within our limits or intention to canvass these questions, we shall content ourselves for the present with hinting that an extension rather than a diminution of this power is to be wished, and that the three kingdoms should be united in one general form of medical practice.
3d. The medical graduates of our two Universities.

4th. The Licenciates who are admitted by the College to practise in London and within seven miles, and the extra Licenciates who are admitted to practise in the country but not within the privileged district of the College.

These are the laws respecting Physicians as a body Corporate; we have not added their Statutes as they are separately printed, although they have never been published by the authority of the College. It now remains for us to notice their rights as individuals, the exemptions to which they are entitled, and the actions to which they are liable. (a)

(a) Vide Post. p. 72.