

THE
CASE
OF
DANIEL M'SWEENEY,
(LATE OF TRINITY COLLEGE;)
AND THE
RIGHTS
OF THE
INDEPENDENT MEMBERS
OF
THE UNIVERSITY
VINDICATED:
BEING
AN ATTEMPT TO PROVE THAT A RIGHT OF APPEAL TO THE
VISITORS, FROM THE DECISIONS OF THE BOARD, IS
CLEARLY AND UNEQUIVOCALLY PROVIDED
FOR EVERY STUDENT,
BY THE
Statutes of the College.

"Hic murus aheneus esto,
"Nil conscire sibi, nullâ pallescere culpâ."—HOR.
"—tua res agitur, paries cum proximus ardet."—*Ibid.*

DUBLIN:

PRINTED FOR THE AUTHOR,
BY ANDREW P. CLARK, 151, CAPEL-STREET.

1819.

Houses of the Oireachtas

THE
CASE

OF
JAMES MURPHY

(IN THE COURT OF COMMONS)

AND

RIGHTS

OF THE

MEMBERS

OF

THE UNIVERSITY

OF DUBLIN

IN AN ATTEMPT TO PROVE THAT A BILL OF APPEAL TO THE
HOUSE OF COMMONS FROM THE DECISION OF THE BOARD IS
A RIGHT AND UNQUESTIONABLE PROVIDED

FOR EVERY STUDENT

BY THE

MEMBERS OF THE HOUSE

OF COMMONS

AND

THE HOUSE OF COMMONS

IN THE HOUSE OF COMMONS

1841

TO
THE INDEPENDENT MEMBERS
OF THE
UNIVERSITY
OF
Dublin,

THE FOLLOWING PAMPHLET

IS MOST RESPECTFULLY

INSCRIBED,

BY

THEIR MOST OBEDIENT

AND

HUMBLE SERVANT,

THE AUTHOR.

32, William-street,
26th June, 1819.

Houses of the Oireachtas

THE
CASE
OF
DANIEL M'SWEENY,
&c. &c.

AN eminent writer has affirmed, that public opinion, called into action by the operation of a Free Press, would be sufficient to restrain the most despotic Government. If the late decision of the Vice-Chancellor of the University of Dublin, respecting the rights of its "independent members," be correct, the Board of that College, is subject to no other restraint. For the *Statutes* they may substitute *their own will*—for the judicial forms of the *British Constitution*, those of the *Spanish Inquisition*. Intrusted with the destinies of the youth of the Nation, there is no bond upon them to be just. They may blast a young man's hopes, ruin his reputation, and destroy his prospects; and in so doing they may consult *justice*, or *whim*—their *passions* or their *reason*. They may be malicious—they may be in error; and if they chuse to be obstinate, their victim has no remedy. They are answerable at no tribunal—they are bound by no obligation—their power is supreme—their decisions are final.

If the declaration of this extraordinary power was calculated to create alarm, the principles on which it was affected to be founded, excited no less astonishment. The

doctrine that the situation of Fellow-Commoners, Pensioners and Sizars, in the University, is the same as that of boarders at an ordinary School, and that their relation to the Board of College, is the same as that of boarders to their school-master, is certainly novel. People in general, I believe, had been weak enough to consider the University, a Public Institution, governed by fixed laws, with funds destined to a particular object, and not convertible, at the will of its Directors, to any other purpose. The Charter of its foundation had led them into the error of supposing the College founded* “for the benefit of the Youth of Ireland;” and the provision for the Provost and Fellows only a secondary object, or, in fact, no object, but an arrangement necessary to the grand and only object—the education and instruction of Irish Students. From this supposed object in founding the College, they inferred that every native of Ireland had a *right* to his education there, unless he forfeited that right in some way expressed in its laws.—They knew that any individual might establish a School—that he might regulate it in whatever manner he may think most conducive to his own *private* emolument: that he might limit the number of his pupils; retain them only as long as he pleased, and dismiss them at pleasure. But the University of Dublin they considered a *perpetual*† School—its Statutes, the *perpetual Head-Master*—the Provost and Fellows, only as Assistants, or Ushers; certainly, having no manner of *proprietaryship*, and possessing no authority but what they derived from their Head-Master, the Statutes: which Statutes (or Head-Master) being dead letter, require, and have, appointed interpreters—the Visitors. The discipline of a private School, they knew to

* “Pro eâ curâ, quam de Juventute Regni Nostri Hiberniæ piè et liberaliter instituendâ singularem habemus,” &c. “ac probenevolentia quâ studia studiososque prosequimur.” Char. Elizab. 2.

† “Perpetuis futuris temporibus duraturum.” Char. Elizab. 2.

be maintained by the discretion of its Master, restricted in no way but by a regard to his own interest: but the discipline of a College, they conceived to be regulated by known Laws, mild and equitable, and they accordingly gave its punishments and its censures the support of their sanction. They saw the pupil of a private School, though perhaps justly removed, under the severest displeasure of his Master, admitted into another School; but the unhappy individual removed or expelled from *one* University, they saw excluded from *every other*, and covered with ignominy, without an inquiry into the merits of his case, or the nature of his offence. The existence of written laws forbade the supposition of error or injustice; the nature of the establishment, whose leading characteristic is benevolence to youth, forbade the supposition of severity; and the appointment of one of the Royal Dukes, as Chancellor, or Chief Visitor, and of the first characters in the kingdom as acting Visitors, completely discountenanced any suspicion of an unredressed grievance; and *all together* formed a body of presumptive evidence, which without any examination, beyond the fact of his punishment, established the *certainty* and the *enormity* of the sufferer's guilt.

It remained for the learned Chief Justice of the King's Bench (the present Vice-Chancellor,) to correct these vulgar errors; to tell the Public, that the supposed distinction between the College and an ordinary school, was erroneous; that in the College no absolute provision was made for the education of any but corporate members, and that the others, namely, the independent members, the Fellow Commoners, Pensioners, and Sizars, were admitted on mere courtesy, on the terms of boarders of a school, and might be treated with as little ceremony.* In effect—that Queen

* His Lordship, it will be seen, was inconsistent at the outset, for after the avowal of this doctrine, he listened to a discussion whose object was to prove that an independent member had a right to appeal to the Visitors;

Elizabeth, in founding the College, did not intend to *secure* the *right* and the *means* of education to “all the youth of Ireland;” that her only object was to make a splendid provision for “a Provost and three Fellows,”† whose whole *duty* should be to teach “three Scholars;‡ which Scholars were to be supported and paid for being taught. That the Fellows were to be considered as absolute Masters, not bound to the performance of any duties, but to teach those who were paid for submitting to their instruction; that their admitting other Students was an *act of grace*, and *entirely voluntary*, and that thence naturally arose a right to remove them whenever they pleased.

It will be recollected, that the question arose¶ out of an appeal from a sentence of expulsion, attempted to be made to the Visitors, by an independent member. His Lordship, Chief Justice Downes, appeared to be confirmed in those sentiments; but, upon hearing the able and learned arguments of the Member, the Right Hon. William Conyngham Plunket, (who, as a watchful guardian of the interests of the College, was present, and generously volunteered his support of the affirmative of the question,) and, being further pressed by the apposite and weighty observations of two other gentlemen, Rev. Messrs. O’Sullivan and Wall, he adjourned for three days to consider: and in giving his decision (confirming to the Board the authority which he had before, in his *opinion*,

and adjourned for three days to consider the arguments. To be consistent, he should have required the Appellant first to shew, if it was a thing not already admitted, that he had possessed some right (as a right to his education,) of which he was deprived; and next, that the mode of redress provided for him was an appeal to the Visitors. The former should have been fully established before the possibility of the latter could be entertained.—It would be ridiculous to suppose that a school-boy could *compel* his Master, after expelling, to re-admit him. From this inconsistency we may be permitted to hope that his Lordship was mistaken.

† Now twenty-five.

‡ Now seventy.

¶ At the visitation, last October,

supposed them to possess,) expressed an assurance, that “the Board, from a conviction that there was no appeal from its decision, had been the more lenient and circumspect in the exercise of its power.”

As the best illustration of the danger of the principles upon which that power is founded—as the best comment on his Lordship’s assurance “that the Board may be safely intrusted with it;” and, in fine, to put to the test of Public opinion, an instance of the “*circumspect and lenient*” exercise of that power, the Case, *then* in vain sought to be brought before the Visitors, is submitted to the Public. I submit it with an humble hope of obtaining the indulgent attention of the Public, while, in my own, I advocate the cause of *every Student* of the University.

On the evening of Sunday, the 12th of October, 1817, I went, by invitation, to a supper-party at the chambers of Mr. Finn, then a Scholar and Graduate of the University; where I met, contrary to my expectations,* a Mr. —, also a Student of the College. A short time before twelve o’clock, the Rev. Mr. Flynn, Master of the Feinaiglian Day-school, who was also one of the party, rose up to retire;—Mr. Finn and I accompanied him as far as the outer gate. Immediately on my leaving the room, and while I was yet within hearing, Mr. — expressed himself of me in most offensive language.† I proceeded, and returning with Mr. Finn, the first thing that attracted my notice was the state

* Mr. Finn told me that he had, as a mere matter of form, invited Mr. —, but from the terms on which they stood, under circumstances with which I was acquainted, he expressed his conviction that the invitation would be declined.

† It may be inquired why I returned?—My surtout was in the room, and Mr. — and I being Lecturers of the Feinaiglian Institution, I had been long before aware of his hostility to me, and did not intend to notice his expressions, or to seem to have heard them.

of the table which I had just left,* the decanters, tumblers, &c. broken. I made some observation, without intending any allusion to any person, and was immediately attacked, with the greatest severity of language, by Mr. —. To this I was preparing to reply, but was interrupted by his throwing his tumbler of punch in my face, and immediately after, his tumbler, which cut me over the right eye. Irritated by this outrage, I seized a tumbler which stood before me, and flung it at him, but he being prepared for it, evaded it, and, leaning over Mr. Upton, who stood between us, struck me twice, on the forehead, and on the nose, with his knuckles. I then seized the shank of a broken tumbler, which lay amongst the broken glass on the table, but Mr. Upton interposed, and held me by the arms—another held Mr. —: while in this state, the tumult subsided. On Mr. Upton separating from me, I perceived him cut and bleeding. Being unconscious of having inflicted the cut myself, I attributed it to a blow aimed at me by Mr. —, and accidentally received by Mr. Upton; but on Mr. Upton's afterwards saying, that in winding my arms in the struggle, I cut him, and recollecting that I had the broken tumbler in my hand, I admitted the possibility of it.

Such, briefly, are the circumstances of the occurrence in College, which terminated in my expulsion. Such is the statement which I made at the Board, and which, attested upon oath (before Alderman Abbott, of St. Andrew-street,) I submitted to Lord Chief Justice Downes, the Vice-Chancellor of the College. For the confirmation of its truth, I rely on evidence independent of my own testimony. How, such being the facts, the Board could have decided as they have, will be seen in the sequel.

Considering myself a much injured person; having nothing to regret in my conduct on the occasion, but the

* I have since learned that the table was thrown down by Mr. Ryan and Mr. —. This probably was the reason of his anger at its being remarked.

accidental infliction of a wound on Mr. Upton, (if I indeed were really the inflicter of it, for I was, and am still unconscious of having inflicted it,) I called on the Dean of College, in the evening of Monday, (the state of my face not allowing me to go out in the day-time) to bring my complaint before the Board. The Dean told me, "that, an application having been made to him for the keys, for the admission of Surgeons, to dress Mr. Upton's and my wounds, an explanation had arisen out of the circumstance, and that the Board had notice of it, and would hold an investigation on the following day, (Tuesday) at eleven o'clock. That nobody else had made any complaint."

On Tuesday morning, I came early into College, to breakfast with the Rev. Mr. Wall, Scholar, and in passing through the courts met Mr. Finn, who invited me into his chambers. Having expressed an apprehension of being deprived of his chambers, he requested, as a precautionary measure, "that I would not mention, at the Board, the intoxicated state of some of the party." To this I replied, that, "as it did not concern me, I would not complain of it, but that, if I were questioned, I should tell the truth." He then said, that "as he could not give clear evidence, respecting the origin of the affray, he thought it better for him to say at the Board, that he was out of the room, when it occurred." I told him that "the truth was the best, and by all means to adhere to that." In fact, I was astonished at his intention. The Dean (the late Rev. Dr. Mooney) had told me, that "though all would be examined on their words, the obligation of the Scholar's oath, would extend to the evidence of such as were Scholars."

Having communicated, at breakfast, this * conversation to my friend Mr. Wall, he desired me "to make myself quite

* This conversation with Mr. Finn, also is contained in the sworn Statement before Chief Justice Downes.

easy on the subject," as, if Mr. Finn deviated, he would detect him; for that he (Mr. F.) had told him the whole transaction early on Monday morning, when his account of it was unbiassed by the necessity of regulating his evidence for the Board, (as he did not then know that an investigation would take place.) That his (Mr. F's) account of it then was, "*that Mr. — had, in the course of the night, made use of language injurious to my feelings, and evinced a disposition to quarrel, which he (Mr. Finn) endeavoured to repress, by making signs; and, at one time, by the open reproof of telling him, that his chambers were no place to introduce any thing unpleasant: that, notwithstanding, it had terminated disagreeably, and that Mr. —, he was apprehensive, would be expelled."

I thought, indeed, from the partiality of the witnesses to Mr. —, that an effort would be made to rescue him from the punishment he deserved: but I thought that that effort, however well-contrived, must be fruitless. The evidence of his violence, on my face, was not to be confuted, and they could ascribe to me no provocation to justify it. I had given him none. They could not say I struck him. He had no mark on his person.

I did not imagine that any criminality would be imputed to me, with respect to Mr. Upton. If I could have supposed it, I would have been satisfied that its inconsistency would be a sufficient refutation. Mr. Upton and I had no quarrel; no dispute; not an angry word between us. If he had been well, and had attended, I knew he would not—could not have accused me. But I chiefly relied for redress on the knowledge which the Board had of Mr. —'s character: he had been pretty often in their hands before;

* Mr. Wall wrote a letter to my Tutor to this effect, but as his letter, with other papers of mine, have been mislaid by some member of the Board, I am unable to publish it, as I did not take a copy. He, however, has seen, and recognizes the above as the substance of his letter.

they knew nothing to my prejudice, not to say more of myself.

I went to the Board that day, supported by a consciousness of innocence ; unapprehensive of the slightest censure for my conduct, and, from the support which my charge received, no less from the marks on my face, than from the character of my assailant, confident of obtaining, in spite of the partiality of the witnesses,* redress for the injuries I had received. I made there precisely the statement which I have published, and having made it, was directed to retire to the anti-room. The other gentlemen who were waiting in the anti-room, were called in singly. I did not hear their evidence.—For aught I then knew—for aught I now distinctly know, they may have accused me of having conspired the death of the Provost, or of any other atrocious crime. Yet I thought if they contradicted my charge, I would be called upon to support it. *Who* would not have thought that if they accused me of any crime, I would be apprized of it, and allowed to make my defence? My judges were grave, learned, and it is to be presumed, sober and dispassionate men ; and yet, WITHOUT A SECOND EXAMINATION—WITHOUT THE SLIGHTEST INTIMATION THAT MY CHARGE AGAINST MR.———WAS CONTRADICTED—WITHOUT THE SLIGHTEST INTIMATION THAT MYSELF WAS ACCUSED—I WAS EXPELLED!!!

I will not presume to offer a comment on such a proceeding : Any attempt of mine must fall infinitely short of what every one must feel, who reads the statement, and remembers that he inhabits a country, “ where all our accusations are public, and our trials in the face of the world.” I need not contrast the measure with the men—the haste of the proceeding with the seriousness of the consequences ; to excite a feeling something stronger than indignation against so inconsiderate a destruction of the prospects and character of an innocent individual. Yes—inno-

* The witnesses were Mr. Ryan, Mr. Finn, and an individual, of whom I shall here merely remark that he *was not a Student of the College.*

cent! for, as long as by human judges, due allowance is made for the frailty of human nature—as long as it is admitted that there may be provocations beyond the endurance of humanity; so long must my conduct, on this occasion, be deemed free from any criminality—so long must my conduct, on this occasion appear, not only excusable, but justifiable. How would the most grave and sedate member of the Board, with the cool discretion of age to compose, and the experience of years to direct him, act, under so gross and outrageous a provocation! So long as the *assailant* shall be considered more guilty than the *assailed*—so long as the *victim*, shall be considered less guilty than the *author*, of a tumult, so long must the conduct of the Board on this occasion be considered *unjust*. So long as the principles of our blessed Constitution, (under whose mild and equitable dispensation, even

“Thieves are not judged, but they are *by* to hear,

Although apparent guilt be seen upon them,”)

shall be admired, the conduct of the Board, upon this occasion, and the principle upon which they administer *justice, cannot be admired*. If hearing accusations in *secret*, and on those *secret* accusations condemning, without giving the accused an opportunity of defending himself—if, besides condemning, punishing him for crimes of which he never heard; if these be the characteristics of an Inquisition, the Board of Trinity College has established an indisputable claim to that title.

On what grounds of expediency can they defend this deviation from every true principle of judicial investigation? Will they call this mockery a *trial*? Will they say “we examined all the persons that were present at the transaction?” No—Mr. Upton and the two Surgeons would be material witnesses—they were not examined. Will they say, “the evidence was consistent and strong, and we thought ourselves justified in deciding upon it?” I answer,

“Qui aliquid statuit, parte inaudita alterâ;
Æquum licet statuerit, haud æquus fuit.”

If they had examined every person, *facts* might still contradict the testimony, however "strong and consistent." If twelve Bishops had *sworn* that A had murdered B, they might be contradicted by producing B alive: if they had sworn that A had cut off B's arm, they might be contradicted by showing that B had both his arms. How could this be done if A did not know he was accused, and B were absent? The analogy of the case is evident. But why was I denied the privilege of being confronted with my accusers? Had I been even informed of the evidence, a single question from me, would have detected the whole management. At the time of the occurrence, one was insensible through intoxication: to escape the discovery of this, he must tell some story*—he adopts the first he hears. Another is decidedly partial to Mr. —————. The third apprehensive for himself, gives neutral evidence, lest, a contradiction in the testimony raising a difficulty, the Board would not take the trouble to discriminate, but punish all. Had I been aware of the evidence, I could not only have disclosed all this, by suggesting one or two questions to the Board, but I could have produced incontrovertible evidence of the truth of every tittle of my statement. I could not only have proved the falsehood of any thing contrary to it, but I could have made the witnesses who gave contrary evidence, contradict themselves. And I *will* make them contradict themselves; for I confidently anticipate "a trial in the face of the world"—a trial before the Visitors next October. In the mean time, I must content myself with submitting to the Public such evidence, as, for purposes herein after explained, I have been forced

* Having met Mr. R—— a few days after, I requested he would state the transaction, as it occurred. He frankly acknowledged his inability to do so; saying, that "all he recollected was, that he endeavoured to rise up and interfere, but fell back again on his chair." It is worthy of remark, that this Gentleman did give evidence, but was reprimanded by the Board for its inconsistency.

to embody in documents, infinitely short of what I shall be able to produce from an examination of witnesses, but sufficient, I should hope, to establish the injustice of which I complain.

As soon as I discovered the decision of the Board, I waited on the Rev. Mr. Wall, my Tutor, and putting him in possession of the facts, requested he would obtain from the Board an explanation, and inform them that, in whatever they held me guilty, if they would hear my defence, I would justify myself. This worthy gentleman with that promptitude which is well known to characterize his exertions for his pupils, undertook the task, and called on the Provost, who told him, that, "when first he heard of the occurrence, from Mr.——'s character, he concluded that *he* must be the guilty person; and that he entered the Board-room with that prejudice on his mind:" and "that, though from the consistency of the evidence, they thought themselves bound to decide, the general feeling of the Board was, (to use the Provost's own words,) that the leaning of the whole party was against me." To an inquiry how it happened that I got no redress for the violence so evident on my face, the Provost replied, "that my account of it was contradicted by the persons examined, who described Mr.—— as having made use of no weapon but his knuckles: that certainly the appearance of one of the cuts (that over my right eye) seemed to corroborate, in some degree, *my* account, and to throw a suspicion on *that* of the witnesses; but that he (the Provost) reconciled the difficulty, by observing that *a skilful pugilist may inflict an INCISED wound with his knuckles*. That, in fine, I was expelled for the cut received by Mr Upton. He did not see how they could hear my defence now, without giving me a New Trial; and he did not see what right I had to that."

If the Provost had sought to impeach his own, and his Colleagues' capacity, as judges—if his object had been, not only to leave their precipitancy without an excuse, but to make it unjustifiable, he could scarcely have produced any

thing stronger than this. He acknowledges a prejudice against my antagonist; a prejudice not founded on surmise, or on hearsay, but a prejudice founded on his official knowledge of the man—on the fact of his having had occasion to * * * * *

He heard my complaint; he saw my wounds. He acknowledges, in common with the other members of the Board, a something more than a suspicion, "*a feeling*, that the leaning of the whole party was against me." He acknowledges, for the Board, that the appearance of one of my cuts, threw a suspicion on the testimony of those opposed to me; and yet I am condemned and punished, with less ceremony than would be observed towards a branded felon, though on his trial for a second, third, or fourth offence. All the doubts and scruples of the Board, yield before the bare assertion of the Provost, "that a skilful pugilist may inflict with his knuckles, a wound similar to that inflicted with a knife or a sword." Although against such respectable authority as the Provost, I dare not question the correctness of the *general principle*; I may venture to promise, that I will prove the learned gentleman wrong in the *particular instance*.

Being led thus far into the *mystery* of my crimes, I perceived I had two points to combat, to prove that Mr. Upton's cut was accidental; and to overturn the Provost's *scientific* inference respecting the manner of mine. For this purpose I called* on Mr. Upton, and requested he would make a statement of the facts in writing; to this he objected, "lest it should give the Board trouble or offence; and lest it should injure any of the rest, by contradicting them." I urged that I required nothing but a true statement, and that, under the circumstances, he was bound, in

* I had been with him before, and had received his condolence. I should think that the intimacy between us being uninterrupted, may be admitted as presumptive evidence of my innocence, with respect to that gentleman.

honor and justice, not to deny me that. He said he would consult his Tutor, Rev. Mr. Sandes. After communicating with that gentleman, he addressed the following letter to my Tutor:

“ 29, College, October 17, 1817.

“ Sir,

“ Having heard, with extreme regret, the circumstance of Mr. M'Sweeny's expulsion, I beg leave to state to you, as his Tutor, what I think of his conduct towards me.

“ It is my firm belief, that, at the time of his striking me, he was wholly intent on taking satisfaction for some blows he had received from Mr. ———, in a former part of the scuffle ; and I acquit him altogether of any intention to injure myself.

“ I am, Sir,

“ &c. &c. &c.

(Signed)

“ WM. UPTON.”

I next called on Surgeon Wilmot, (who had dressed my wound) and obtained the following certificate :

“ I certify that the wound which Mr. M'Sweeny received over his right eye, in College, on the night of Sunday, the 12th inst. *was not* inflicted with the knuckles of a shut hand, as it was a clean wound, bled freely, and was not accompanied by any marks of contusion.

(Signed)

“ S. WILMOT.”

“ York-street, Oct. 18, 1817.”

Mr. Wall called, with both these documents, on the Provost, for the purpose of founding on them a claim, either to have the sentence reversed, or the case re-heard. The Provost admitted that *prima facie*, they shewed that — ought to have been expelled. “ How could that now be done—to rehear a case of acquittal was unprecedented ; and as for myself, I could not complain of any hardship, inasmuch as, by the Statutes, the *whole party* incurred ex-

pulsion; and though I suffered alone, I suffered no more than if, *with the whole party*, I had been expelled.*" To this I replied, by letter, to the Provost, that the documents submitted to him, shewed more than he allowed; that, with respect to Mr. Upton, they shewed his wound to be accidental; and they established the provocation alleged by me to have been given by Mr. ———, thereby impugning the testimony of the witnesses, who did not account for the wound over my eye, but suppressed it, because it was the *provocation*, and because it would have *justified* my conduct. That the whole criminality of the transaction was centered in that wound thus suppressed; for its infliction was the first aggression. That they established my right to a trial, which I sought merely for my own justification, and not for the punishment of Mr. ———, as that was now no object to me. With respect to the observation, that I might have been expelled with the rest; that if such were the law, and if, on full investigation, the decision had been conformable thereto, I would urge my personal sufferings—my unimpeached character, and my perfect innocence in the transaction, against the severity of the Statute, as grounds for mercy. That the case was not so; that a selection had been made, which neither my character, nor the degree of my guilt warranted: that, in such a case, no selection

* The above is a specimen of the Provost's logic—the following anecdote contains a choice one of his rhetoric. A deputation of the Students waited on him, to obtain his permission for the re-organization of that invaluable National Institution, the HISTORICAL SOCIETY. His reply was polite, argumentative, and brief—"I rode the Bull once—I rode the Bull twice—'twas near throwing me the last time—I'll ride the Bull no more." If I could convey manner into the words, this little anecdote would give a more correct idea of the man's character than volumes. It is not quite so unconnected with the subject as it may, at first sight, appear—How could people, remotely situated, believe that a Provost of Trinity College could be insensible to the hardships of which I complained, if they had not been informed, that,

———— "There govern'd in *that* year,
A stern, stout churl, an angry overseer."

was just, but a selection of the most guilty. I concluded by requiring, either restoration or a trial.

Having required that the communication should be made through my Tutor, Mr. Wall again called on the Provost, who told him that "the only thing proved was, that more ought to have been expelled: in his opinion, the whole party ought to have been expelled; and the only hardship in my case was, that I was expelled without company: and as for the others, they could not now be punished, as he said before!" Does the Gentleman think it no hardship to be condemned unheard? Does he think it no hardship to be punished instead of being redressed? Does he think it no hardship, that a person, whose sole guilt was, that he had been assaulted—should be punished as an aggressor? Under what circumstances would the Gentleman think it necessary to inform a person that he was accused, before he would condemn and punish him, if he does not when he acknowledges the strongest prejudices against his accusers?

I was induced to apply, in the first instance, to the Provost, because I had been informed that, without his concurrence, my case could not come before the Board; and I had reason to believe that, without his countenance, I could not hope for success. Finding, however, that while, in effect, he admitted my right to a trial, he seemed little disposed to grant it, I waited on the other Members of the Board, to prepare them for a Memorial which I intended to lay before them. Two of these Gentlemen, whose public character inspired me with the highest reverence for them, intimated, that "it would be prudent to defer my application for some time, as the Board would be extremely reluctant to do any thing that might argue haste and inconsistency." Although I was aware that the great difficulty was, the pain the Board would feel in undoing what they had done, and that they would feel less pain at a remote period, than immediately, I did not intend to follow the advice of these Gentlemen, but to bring the matter imme-

diately to an issue ; but before I could accomplish my purpose, a domestic affliction drew me abruptly to the country : I had previously, (immediately on my expulsion) resigned my situation in the Feinaiglian Institution.

In May, 1818, I forwarded to the Board, through the Rev. Dr. M'Donnell, whom, as Dean, I considered the official organ, a Memorial, praying restoration or a trial. The answer to this memorial, I consider an important official admission of a part of the consequences resulting from the Board's having originally decided on an imperfect investigation ; namely, the impunity of the guilty. It confirms my account of my Tutor's conversation with the Provost, and shews the latter Gentleman's influence at the Board. It is merely the echo of his first answer ; and, what is remarkable, was delivered by himself, in the name of the Board, to Dr. M'Donnell, from whose polite letter to me, I shall merely quote what relates to the Memorial.

“ I received from them no answer, but a verbal one from the Provost, who said, that you appear to the Board to have shewn sufficient grounds for inculpating others, but not for reversing your own sentence : that, therefore, matters must remain as they were, with respect to yourself, there being no grounds for altering the decision, and, with respect to the others concerned in the same unfortunate quarrel, it being a thing unprecedented to rehear a case of acquittal.”

In addition to this, the Provost informed my Tutor, that the Board unanimously rejected my Memorial, *without a discussion*. This, it must be confessed, was, to say the least of it, somewhat arbitrary.—The Board were not in possession of the merits of my case : they adopted the Provost's opinion on the subject, without giving themselves the trouble to consider it.

It was now pretty plain to me, that I would obtain no redress from the Board, and I anxiously awaited the ensuing visitation, when I expected, by a public trial, to convince the world of my innocence, and my wrongs.

I came to Dublin early in October, and, having some time to spare before the visitation, resolved to try the success of treaty. I waited on the Provost, and obtained an audience, for the first time. Having informed him of the object of my visit, he frankly declared, that "the Board *deeply* regretted, that persons, whom they now knew to be guilty, had escaped; but that, with respect to me, there was but *one* sentiment, that, from the beginning, they were *unanimously** of opinion, that I deserved expulsion. He would admit to me that two had escaped, who deserved to be expelled, and even, that they were more guilty than I; but he insisted that there was still sufficient to warrant my punishment." I told him, that my punishment, implying that I was the *most* guilty, was unjust, (now that it appeared I was *not the most guilty*.) I said, that it was evident, from the manner in which the guilty had escaped, namely, by their own testimony, that they had conspired to substitute me for themselves. I told him that I went to the Board perfectly confident of not incurring even a censure; that if I thought I was impeached, I could have satisfactorily established my innocence, and that it was monstrous to suppose, that one, supported by a consciousness of innocence, could anticipate a false, or make a defence against an unknown charge.†—That in a case which was to involve

* The Provost must have a very treacherous memory, (I dare not suspect his veracity) for two highly respectable members of the Board, intimated to me, that they voted *against my expulsion*—and Dr. Phipps told me expressly that his vote was that I should be admonished, and rusticated.

† That I had no reason to anticipate *any charge*, will appear from the subjoined letter, addressed to me by Mr. Upton.

"Sir,

"Dublin, May 4, 1819.

"I feel no hesitation in complying with your request, that I would certify my not having had the slightest intention of making any complaint to the Board, concerning the accident which befel me, in October, 1817. I neither then felt, nor do I now entertain any resentment towards you, in consequence of that occurrence.—Of this, the letter I then addressed to your Tutor, might have been sufficient to satisfy you.

(Signed)

WM. UPTON.

the character, the prospects, and the happiness of a young man, I might have expected greater caution and deliberation, from men, such as composed the Board—That I could not conceive it reconcileable with justice or reason, that a person should be condemned before he knew he was accused—That even my complaint was unjustly disposed of: I had the marks of very great violence on my person, and, notwithstanding this, the Board acquitted the individual whom I accused, without inquiring if I could support my charge—That, that was a matter of minor importance—that I did not now regret that he had escaped, but that it was no less unjust, because I did not regret it—That it was evident, if there had been a fair trial, he *could not* have escaped; for, on two or three days after the decision, the Surgeon's certificate was sufficient to convince him, (the Provost) that he should have been expelled—That, clear as it was, that *he* had unjustly escaped, I would make it equally clear that *I* was unjustly punished. The Provost observed, that "CERTAINLY, BEFORE THE BOARD ONE HAS NOT AS MUCH FAIR PLAY AS IN A COURT OF JUSTICE." I replied, that it did not ordinarily happen, that a man has in a Court of Justice, so great a stake as that which I lost before the Board—That I did not see why that caution used in disposing of the smallest portion of a man's property, should be dispensed with, in disposing of what exceeded both life and property in value—his reputation. The Provost then said, "that what principally incensed the Board against me, was, that I had been represented as having ferociously inflicted two wounds on Mr. Upton, one by throwing a decanter at him, and the other by striking him with a bottle." I said, I had not before heard that such evidence was given; but that it could be easily contradicted—Mr. Upton could contradict it—his letter contradicted it; and the Surgeon who dressed the cut, could contradict it. I desired him to remember, *who* they were that gave this testimony—men, who by falsehood had extri-

cated themselves ! And what their object was, to divert the attention of the Board from the *real outrage*, which was *too palpably* evidenced by the marks on my person. How could this be done, but by inventing a tale of such atrocity, as, while it brought the Board speedily to a decision, would, by contrast, mitigate the character of my complaint—that, if he was not satisfied of my perfect innocence, an investigation of the case would convince him. It was not unreasonable in me to require a trial. I concluded, by requesting his permission to appear before the Board, for the purpose of urging my claims, in person, and answering any objections they may make. He said, “the regular course was, for my Tutor to apply at the Board.” My Tutor applied, and permission was not granted—in consequence whereof, I immediately addressed the following notice to the Board.

Dublin, October 17, 1818.

Gentlemen,

If you had entered into the merits of my case, I have no apprehensions but I should have obtained justice from *you*. But, now, that (after a year's suffering, and your admission, that the investigation was imperfect, and the decision premature,) you deny my memorial a discussion, and myself a hearing, I am under the necessity of notifying my intention to appeal to the Visitors. At the same time, I entertain a confidence, should you favor me with a hearing, that you will not persevere in selecting for punishment the least guilty of three persons, while you admit that *that* selection was obtained by the false evidence of the more guilty ; and recollect that the person thus selected, was seeking redress for an unprovoked outrage on his person ; and that, instead of giving him redress, you visited him with the severest punishment, for an accident, which (under the circumstances) humanity could scarcely visit with a censure.

I have the honor to be,

&c. &c. &c.

(Signed)

DAN. M'SWEENY.

To the Board of T. C. D.

The confidence which, it may be seen, I expressed in the above notice, that the Board, if they would consent to hear me, would not persevere in punishing me—will account for my addressing the following letter to the Provost, on the ensuing Monday.

Dublin, October 19, 1818.

Sir,

As there will be a Board to-day, I am anxious to impress on you, briefly, the peculiar hardship of my case.

With a good character, and (probably) a good cause, I had to contend with men, whose general character, you confessed, prejudiced you against them. In addition to this prejudice, their evidence, on the investigation, convinced you, that they were biassed against me. For you confessed to my Tutor, on his first application to you, in my behalf, (two days after) that, “before you went to the Board, the impression on your mind was, that — was guilty; and that, on the investigation, though the evidence was pretty consistent, still, the feeling of the Board was, that the leaning of the party was against me.”

Under any circumstances, it was the duty of the Board to give me an opportunity of defending myself, by apprizing me of the charges against me; but, under the feelings which you have avowed, it was peculiarly imperative on them to suspend their decision, until their doubts should have been cleared up, by my failing to establish my innocence. They have not done so—and though I had the strongest claims to a re-hearing, (if not for the conviction of the guilty, at least, for the exculpation of myself) they have denied it to me: and, to establish my innocence, I was obliged to have recourse to after-evidence in the way of documents, which I might have produced on the trial.

I have succeeded in establishing, that two individuals, on whose evidence I have been expelled, were *more guilty than I*; and yet I have been expelled, as the *most guilty* of the party—while you perceive that *my* statement was the truth, (though you claim that it involves myself) and admit that *theirs* was false, and unjustly extricated them—while you perceive that, by contrivance and combination, they have succeeded in marking me

out as a victim to atone for their crimes—notwithstanding these claims on your mercy—you shift your ground, and maintain that my suffering is not a hardship, inasmuch as “on the simple fact of my being one of such a party, drunken, and riotous,” I incurred the same penalty.”

Without insisting on my *perfect* innocence, (which I trust I shall be able to establish,) I might expect—from equity, and the indignation you must feel, that men, guilty (in addition to their share in the transaction) of perjury and conspiracy, should be placed beyond your reach, by the imperfection of your mode of investigation—that you would be induced to stigmatize their evidence by my restoration. But if it should be contended, that “if I had got a fair trial, I would have been expelled as a person guilty in a secondary degree—or even as one of the party,” I scarcely think the charge of partiality could be escaped. It would appear, that either as aggressor, or otherwise, it was intended to expel me ; and, that the mercy extended to two, who, *ex confesso*, were of the party, and more guilty than I could be proved to have been, would have been denied to me. I must express my obligations for your kind attention on Saturday, and beg the favor of your reading this at the Board.

I have the honor to be,

Sir,

Your obedient Servant,

(Signed)

DAN. M'SWEENY.

To the Rev. Thomas Elrington, D. D.

Provost of T. C. D. &c. &c.

Finding this ineffectual, I immediately addressed to the Board and Visitors, severally, an Appeal, in the following form.

I, Daniel M'Sweeny, late Sizar of Trinity College, Dublin, appeal against the injustice of expelling me (last October,) without previously apprizing me of the charges upon which I was tried ; also, against the injustice of denying me a second trial, or a re-hearing, when it was admitted that the first investigation was imperfect ; also, against the injustice of retaining me to suffer

as the *principal aggressor*, in a transaction, in which it is admitted, (or I offer to prove) that two others were *more guilty*—or, that I should at all suffer, when I am not guilty of any crime that could deserve expulsion—and, finally, that when I complained of a most violent, and unprovoked outrage on my person, committed by a Student of the College, I got no redress whatever.

October 20, 1818.

Having thus demanded a public trial, for my justification, I was aware, that from the establishment of my *perfect* innocence alone, I might hope for success. I did not suppose, that the Visitors could be induced on light grounds, to pass a censure on the Board, by reversing their decision. I knew that, naturally, the leaning (if any) of the Visitors, would be to the other side. In making the arrangements for my defence, a recollection of what the Provost had told me concerning the bottle and decanter, &c. (vide page 21) suggested to me the necessity of ascertaining distinctly, the evidence given on the investigation. For that purpose I called on Dr. Phipps, the Register, for a copy of the proceedings, but this he peremptorily refused. I urged the cruelty of denying me the means of establishing my innocence, and the arbitrariness of punishing me so severely, without even informing me for *what*. Doctor Phipps inquired “if my Tutor had not received a notice of my punishment, specifying the crime?” I said not. He then told me, that I was expelled for “being drunk, rioting, and inflicting a wound.”

This new charge of drunkenness, coupled with what the Provost told me, suggested the propriety of conversing on the subject with Surgeon Wilmot. The result of that conversation, fully meets every unanswered charge, and forcibly illustrates, if illustration were necessary, the consequences of a system by which a person is adjudged guilty, without being aware that he is accused.

"I certify, that the wound which Mr. Upton received on the 12th of October, 1817, extending across his forehead, was likely to have been inflicted by some irregularly broken glass weapon, without the application of much force.—From the nature of the cut, it could not have been caused *by a decanter thrown, or by a stroke of a bottle.* Mr. M'Sweeny, who was present while I was dressing it, waited patiently until I had done, and then inquired if it would be necessary to have one of his wounds stitched.—*He had no appearance of intoxication, nor even of having drunk freely.*"

(Signed) "S. WILMOT."

"York-street, October 24, 1818."

Prepared then to establish my *perfect* innocence, no less by evidence, (which in the certain anticipation of a TRIAL, I designedly suppress,) than by these documents, I appeared before the Visitors. The Vice-Chancellor, after hearing a discussion, and adjourning, decided, on principles which I have already noticed, and which I shall have occasion further to examine in another place, that "as an independent Member of the College, I had no appeal from the decision of the Board."

Thus excluded from that means of vindication, the most grateful to my feelings, and the only one that could repair the injury, publicly offered to my character—a public trial; I still had hopes that the Board would relent. I thought they would be magnanimous enough, instead of being prejudiced against me, to give me credit for the efforts I had made. The refined cruelty of their laconic reply to my remonstrance, of May 7, and the indecent mockery of referring me, *for an answer* to my letter of May 21, *to that which was no answer*, will shew how well-founded my expectations were.—If *their* part of the subjoined correspondence shews that "lenity," for which the Vice-Chancellor gave them credit at the visitation, I leave to the public to determine.

Dublin, May 7th, 1819.

Gentlemen,

Conceiving the several charges against me, so far as I have been made acquainted with them, completely refuted by the documents, already, from time to time, laid before you, except the charges of intoxication, and the alleged circumstance of Mr. Upton's cut, (these remaining unanswered and unrefuted, only, because I did not know that they existed, until within a few days of the last visitation,) I beg leave to submit the enclosed document* to your consideration. In applying, last October, to Dr. Phipps, for a copy of the evidence given in my case, (which he refused) I, for the first time, discovered, that drunkenness was amongst the number of my alleged offences, and the Provost informed me, that I had been accused of having struck Mr. Upton with a bottle and a decanter. It must be unnecessary to point out how this document bears on those charges.

I beg leave, also, to solicit your consideration of the circumstances under which I have been expelled. I went to your Board, as I conceived, in the sole capacity of a complainant, seeking redress for injuries, which redress, you subsequently admitted,† I ought to have obtained; but instead of giving me that redress, you punished me for alleged crimes, of which I was accused in secret, without informing me that I was accused, and hearing my defence.

I will not urge my case in any stronger light—though I could: but if you profess not to be convinced by the several documents, and by this last, probably the strongest, it only remains for me, solemnly protesting my innocence, and protesting against the manner in which you concluded on my guilt, to ask you, in the sacred name of Justice, to give me the means by instituting an investigation; and I pledge myself, in the face of the world, to prove every tittle of my first statement before you, and to disprove every thing imputing the slightest criminality to me on the occasion. Should you deny the force of the documents, and also deny me

* Vide Surgeon Wilmot's certificate, page 26.

† In a letter from the Dean, Dr. M'Donnell, purporting to convey your answer to my memorial, and also in the Provost's verbal answer to my Tutor.

this, I must despair of ever moving you, and I promise this shall be my last application to you.

As honorable men, I am sure you will not shield yourselves behind the late decision of the Chief Justice, which enables you to be unjust with impunity. Could I imagine that, I would take the trouble to convince you that I will be able to induce his Lordship to recant his opinion before the next Visitation. I deferred the present application, for the purpose of giving any angry feeling which my late appeal may have created in your bosoms against me, time to subside. Neither on that occasion, nor in any of my applications to you, have I been actuated by any motive but a sense of the injury you have done me, and a consciousness of my own innocence; and you will do me the justice to remember that, though I have been incessant, I have been respectful, in my expostulations: some of your members had the kindness to remark the moderation and temperateness of my conduct, on the trying occasion of my public appeal.

The principal argument advanced against me, in the various discussions which I had, through my Tutor, with the Provost, was, that "if there had been, in the beginning, a perfect investigation, I might have been expelled with the rest, as one of the party." I have looked into the Statutes, and I find (in Cap. 11. "*De morum honestate tuendâ, &c.*") that, the Authors of domestic sedition or disagreement, should be *fin'd a Month's Commons.*" The extraordinary lenity with which the other crimes enumerated under this head are treated, enables me to say, with confidence, that this Statute, so far from warranting the *Expulsion*, does not warrant the *fining* of one, who was not only not the "*Author*," but who was the *Victim* "of a dissention." But you will probably say that the case did not belong to this Statute, but to the Statute, "*De pænis majorum criminum.*" In that Statute I find, that "*whoever, with a violent blow, shall have inflicted a severe wound on a FELLOW, OR SCHOLAR, shall be expelled.*" The context will be sufficient to convince you that the crime contemplated here, is a crime against a privileged member. This interpretation of *discipulus* is demonstrable from the text, but forces itself irresistably upon us, when we consider the *spirit* of the Statutes, which is the rule given by the Statutes themselves for their interpretation.

The case then *does* belong to the first Statute. But, if you should claim for *discipulus* a wider signification, you will completely subvert the decision of the Vice-Chancellor, who founded mainly on this interpretation, the Exclusion of the "independent members" from his Visitation protection.

I have no interest in insisting on this interpretation, or on that; for, were the Statutes, instead of being characterized by lenity, "written in blood," they could not warrant the punishment of an innocent individual—they could not warrant the punishment of any individual, whatever may be the presumption of his guilt, without the precaution of fairly ascertaining whether he was guilty or not.

You have done me a double wrong; when you should have redressed, you not only did *not* redress, but you *punished me*. Whether you will persevere, or not, in this wrong, is a question for your own breasts to determine. Whatever may be your decision, I beg that the enclosed may be returned with your answer: should it be unfavorable, I beg the indulgence of a copy of your first proceedings, that I may know *why* and *upon what evidence* I have been expelled.

I have the honor to be
&c. &c. &c.

(Signed

DAN. M'SWEENY.

To Doctor Phipps, Register,
for the Board of T. C. D.

ANSWER.

"Sir,

"I produced your letter, and the certificate accompanying it, at the Board to-day; but they declined going into the business. I return the certificate, and am,

"Your very humble Servant,

(Signed)

"ROBERT PHIPPS, Registr."

"Trinity College, May 8, 1819."

"To Mr. Daniel M'Sweeny."

Finding, that in the above, my application for a copy of the proceedings was not noticed, I addressed to them the following letter.

Dublin, May 21, 1819.

Gentlemen,

When I last had the honor to address you, I promised that you should not be troubled with another application; I hope this may not be construed into a violation of that promise, when I inform you, that its object is, to call your attention to what yourselves must confess to be, the reasonable request of my last; namely, "to be furnished with a copy of your first proceedings, that I may know why, and upon what evidence, I have been expelled." This, you must allow to be reasonable, inasmuch as I was not permitted to hear the charges, or the evidence; and the accounts I got subsequent to my punishment, were so various, as to enforce the necessity (to me) of correct information.

I have the honor to be,

Gentlemen,

Your humble Servant,

(Signed)

DAN. M'SWEENY.

*To Doctor Phipps, Register,
for the Board of T. C. D.*

ANSWER.

"Sir,

"I beg to refer you to my answer to your former letter.

"I have submitted your letter of this morning, to the Board, and have no further answer to send.

"I am your humble Servant,

"ROBERT PHIPPS."

"May 22, 1819.

"To Mr. Daniel M'Sweeney."

Such is the history of the transaction up to the 22d of last month. I have been minute in detailing the particulars, for the purpose of shewing, that, while I have been persevering and incessant in demanding justice, I never departed from a patient line of respectful expostulation, so long as I could reasonably entertain hopes of redress in that way. I have been minute, because, in the discussion with the Provost, subsequent to my expulsion, I produced proofs of my innocence, which, I trust, the PUBLIC will deem satisfactory and conclusive; because that very discussion is irrefragable evidence, in support of my charge against the Board. It may be seen that, from the *moment of my punishment*, I complained of having been CONDEMNED UNHEARD, and therefore PUNISHED, THOUGH INNOCENT; and that my petition throughout was—TO BE HEARD. The *hardship of the complaint*, I am sure, will be as universally felt, as the *reasonableness of the Petition*.

When the consequences of expulsion from a University are considered—when it is recollected, that it deprives a young man of the means of education, not only in the College from which he is expelled, but in every other College; and, that it at once annihilates all his prospects, by destroying his reputation, it will be readily admitted that such a punishment ought never be incautiously inflicted. With the discipline of other Colleges, I am unacquainted, but of the University of Dublin, I can confidently affirm, that under a *just administration* of its laws, (for the Board has always affected to govern *all* the Students* by the Statutes,) the extreme, the capital punishment of expulsion, can fall on the irreclaimable reprobate only; or, on one who has proved himself unworthy of the advantages of society, by a *gross violation* of the first principle of civil society—subordination.

* It will be difficult to reconcile this with the Vice-Chancellor's opinion, that "the independent members are merely to be considered as boarders;" and, probably still more difficult to reconcile it with the doctrine, that the Board, while it professes to govern the independent members by laws, is not responsible for the mal-administration of those laws.

It would be inconsistent with the character of an establishment, professedly instituted for the good of youth, to leave their best interests exposed. It would be absurd that it should leave *that* uncertain, which it professed to secure—that it should encompass *that* with difficulties, to which its professed object was to invite *all*. The penal laws of such an establishment should exhibit a reluctance to destroy ; they should be rather corrective than vindictive. That such is the character of the laws of the University of Dublin, a reference to the two penal Statutes will be sufficient to prove.

The first of these Statutes (Cap. 11.) concerns “the cultivation of good morals, and the upholding of the public estimation of the College.”

In the preamble, it sets forth the advantages, to literary men, of modesty and good morals, and to the College, of public estimation. To these objects, it directs the attention of “*all the Students of every degree and condition.*” It then prescribes certain forms of respect to be observed by the junior Students, towards their superiors; and directs, *that no Under-graduate shall go to the city, without his Tutor's written permission, under a penalty of, for the first time, a week's, for the second, a fortnight's, for the third time, a month's commons ; and, for the fourth time, (if the Provost and majority of the Senior Fellows* agree to impose it) amotion from the College. That the AUTHORS of sedition, or domestic disagreement ; also, those who have struck, wounded, or defrauded ; or seduced others to a tavern ; who shall have been guilty of excess in drink ; who shall have STOLEN a book, or a coat, or any thing else, shall be punished, for the first time, by a fine of a month's commons ; for the second time, by a fine of three months' commons, and for the third time, by expulsion from*

* In this instance it may be perceived, that the Board has a discretionary power to *mitigate the severity* of the law ; in no part of the Statutes are they empowered to *increase it*.

the College.”—Many other crimes are enumerated, amongst which are “*the robbing of orchards, &c. bringing censure on the College, by dissolute habits, the frequenting of taverns, and houses of ill fame;*” but all these, for the first and second times are punished with ADMONITION OR FINE.

It is unnecessary to pursue this Statute farther, for the purpose of shewing the *tenor* and *spirit* of the College laws—such tenderness do they evince for youth—such anxiety rather to *reclaim* than to *destroy* them; that even THEFT must be committed three times to be *capital*—to *deserve* EXPULSION.

The second penal Statute, (cap. 23,) “concerns the punishment, of what are called, greater crimes, &c.”

By this Statute it is ordained, that “if any of the Fellows, Scholars, or others residing in the College, shall be convicted of blasphemy, heresy, treason, of stubbornness, and contempt against the Statutes; of perjury, *notorious theft, voluntary manslaughter;* of fornication, of adultery, incest, or the *violent striking* of any Fellow or *Scholar, (by which he shall have inflicted a *severe* wound

* I have followed the Chief Justice in confining the signification of *discipulus*, to a Scholar of the House. Although I do not agree with his Lordship, that it is never used in the Statutes, in a more extensive signification, it is very evident, that it is used here in that limited sense. I will not deny, that a person guilty of violently striking and wounding any fellow-student, would deserve expulsion; but the founders of the College, and the framers of the Statutes, did not think so.—Few will be found hardy enough to maintain, that a person guilty of defrauding another, or of stealing from him, would not deserve expulsion; and yet to this crime, which has no provocation to justify, and which, within the walls of a College, can have no distress to palliate it; the framers of the Statutes have thought proper to be lenient. Without such an instance of their lenity before us, we might be disposed to impute this distinction between privileged members and others, to an accidental omission; but when we consider this, and the *cautious, precise and comprehensive* terms, by which the application of the Statute is determined to every one in the College, “if any of the *Fellows, Scholars, or others living within the College,*” and the exactness with which all those entitled to particular reverence, are enumerated—“*the Provost, Vice-Provost, Dean, Senior Lecturer, Doctor, or Bachelor of Divinity*”—we can no longer entertain the supposition of accident, but are forced to acknowledge design.

on any of the aforesaid,) or of *even slightly striking* the Provost, Vice-Provost, Dean, Senior Lecturer, a Doctor, or Bachelor of Divinity ; of *forcing* the bolts of the gate, or *even privately* unbolting the same, of forming conspiracies or plots against the College, or at any time exciting seditions in the College, or doing it a serious injury, either by himself or others ; or of branding it with disgrace or infamy, &c. he shall be expelled the College as a pestilent member, &c."

In no part of this justly severe Statute, does there appear any thing to warrant the conduct of the Board in the case in which I was unhappily concerned—to justify their precipitancy ; or their obstinacy. There is scarcely a crime in the above enumeration, entitled to the smallest indulgence : most of them are of the blackest moral character, while the others would be completely subversive of all order and discipline. The Provost, in a conversation with my Tutor, assumed, that "by the Statutes, every person of the party in which the affray occurred, should be expelled." This assumption, I contend, is not borne out by the *letter*, and is directly *opposite* to the *spirit* of the Statutes. But were such the law, he would not be warranted in the conclusion which he drew from it : it could not justify the *selection* of one, who was not only *guiltless*, but a sufferer and a complainant ; who was not only NOT "THE AUTHOR, but who was the VICTIM of the affray."

The only part of this Statute, which could be applied to my *imputed crime*, is, the "violent striking of a Fellow or Scholar." From what immediately follows, namely, "*even slightly striking* the Provost, Vice-Provost, Dean," &c. it is manifest that the rank of the sufferer, increased the degree of the crime—that an attack upon a privileged member, is regarded as an attack upon the College itself. This principle, it must be admitted, is just, and its application cannot be called severe, when it is recollected, that, to come within the meaning of the Statute, the striking of a

Fellow or Scholar must be "violent," and the consequence of that "violent striking," must be a "severe wound."

Except in one or two instances to *mitigate* the severity of the law—in some cases of censure, and where it may be expedient to substitute a fine for "the subtraction of commons," the Provost and Board, professing to make the Statutes their rule, have no discretionary power. They have no power whatever over cases which are described as capital, and consequently they cannot dispense with any of the circumstances essential to the character of those cases. "The violent striking of a Fellow or Scholar," they cannot extend into the violent striking of a Fellow, Scholar, or any other within the College—much less can they dispense with the circumstances of "violent striking," and "severe wound." It would be irrational to suppose that they would be warranted in applying the meaning of the Statute to a striking, justified by sufficient provocation, or necessary to one's defence: or to an *accidental striking*. How far the Statutes warrant the Board, in denying to the students, "as much fair play as they would have in a COURT OF JUSTICE,"—the public will judge. With respect to my particular case, waving the question of my guilt or innocence, I have been punished with a severity, not due, even to my *imputed crime*. The individual injured, was neither a Fellow, nor a Scholar, but a pensioner;* and the "striking and wounding" of an unprivileged member, (even though it were *severe*, though it were *designed*, and though it were *not justified* by provocation) is provided against only in the first of the penal Statutes, and is not there punishable with expulsion. Where *severity* is not admissible, *precipitancy to punish* is cruel, and *injustice* doubly unjust.

The *prima facie* injustice of condemning a person unheard, can scarcely be palliated by any circumstances, but may be aggravated. If the strong testimony of many dis-

* Mr. Upton is now a Scholar.

interested persons were corroborated by every inference, that could be drawn from the general conduct and character of the accused, still, that system must be infamous, which would deny him the opportunity of defending himself. What epithet then can be found sufficiently strong, for a system which denies that indulgence to one, whose whole life refutes every charge advanced against him.

I was educated in Cork, by the Rev. Mr. Lee : the justly regretted demise of that gentleman, and the no less regretted demise of Mr. Maginn, Master of Marlbro'-street school, who, in my time, had been Assistant to Mr. Lee, deprive me of very strong testimony respecting my *school-boy* days. Having, however, left school very early, the following testimonium takes up my life from that period; and will, I trust, be deemed strong and decisive. Having intended it for the Board, I sought the signatures of those only who would be known to its members; and whose high characters would be equivalent to greater numbers; but, were number an object, I can in truth affirm, that, there is not in Clonmel, an individual, who would dissent from any part of it. The Provost saw it last October, before the Visitation, and acknowledged its strength and respectability.

“ We certify, that we have known Mr. Daniel M'Sweeny, these several years, and consider him a young gentleman of exemplary propriety of conduct. He conducted here, in conjunction with his father and brothers, a respectable Seminary, with considerable credit. From the time of his connection with the Feinaiglian Institution, what we knew of him was mere report, but that led us to expect any thing rather than the melancholy catastrophe which restored him to us. With the circumstances of that transaction, we profess to be totally unacquainted; but we owe it to justice to say, that we never considered him to be charac-

terized by violence, or a disposition to quarrel; nor knew him to be guilty of a single irregularity."

"Clonmel, October 13, 1818."

Signed,

"RICHARD CAREY, Prebendary of Donoghmore, and Schoolmaster of Clonmel."

"THOMAS FLANNERY, P.P. of Clonmel."

"JAMES WORRAL, A. B. Dissenting Minister."

"WILLIAM STEPHENSON, A. M. Vicar of Tullaghorth."

"JAMES HILL, A. B. Clk."

"ROBERT CONSTABLE, M. D."

"GEORGE GREENE, M. D."

"EDWARD EAGLE, M. D."

"My knowledge of Mr. Daniel M'Sweeny, does not extend so far back as that of the respectable Gentlemen, who have signed the above testimonium—I can therefore only testify, that, during the last year in which he has been resident in Clonmel, his general character has been that of a highly regular, and well-conducted young gentleman."

"DANIEL HENRY WALL,
Rector of Clonmel."

"October 13, 1818."

A person's College character is estimated by his regularity, and by the diligence and success with which he performs his exercises. I had been nearly three years a member of College, and, though all that time engaged in the laborious avocation of a teacher; I was not inattentive to my College business; and—without entering into the minutiae of College judgments, &c.—not unsuccessful. *This*, as it is a criterion of *diligence*, is universally received in College, as evidence of propriety. A person who is not only seriously, but laboriously employed for a large portion of his time, and, who gives a proof of well-appropriating his leisure, cannot be suspected of those irregularities, by which young men generally forfeit the approbation and good opinion of

their superiors. The best pledge a young man can give of propriety is, a consciousness of his interest, exhibited in an anxiety for his reputation, and his improvement. I had not incurred a single censure; nor even a fine except for some examinations, which, being in the country, I was unable to attend. Under any other, than my present most calamitous circumstances, I am sure I should obtain from all the Junior Fellows that knew me, (that is almost every one of them) as warm and strong a testimonium, as any other Student of my standing; but, under a censure of the Board, it would be not only indelicate, but highly improper in me, to require, from those gentlemen, an expression of their opinion which might seem to be opposed to that censure.

It is extremely painful to me, to have been obliged to speak thus of myself, but it is the only means by which I can refute the calumny of my punishment, and expose the precipitancy and injustice of my judges. Of the individual who committed on me the outrage, of which I complained, I should be equally unwilling to speak severely, relative to what is unconnected with my particular case. But did not the admission of the Board make it unnecessary for me to adduce presumptive evidence in support of my charge against him, I could refer to incidents, at the chambers of the Rev. Thomas Taylor, in College; in the company of Mr. Monnet; and at the Moira tavern, in the company of Mr. Finn, and Mr. M'Shane, of College, related to me, by themselves. Of his College character, I shall merely say, that he had various and strong reasons to be well acquainted with the mode of proceeding at the Board. To this fact the Provost has borne testimony, by acknowledging a prejudice against him.

I would here remark, that having alluded at the visitation, to the Provost's avowal of this prejudice, the worthy gentleman, with well-affected tenderness FOR THE REPU-

TATION OF A STUDENT, rose up, and, claiming for himself the privilege of *not denying my assertion, and YET not assenting to it*, "protested against my making any use of any conversation he had with my Tutor, *especially to the detriment of an absent individual.*" Alas ! that *that same gentle, humane and immaculate Provost*, should, *on a whispered tale*, not only have *consented* to the MURDER, but have, himself, become ONE OF THE EXECUTIONERS, of the fair fame of an individual, *equally* under his protection ; and having, *still stronger* claims to that protection, while that individual was *absent, and unconscious of his danger.* What will the honorable gentleman say, when I tell him, that the individual (to whose interest he has been so miraculously converted from his prejudices) at an entertainment *given by himself to his selected friends*, at the Moira tavern, on some provocation, flung a decanter at the head of Mr. M'Shane, *his own guest* ; and, though prevented from doing *him* any injury, did considerable damage in glass and furniture ; and *this*, in the company of Mr. Finn.*

I am sure I do not yield to the PROVOST, in tenderness for reputation : next, to the pain of having been obliged to speak in praise of myself, is the pain of being under the necessity of observing severely on the character of another ; but, in this instance, I feel I would be warranted, did my case require it, in being even *more* particular. The characters of the individuals concerned in an affray, might be such, as to furnish an excuse for precipitancy, in deciding between them. In this instance, I am bold to say, instead of furnishing *that excuse*, they furnish the *greatest aggravation* of that precipitancy. *My* character, considered with or without a comparison with the other persons concerned, was such as would obtain for me, in a Court, warranting the most summary procedure, some indulgence ;

* I was not present—I give this merely on the report of Mr. Finn, and Mr. M'Shane ; and from the circumstance of my having seen the bill for broken glass, &c. I think between 3 and £4,

at least time to make my defence. Before the Board of Trinity College, those circumstances in my favor, which should have the greatest weight *there*, did not obtain for me EVEN THE INDULGENCE OF AN INTIMATION THAT I WAS ACCUSED !!!—Nay—my own unimpeached character; the reprobate character of my antagonist; the palpable evidence of violence on my face, a suspicion that the witnesses were hostile to me, the fact of my being unaware of the charges, the seriousness of the consequences, and the great difficulty of undoing what they were about to do, were insufficient to prevail on the Board to suspend their decision for a moment; and yet, *these* are the men, that at the last Visitation, had the *unparalleled modesty* to demand, “that their decisions should be final.”

With respect to the justice of my punishment, I would ask any honest man, after reading the foregoing detail, what presumption of my guilt can fairly be deduced from a condemnation obtained in the manner I have described—*on secret evidence* (by the admission of the Board) *afterwards impeached*? On the contrary, does not my whole conduct afford the strongest presumption of my innocence? As soon as I discovered my punishment, I complained of not having been heard in my defence—I asked for A TRIAL—I wrote to the Provost for A TRIAL—I personally solicited the Members of the Board for A TRIAL—I memorialized for A TRIAL—I applied for *even a hearing* before the Board—I APPEALED TO THE VISITORS IN THE FACE OF THE COUNTRY! Does this look like a *consciousness of guilt*; or a *consciousness of innocence*? Would I have sought to have *my guilt* confirmed by the Chief Justice? Would I have sought to make my disgrace more public, by its promulgation in *open Court*? What could have impelled me to sacrifice the hope of mercy, which even *guilt* can entertain, by defying the Board in so public a manner, as to make it impossible for them to be merciful, even if they *were* more

placable than offended men of power generally are? Was it a *consciousness of guilt*, or a *consciousness of innocence*?

But my innocence does not rest on these presumptions alone, however strong. What charge have I left unanswered? Will it be believed, that I was THE AGGRESSOR—THE AUTHOR OF THE AFFRAY. My character, and that of the other individual concerned, considered together, forbid the supposition; the acknowledged falsehood of the witnesses in suppressing the cut, to which I ascribed the provocation, and their object for so doing, forbid it. Nay; *the Provost himself*—by being reduced to the necessity of justifying my punishment, by assuming a *general principle* which is false, namely, “that *all* might have been expelled,” and, by *falsely* arguing from that *false principle*, “that therefore, one *not the most guilty*, might be selected—has altogether given up the supposition, that *I was the aggressor*.” Will it be believed that I acted criminally towards Mr. Upton? His own letters “acquitting me of any intention to injure him;” forbid it—common sense, without any other evidence than the absence of any motive, weighing my character against *the charge*, would acquit me of it.—Will it be believed that I was *drunk*? The testimony of that highly respectable gentleman, Surgeon Wilmot, of York-street—making it unnecessary for me to appeal to my character, or to other evidence—refutes the calumny. What then is my guilt?—That (though I took the precaution of ascertaining, as far as strong probability went, that I would not meet a certain individual, whose company, because of his violence of character, was objectionable,) I accepted an invitation to a party in College—that there—being most outrageously and violently assaulted, I did not exhibit a forbearance beyond the lot of humanity—a tameness beyond that of the worm on which we tread. That, outraged in my feelings, and wounded in my person, I shewed a degree of resentment which any one would have felt—certainly not

equalling the violence with which I was assaulted.—That, a gentleman having interfered, and caught me by the arms, I struggled to extricate myself, and cut him accidentally—and, for this—notwithstanding the lenity of the Statutes—notwithstanding the extreme delicacy of the situation in life, which I filled, (my present existence, and my future hopes, depending on my reputation)—the Board of Trinity College expelled me, without a hearing of my defence—without an intimation that I was accused! And the individual who had so unprovokedly assaulted me—who had inflicted three wounds upon my face—an old offender against College discipline—they acquitted!!! Is this justice?

I do not mean to impute to the Board intentional injustice—their mode of investigation exposed them to imposition, and I am ready to believe, that they *were* imposed upon—they were irritated, and their decision was precipitate—their *first* fault was only ERROR—their *grand* fault,* that which often includes tyranny, cruelty, oppression, and injustice, is OBSTINACY. For *these* I have left them no excuse—their mode of investigation should be a *model* to others—they should be superior to irritation—their precipitancy has no excuse, in a country, and under a constitution, where, even the culprit, after being publicly accused, and confronted with his accusers—after being heard in his defence, and found guilty by his peers, is asked by the Clerk of the Crown, if he has “any thing to say, why the sentence of the law, and execution thereof, may not be awarded against him.” Their precipitancy has no excuse in the relative characters of the

* It is but just to remark, that, whatever I have said concerning the Board, is not intended to apply to its Members, individually—but merely to the influence which directs its decisions. The Board consists of the Provost and the seven Senior Fellows. At the time of the investigation, Doctors Prior and Lloyd were absent: Doctor Phipps voted against my expulsion, and Doctor Davenport, though he did not tell me so, expressly, gave me to understand, that he also voted against it. These gentlemen, therefore, are not chargeable with any part of the transaction: take *them* from the Board, and what remains—The Provost and * * * .

persons concerned—*they* should be the last to decide *precipitately* on that, whose value it should be their object to inculcate—*they* should pause, even when it would be necessary to do an injury to those, to whom naturally they were the dispensers of good. For their obstinacy *I* have left them no excuse in the established lenity of the Statutes; none in the moderation of my request “even to be heard.” By refusing me a copy of the evidence, and the charges upon which *I* was expelled, *they* have left *themselves* no excuse for *any* part of *their* conduct.

I now submit *their* conduct and *my* guilt to the judgment of an impartial public. Had there been any other means left me, of discharging the sacred obligation of vindicating my character, *I* would not have resorted to *this*. That *I* have not *willingly* resorted to it, *I* offer, my patiently remonstrating for twelve months—my appealing to the Visitors—after that, my patience—and again, my remonstrating, as proofs—Had *they* been as slow to punish, as *I* to vindicate my character, *I* had been saved the pain—the public the trouble, and themselves, perhaps, the mortification, of this exposure.

It cannot be necessary to point out how *THIS CASE* illustrates the danger of intrusting the Board, with “absolute and uncontrollable power over the independent members of the College, without any responsibility for the justice of their measures.” It must be perfectly plain, that if an individual Student may be injured, without the means of redress, *no* Student can be considered safe; *all* may be injured—*all* may be expelled. However unlikely it is, that any set of men, intrusted with the power, would have the hardihood to resort to this extreme measure; it is quite conceivable, that obnoxious individuals may be selected for oppression and injustice—and every one must

tremble, who cannot assure himself that he may not be one of those obnoxious individuals. When a person, professing to be innocent, and complaining that he was expelled, contrary to the Statutes, and, contrary to every principle of justice, without an opportunity of defending himself, is told, that he cannot be redressed, it must be obvious, that, for particular purposes, any individual may be expelled without the shadow of a pretence. A corrupt, unprincipled Provost, ambitious to give a representative to the University, would find in this power a ready instrument to effect his purposes. The Electors of the College are ninety-five, whereof seventy are Scholars. The Scholars must be chosen from the unprivileged Students, or independent Members of the College. If then, every year previous to the examination for Scholarships, or, even the year of an anticipated dissolution of Parliament, the Provost would expel or rusticate a few only of those candidates, whose talents would secure their election, but whose interest would not be with *him*, his ranks would quickly be filled; for every place thus vacated, and filled by a partizan of his, would make an accession of two to his strength. This would not be difficult; with a majority at the Board, he could expel or rusticate them on some pretence, or, without a pretence. If the rusticated appealed to the common law, they would incur expulsion by the Statutes; if either they, or the expelled, appealed to the Visitors, they would not be heard—"the decisions of the Board, with respect to independent members, must be final." This, indeed, is mere speculation, but it is possible, and certainly not improbable, when we consider the powerful motive of a corrupt zeal, and recollect, that the injury of expulsion from a University has been defined by one of the first authorities in the kingdom, the Chief Justice of the Common Pleas, to be no more than the amotion of a boarder from an ordinary boarding-school.

Under the present virtuous and well beloved Provost, no apprehension of those evils can be entertained; his integrity is unimpeached—but, of his falibility the Reverend Gentleman has himself given soon proofs—His supplying the acknowledged deficiency of the College-Course in the BELLES LETTERS, by suppressing one of its finest Institutions, the HISTORICAL SOCIETY—is one. His attempt, nearly to close up the Library, because, “some one had been reading *MAGICK* there,” is another. His manner of complying with the precept of the Statutes, which directs, “that he, and all the members of the College, should cultivate to the utmost of their power, concord, unity, peace, and mutual good will”—his manner of complying with this precept, I say, by fomenting the late contested election, will, by those who know how much that concord, that unity, that peace, and that mutual good will, have been improved by it, be admitted as a third proof. If then there were nothing but the falibility of these men, exhibited in the detail now before the public, this alone should be sufficient to enforce the inexpediency of their possessing a power, which may be made an instrument of the oppression of innocent individuals—which may be converted to the purposes of political intrigue—in fine, a power by which any Provost, that may be vicious and base enough to undertake it, may, when he pleases, make his corporation a close borough.

If it were necessary to point out how this case may serve as an apt comment on the “circumspection and lenity which the Vice-Chancellor was assured the Board would display in the exercise of its power,” I need only refer to the extraordinary *circumspection* of taking evidence in secret, and diligently concealing from the accused, both before and after punishment, the evidence and the charges on which he was condemned; or rather to the *want of*

circumspection, to which they themselves plead guilty, by acknowledging, that, after their secret, precipitate, and yet *circumspect* investigation, "I had shewn sufficient grounds for inculpating others."—If the principle, that "*Ju-
dex damnatur cum nocens absolvitur*" be admitted, we will be reduced to the necessity of translating "*DAMNATUR*," is *circumspect*, if we give the Board credit for *circum-
spection*," in this case. And, as for their "*lenity*," we may give them credit for the lenity of permitting the guilty to escape, and punishing the innocent;—but, if this be *their lenity*, the punishing of THEFT by "a fine of a month's commons," must be the *severity of the Statutes*.

Having now, by my case, illustrated the danger of the principles, upon which the decisions of the Board, with respect to independent members, are assumed to be final—having shewn the "*lenity and circumspection*" of the Board—having shewn that the decision which excludes me from redress, leaves *all* exposed to injury, it only remains for me to examine the validity of that decision.

THE
RIGHTS
OF THE
INDEPENDENT MEMBERS
OF THE
UNIVERSITY,
&c. &c.

THE *real* grievance which MY CASE exhibits, resulting from the exclusion of the independent members of the University from any means of redress, makes it unnecessary for me to expatiate on the *probable* evils of such a system; and will, I trust, serve as an apology for, what, under any other circumstances, would be an unpardonable presumption—my undertaking to canvas the decision upon which that exclusion is founded.

It were, indeed, to be wished, that the task had fallen to some one more competent to its execution; but, as the promulgation of “a power (in the emphatic words of Mr. Plunket) incompatible with the principles of our free constitution,” after a lapse of six months, has raised up no abler advocate for the unprivileged Students of the University—I, with great diffidence, offer myself as the humble assertor of their rights, and my own; proposing to shew that the Fellow-Commoners, Pensioners and Sizars have, when aggrieved by the Board, a right of appeal to the Visitors.

Before I review the decision of the Vice-Chancellor, and observe on some heterogeneous matter, which his Lordship thought necessary to blend with it, I shall state, in the clearest and most perspicuous manner I can, the arguments to be deduced from the Statutes of the College, in support of the Right of Appeal which I propose to establish.

First—*That all the Students have a RIGHT to education*—is manifest, from its having been the *primary* object* in founding the College, to provide for the education of Students in general, without any restriction: for, if *this* be admitted, and the RIGHT be denied, it would follow, that persons only *secondary* in the contemplation of the Founders (although intrusted with the executive power,) may defeat the *primary* object, by refusing to admit *any* Students; and may, at their ease, enjoy the *funds*, without keeping in view the *end* of the endowment of the College.

Besides the right to education, which, derived from the nature and the express object of the institution, I contend every one enjoys, "*he possesses, also the inchoate right, or*

* This is manifest, from the clause of Henry Usher's petition which Queen Elizabeth recites in her charter; "Whereas our beloved subject, Henry Usher, Archdeacon of Dublin, has besought us, in the name of the City of Dublin, that, inasmuch as no College for educating Scholars in polite literature, and the arts, as yet exists in our kingdom of Ireland, We would deign to erect, found, and establish one College, the mother of a University, near the City of Dublin, for the better education, institution, and instruction of Scholars and Students, in our kingdom aforesaid; and, also, that in some way a convenient provision may be made for the support and maintenance of a Provost, Fellows, and certain Scholars: Know ye, that We, in consideration of our singular concern to have the youth of our kingdom of Ireland, piously and liberally instructed, and our benevolence towards studies, and the studious, &c. &c.—assenting to this pious petition, will, grant and ordain for ourselves, our heirs, and successors, that henceforth there be and shall be a College, the mother of a University, in a certain place, called Allhallowes, near Dublin, aforesaid, for the education, institution, and instruction of Youths and Students," &c. &c.

*natural eligibility, to the offices and privileges of Fellow and Scholar. If then, the Executive authority of the College have an arbitrary power to inflict on a Student a punishment, (not only in their own, but in the construction of other Colleges,) branding him with infamy, and, by its operation, rendering him in-eligible to these offices—they have a power capriciously to destroy the natural rights of the subject:—a position, which it would be as absurd as it is unconstitutional to maintain.”**

That all the Students are subject to the Statutes—may be inferred from the Provost's oath, (cap. 3.) wherein he swears “to govern and defend all and every of the Fellows and Scholars, Fellow-Commoners, Pensioners and Sizars, and the other Members of the College, by the same laws and Statutes;” from the fact, that the penal Statutes are so constructed as to apply to all the Students, (cap. 11, and 23.) and from the express provision, (cap. 10, in fine,) that “all the pupils, of whatever denomination, should be subject and obedient, with respect to morals and scholastic exercises, to the same laws and Statutes, as the Scholars supported by the College, and that they be punished, if they deserve it, in the same manner.” Hence the precept, (cap. 27.) “That the Statutes should be read publicly and distinctly, in the chapel or hall, by the Deans, at the beginning of each term, which reading, (ne quis eorum quibus parendi officium incumbit, ignoracione peccet,) all the Fellows, Scholars, Fellow-Commoners, and the other Students are bound to attend, unless the attendance of any be dispensed with, on sufficient grounds, by the Provost.” Hence the practice of putting a book of the Statutes, into the hands of every Student, on his entrance and matriculation.

That all the Students are to be protected by the same Statutes—may be inferred from that part of the Provost's

* This argument, the Rev. Mr. Wall, Scholar, in my judgment, very properly objected to the Chief Justice's opinion, that the Students (being merely boarders,) might be dismissed at pleasure, without any right of appeal.

oath, where he swears to “DEFEND *them by the same laws and Statutes,*” as well as from the maxim, that in laws “subjection and protection are reciprocal.”

That it is not intended that the Board should exceed the prescribed rule of the Statutes— will appear, no less from the effect of written laws to limit the executive power, and the fact, that they are, themselves, subject to the Statutes, being legislated for, along with the Students, without any distinction (cap. 23.) subject, for the same crimes, to the same penalties; than from the impossibility of supposing them possessed of discretionary power, without the inconvenience of also supposing, that they may *capriciously and unjustly*, more than defeat the primary object of the Institution, by doing an *injury* to those for whom a *benefit* was intended;—and that, while *all* are subject to, *some only* are protected by, the letter of the law.

Having, as I conceive, shewn that all the Students of the College possess certain Rights, on the sole condition of obeying, *not the arbitrary will of any set of men*, but, the Statutes; and that, by these, *all* are protected in the enjoyment of their rights, from injustice and oppression; it remains to shew *how this protective power of the Statutes is made operative.*

Written laws, unless the executive power were responsible for the just administration of them, would be nugatory. *This*, as well as the fact, that the executive power of College is subject to the laws which it administers, presupposes a superior authority: this authority is vested in certain officers, called Visitors, concerning the extent of whose power—from what we read in Blackstone, (cap. 18, vol. 1,) no less than from the Chief Justice’s having allowed a reference to the Statutes, to ascertain *his*—we may infer, that it is as unlimited as the Founder hath made it. We are then to inquire in the Statutes, if the Visitors are, as appointed representatives of the Founders, to

secure the just appropriation of the funds, the pure administration of the laws—to protect *all* the Students in the enjoyment of those rights which the Founders' property purchased—to redress all grievances, and to correct all abuses; or, if they labor under any disability and limitation of their power.

There does not appear, in any part of the Statutes, any limitation to the authority of the Visitors; on the contrary, they are empowered, (pag. 9, Chart. Eliz. et 31 Carol.) "to decide and definitively conclude ALL suits, actions, and controversies, which the Provost and the majority of the Board may not be able to settle, and to take cognizance of ALL abuses, not corrected by the Provost and Board! And, (cap. 27 Carol.) they are not only empowered, but besought to go to the College, and call together the Provost, Vice-Provost, Deans, Bursar, Lecturers, Fellows, Scholars, and all the Students in general, and to visit the College, as well the Head as the Members, and diligently to inquire concerning each and every thing, touching the state, interest, honor, and STATUTES of the College, concerning the reformation and correction of the Provost, Vice-Provost, Bursar, Deans, Lecturers, Fellows, Scholars, Students in general, and Porters, and from the same to require an oath to declare the truth in every thing aforesaid: and all crimes, excesses, abuses and omissions, by whomsoever of the said College, and howsoever committed, discovered in that Visitation to punish and reform, or to take care that they be punished and reformed by those whose duty it may be, &c. and to do every thing necessary to their correction and reformation, although that should extend to the privation or amotion of*

* I think it necessary here to observe, that I differ from the Chief Justice in the interpretation of *discipulos*, which I shall defend by and by—the point at issue can be established independently of this translation, but as it is, nevertheless, not unimportant, and some way connected with the Chief Justice's decision, I have determined not to pass it unnoticed.

redress all grievances—to correct all abuses—to exercise jurisdiction over, and to afford protection to, all in the College, or any way connected with it. Whatever is wanting to the establishment of this, in the arguments which I have adduced, may be fairly admitted to be supplied by the inference to be drawn from the conduct of Lord Clare, when Vice-Chancellor. His Lordship exercised that jurisdiction over independent members, which my construction gives the Visitors, by (in the year 98,) expelling independent members: and, as he should, to be consistent with this first act—also heard their appeals from the decisions of the Board. By expelling them he has justified my interpretation of *discipulus*; for, in the Statute, the Visitor is permitted to proceed “*ad privationem seu amotionem Præpositi, Vice-Præpositi, aut alterius cujuscunque ab administratione, vel officio, seu ad amotionem alicujus Socii, Scholaris vel Discipuli ab hoc Collegio,*” &c. Here, unless we translate “*vel discipuli,*” or Student in general, the Visitor has no power to expel an independent member. Chief Justice Downes himself, limiting the signification of *Discipuli*, declared that, “the Visitors had no jurisdiction over the independent members.” But even, if this were the case, they have still the means of redressing them, by being empowered “to punish and reform all crimes, excesses, abuses and omissions,” without any restriction, as to the persons by whom committed, or against whom committed; “*Crimina, &c. QUORUMCUNQUE dicti Collegii et QUALITERCUNQUE commissa.*”

Nor would this construction prevent them from punishing “the crimes, &c. of WHOMSOEVER of the said College;” for there is an express clause, enabling them, where it is not intended that themselves should directly exercise jurisdiction, to compel the Provost and any others, to do their duty; “*aut ut puniantur et refoventur per Præpositum, vel quorum interest, curare.*” This clause is inserted, to enable the Visitors to “correct the porters and other infe-

rior officers," without directly exercising jurisdiction over them. If a Student, ill-treated by any of these persons, and dissatisfied with the redress, which, on complaint, the Board may have given him, appeals to the Visitors; they, by this clause, are empowered to compel the proper officer to fine (by subtracting from their wages) or to dismiss them. The clause is not at all necessary to enable them to punish the crimes of the independent members, by *indirect* jurisdiction, as may be inferred from Lord Clare's having exercised *direct* jurisdiction. But before I justify his Lordship's and *my* interpretation of *discipulus*, I will recapitulate a few of the contradictions, which would flow from the opinion, that the independent Students have *no* appeal to the Visitors.

The Board, having a prescribed rule for the government of *all* the Students, may, with respect to some, for *this* rule, substitute any thing the most opposite; and make subservient to their own will and caprice, not only the right to education, which the Founders of the College had provided for all; but also, by implication, the natural rights of the subject. Where (in cap. 11.) it is directed "*if, in consequence of the dissolute habits, &c. (either within the walls of the College, or elsewhere,) of any one, &c. it should happen that the College be publicly—badly reported of, that the delinquent for the first time, be admonished (tantummodo) ONLY* : The Provost and Board, although they are strictly confined to *this punishment* and to *this Statute*, "*unless it be a crime provided against in the Statute, concerning the punishment of greater crimes,*" may *expel* the individual. Perhaps I could point to an instance of three so circumstanced, whose case *mercy* could have as easily confined to this Statute, as *angry severity* has wrested it into the more penal one; but, to be more moderate—they may admonish him *publicly*, and *rusticate him for twelve months*. Here would be the intention of the

the will and intention of the Founders and Testators may have effect. In the case of an expelled Student appealing to the Court of King's Bench, the business of the Court would be, first, to ascertain the intention of the Founders, with respect to an appeal to its jurisdiction. There could be no more positive proof that they intended *no such appeal*, than the fact that they prohibited it under the severest penalty they could inflict. My assumption then, "that the independent members excluded from visitatorial protection, are left no means of redress; and that the Board, not responsible to the Visitors, is responsible to *no* tribunal," is here justified; if it were not already justified, by the Vice-Chancellor's description of those independent members, and their relation to the Board.

But the Founders—the framers of the Statutes, did not leave themselves, liable to the imputation of the savage cruelty of (after recognizing the possibility of dissatisfaction) cutting off all means of remedy—they did not leave themselves, I say, liable to this imputation—to be justified by the previous appointment of Visitors, without any limits to their authority; or by the subsequent clear, and comprehensive definition of that authority, including all possible cases of grievance. No: on the very spot, lest there should be any misconception—lest any should think them so cruel—they say—*we do indeed prohibit a recourse to the common law*, ("tamen: ") "*however*," lest we should be supposed severe, or to favour injustice, recollect, that "*we do not prohibit an appeal to the Visitors*." They did not betray the indiscretion of excluding that security for the just appropriation of their property, which the law of the land, unless they prohibited its interference, or appointed a sufficient authority, would interpose. No: for the very moment they withdraw that security for their laws and their subjects, they tell us that they have appointed another; "*however, we have provided an appeal to the Visitors*."

The only objection* I ever knew to have been made to the reasonableness (on a superficial view) of the claim that the right of appeal should be allowed to all, was, that it would be imposing on the Visitors a troublesome and arduous task, to require them to hear the appeals of nearly sixteen hundred Students; whereas many of them might appeal about the most trifling thing—even about a small fine. The answer to this objection, is probably the strongest confirmation of my arguments. The framers of the Statutes having in contemplation the indefinite number of Students, for whom, education was provided, took the same view of the inconvenience; and immediately after the clause recognizing the right of appeal, introduced a clause “*empowering the Visitors to reject (without hearing) any one that may appeal foolishly, and about any thing trifling.*” And why? “*lest discredit should be brought on the College, or too much trouble should accrue to the visitors from numerous appeals:*” and still further, “*they empowered them (having first consulted the Chancellor,) to increase the punishment, when the serious nature of the case obliges them to hear it, but when a real grievance shall not be established.*” “*SED NE FREQUENTI APPELLATIONE Collegio dedecus, aut VISITATORIBUS NIMIA CREETUR MOLESTIA, licebit iis, ineptè, aut de levi appellantem rejicere; appellantem verò in causâ graviori, et absque justo gravamine, licebit Visitoribus (sed consulto priùs Cancellario Academiæ) ipsum pro qualitate delicti, severiori pœnâ afficere,*” cap. 11.

Without looking elsewhere to ascertain the spirit and intention of the Statutes, it would be an outrage on common sense, to suppose, that it could have been intended—after recognizing the possibility of a “*justum gravamen,*”

* This objection was made in a large company in Dublin, last November, where the Vice-Chancellor's decision happened to be the subject of conversation.

sentences ; this will be perceived to consist in the *prohibition of external*, but the *provision of internal interference*. If we suppose the intention to have been, merely to say “ *however we do not prohibit THE right of appeal which we have elsewhere provided,* ”—we must also suppose that, without this clause, the rendering penal an application to *external Courts*, would have prohibited an appeal to a Court established for that purpose, *within the College*. As there is nothing in the Statute that could possibly restrict the right of appeal already provided, the use of *tamen* here would be wrong, and the clause altogether unnecessary. But his Lordship’s argument was still further fallacious—he said, it applied to a right of appeal already provided, and assumed that that was a limited right. Now, the only place in which we find the Visitors noticed before this in the Statutes, is in the Charters of Elizabeth and Charles ; where we find, *Visitatores “ omnes lites, actiones et controversias (quas Præpositus et major pars Sociorum non possint componere dirimant et definiant, et omnia graviora delicta ab ipso Præposito et Sociis non emendata, animadvertant.*” Here we find the species of appeals, not only *not limited*, but *very generally* described, “ *OMNES lites, actiones et controversias.*” If we compare the “ *omnes lites,*” in this place, with the “ *omnes lites,*” whose determinations are, by the clause in question, confined within the College, we can have no doubt, but that it was the intention of the Framers of the Statutes, that *all* controversies should be decided by the Visitors, without any restriction, except where the cause may be “ foolish or trifling.”

His Lordship translated “ *Scholares et discipulos omnes,*” “ the Scholars supported by the College.” I, it will be seen, have translated these words, the Scholars and Students in general. His Lordship justified his interpretation by the title at the head of the Statute which concerns only the seventy Scholars—namely, “ *De Schola-*

ribus sive Discipulis." To this I object that, first, the etymology of the word is in favor of my translation; and, secondly, I will shew it to be used in two significations in the Statutes; and, in a particular passage, we are bound to adopt that signification to which the construction inclines, and of which, the spirit and intention of the author seem to approve.

The only place where "*Discipuli et Scholares*" occurs manifestly distinct from, and forming only a part of, the Students in general, is in cap. 10, where we have "*pupilli omnes quocunque vocentur nomine iisdem legibus & statutis, &c. quibus discipuli et Scholares Collegii expensis sustentati.*" If it were intended that "*discipuli et Scholares*" should signify throughout the Statutes, as the Vice-Chancellor claims, "merely the Scholars supported by the College," the annexation of "*Collegii expensis sustentati,*" would be unnecessary: the effect, then, of the new idea, "*Collegii expensis sustentati,*" being more particularly to define, and therefore to limit the application of "*discipuli et scholares;*" "*discipuli et scholares COLLEGII EXPENSIS SUSTENTATI,*" must signify fewer individuals than "*discipuli et scholares OMNES.*"

In cap. 15, Concerning the exercises of the classes—we find it directed, that all the Under-graduates be distributed into four classes—and the persons thus denominated "*ii qui nondum sunt graduati,*" are designated through the entire of the chapter by the term *discipuli*. And still stronger (if possible) we have, cap. 14, "*discipulos cujuscunque generis,*" relating to the *discipuli* of the following chapter, that is "*ii, or personæ, qui nondum sunt graduati—cujuscunque generis*"—that is, of whatever denomination, whether Fellow-Commoners, Pensioners or Sizar—*discipulus* being used in both these places, manifestly in the wide or literal sense; and no where have we *scholares et discipuli*, nor *scholares et discipulos omnes*, manifestly in the limited sense of Scholars supported by the College.

What I gain by interpreting "*Scholares, et Discipulos*," "the Scholars and Students in general" is ; that it must appear *monstrous*, that it should, for a moment be doubted, that the independent members have visitatorial protection, when they are so plainly directed "to be called together and visited." That they have visitatorial protection I have shown, independently of this command to visit them ; and I now submit it to any man of common understanding, to the Vice-Chancellor himself, and to the members of the Board who are interested, if my proposition, *that the independent members have a right of appeal to the Visitors from the decisions of the Board*, does not clearly follow, independently of any other arguments, from the fact, that *all* the Students are to be governed by the Statutes—and that the Visitors are besought "diligently to inquire concerning *each and every* thing touching the Statutes." With this single argument supported by the spirit of the Statutes, I should almost have contented myself, had I not, in meeting the Vice-Chancellor's decision, to defend the RIGHTS of sixteen hundred Students, and the CHARACTER of the MILDEST and MOST BENEVOLENT *Code of Laws*, ever framed for the government of a Public Institution.

Having shewn the correctness with which the Vice-Chancellor translated the Statutes, I now proceed to examine his Lordship's description of the Sizars, which may not be unimportant. By this I will at once shew that he mistook both the *letter* and the *spirit* of the Statutes, and remove a very erroneous impression, which his description is calculated to make on the public, respecting the situation in College, of that class of Students. After saying, that "he considered Commoners and Pensioners only as persons who paid for their board and education, and similar, in every respect to pupils at a boarding school : and that, for any impropriety of conduct, they could be sent away from the University, in like manner as they would from any Se-

minary of education." He added, that "Sizars* were persons who did not come within that description; and although he should be extremely reluctant to make any observations which would be likely to hurt the feelings of a class of men, some of whom had risen to the highest situations in the State, and had reflected the greatest honor on the University where they had been educated; yet, it was absolutely necessary, however painful it was, to remark on the peculiar situation which they held in this College. They were, in fact, denominated poor Students, and their duty was to attend as servants on the Fellows, and their more fortunate Brother-Students; their time of remaining in College was undefined; they were not obliged to attend any examination, nor was it necessary for them to be examined for entrance. They were admitted through favor, and were liable to be discharged at pleasure; they were not members of the University, and therefore had no right of appeal to the Visitors."

Although this description could impose on those only who may be totally ignorant of College affairs, yet, as it is sanctioned by the Vice-Chancellor's authority, it does deserve to have all its allegations met by a *true* statement. I owe it no less to myself, and to that class of Students to which I had the honor to belong, than to the character of the College, to correct so gross a misrepresentation, into which nothing but his Lordship's very imperfect acquaintance with the Statutes could have led him. It is indeed to be regretted, that, as "it was *absolutely necessary* to remark on the peculiar situation of Sizars," his Lordship did not inform himself better on the subject.

* I extract this from the report of the proceedings, given in the Freeman's Journal of Saturday, October 31, 1813.

The laws of Trinity College make no distinction between those subject to them, but, on the contrary, provide* that no distinction should be made. The question was, whether a Student had a right of appeal to the Visitors. As the law made no distinction between the different classes, it could not have been absolutely necessary to the elucidation of the question, "to remark on the peculiar situation" of the class to which the appellant belonged. It may indeed, be *necessary* for other purposes, and so may a misrepresentation of the class be *necessary*.

The situation of a Sizar in this College, so far from being degrading, is often an object of ambition, to many who are independent of the immunities it confers. They are, it is true, "denominated poor Students;" but they are *affectionately* so denominated; and, for them the Statutes evince, throughout, the most paternal regard. In the election of Scholars, the *poverty*,† and merit of the candidate must decide; and, in the election of Fellows, the preference is to be given, (*cæteris paribus*) to the Scholars,‡ (who, we will recollect, were to be elected out of the poorer candidates, in preference to their more wealthy competitors.)

We find the Sizars mentioned in the Statutes also, as persons whose services would be necessary to the Fellows, Scholars, &c.: but, to understand this, we must consider the origin of Sizars. They are no more than the lay-brothers of the old ecclesiastical establishments, whose offices, so far from being considered servile, were consi-

* "Pupilli omnes quocunque vocentur nomine iisdem legibus et Statutis, teneantur et pareant, quibus Discipuli et Scholares Collegii expensis sustentati, &c." cap. 10.

† "In qua electione habeatur ratio inopiæ, ingenii, doctrinæ, virtutis," cap. 5.

‡ "In hac electione discipuli Collegii semper præferantur, atque similiter tenuiores ditioribus," &c. cap. 6.

dered honorable. We find Sizars, I say, *so mentioned* in the Statutes, owing, I suppose, to this their origin ; but they have no such duties as these here implied to *perform*. They have no duties different from those of the Fellow-Commoners and Pensioners. They may live in College, or out of College :* if they live in College they can be rewarded for their diligence, by being appointed to situations of considerable emolument, (often with mere nominal duties,) of a nature that could not offend the most squeamish delicacy ; and the only thing that could be considered in the slightest degree painful to the most delicate feelings, is, that their hour of dining is later than that of the other Students, and the joints served up to them, are those removed from the Fellows' table : the vegetables are, however, dressed for themselves, a clean cloth is laid for them, on a separate table, and they have the attendance of the porters. Whether this is degrading or not, can be best collected from the opinion entertained of it in College, where only (the concomitant circumstances being known) the matter can be fairly estimated.

There is no class of Students more respected in College, nor any class in which a young man of merit may more readily recommend himself to notice ; for the general feeling is, that they are, as his Lordship admitted, a meritorious class.

There is not only an *election*, but an examination previous to admission. The subject of the examination comprises the whole entrance-course of the Fellow-Commoners and Pensioners, together with the classics of two terms in the *junior freshman* year. The vacancies average from six to ten, and the candidates† from fifty to seventy : and,

* Of this I am an instance, having never lived in College, or performed any duties different from those which I would be bound to perform, if I were a Fellow-Commoner, or a Pensioner.

† At the late examination for Sizarships, the number of candidates was seventy-five.

from the extent of the course, and greatness of the competition, success is considered highly creditable, and a test of classical knowledge, not inferior, and even by those who have obtained both distinctions, declared superior, to the obtaining of a Scholarship. They scarcely ever fail to obtain Scholarships, and several of them are to be found amongst the present Fellows.*

To their success in after-life the Vice-Chancellor has done ample justice. To be greatly successful without any of the advantages of fortune, rank or connections, is decisively indicative of superior personal merit: and the Sizars, considering their number, (only thirty) and the many instances of distinguished members to which they may refer, have very large claims to that respectability which a class may derive from the merit of individual members. Any class of men that could boast the production of a Murray,† a Curran, and an Avonmore, could not be *justly* charged with meanness—ought not to be *insulted for their poverty*. Poverty is no reproach to Students or to Scholars; the pursuit of learning has been always accounted more respectable than the pursuit of money. Do we reject the works of Homer because he was a beggar? or has Plautus less credit with us, because he turned a mill?

But what has poverty to do with a question of *right*? Would the poverty of a Student warrant the Board in treating him with severity or injustice? Would it not aggravate the injury? Why then did his Lordship turn aside to irrelevant matter. Why *unnecessarily* hurt the feelings of a class of men, whose merits he could not deny, by misrepresenting them. His Lordship might have been convinced of the absurdity of arguing from what Sizars *were*, to what they are, by looking into the Statutes, and

* Their eligibility to the highest distinctions in the College, must be received as positive evidence, that their situation is not servile or degrading.

† I mean the late respected Provost.

applying the same principle to a description of the other classes. He would there find the annual "*salary*" of the Provost to be one hundred pounds!!! And the annual salary of each of those gentlemen, who, with their chief, the Provost, claim the privilege of arbitrarily destroying the rights of the subject, to be *nine pounds*!!! And if, from this he argued, that it could not have been intended, that they should possess the formidable power which they claimed, he might have been more rational than in inferring, that the Sizars, by their poverty, forfeited every claim to common justice. The condition of men who claimed a power never claimed by any body of men, but by Parliament, would certainly be a fairer object for animadversion than the condition of persons who claimed only a common right—the right of every man in society—a right to complain when aggrieved: and his Lordship, following the letter of the Statute, in describing the situation of the Provost, and Senior Fellows, would not have been more wide from the fact, than he has been in his description of the Sizars. In fact, the exploded condition of Sizars centuries ago, could no more justly be objected to the Sizars of the present day, than the rank in life of his Lordship's father, or grandfather, could, with justice, be objected to himself.

His Lordship remarked, that the only qualification for a Sizar mentioned in the Statutes, is, that he be "*auditor logices*." May I, without offence surmise, that he did not take time to consider the meaning of the expression? If he had, I am sure he would not have said, the *only* qualification. "*Auditor logices*" means one fit to commence the study of logic. Of Scholars, it is said, (cap. 4.) "*Nemo etiam elegatur qui non sit at logicam in aulâ discendam idoneus*."—If we compare this with what is prescribed for Sizars, we will at once see, that it was intended that the qualification of Scholars and Sizars should be similar.

“That their time of remaining in College is *undefined*.” True! and so is the time of any Student’s remaining in College, undefined. Any Student after taking his Bachelor’s Degree, may remain until he is Master, and after that continue as resident Master for life. The Sizars generally get Scholarships, and often get Fellowships, in which case they continue for life; but the duration of Sizarships is *well defined*, they last only four years, or until the degree of Bachelor may be obtained.

That they are obliged to attend Examinations needs no further proof, than that they are fined in the very same way, and to the same amount, as the Fellow-Commoners and Pensioners, for such Examinations as they neglect to attend; and that an Examination is positively required previous to their admission, follows very clearly, from the mention of a qualification, (“*auditor logices*,”) unless his Lordship imputes to the Provost and Board, the sagacity of discovering, by intuition, whether one is fit to learn Logic or not. For the Fellow Commoners and Pensioners, no qualification is prescribed, either directly or by implication; and yet, marvellous to say, his Lordship did not think it *absolutely necessary* to remark that.

It is clear then, that all his Lordship’s allegations with respect to Sizars, were erroneous, and altogether irrelevant if they *were* correct; and it must be a source of regret to every benevolent mind, that he should have thought it necessary to send out on the public, a misrepresentation as injurious to the character of the College, as it must be painful to the feelings of a class of men, who are to be found at the head of all the learned professions—at the Bar, on the Bench, in the Councils of the Nation, and in the Church, successful beyond the ordinary lot of unpatronized merit, and whose whole fault was that their origin had been poor. “*Quantum generi demas, virtutibus addas.*”

Perhaps his Lordship was irritated that an humble individual of that class, should have been the occasion of so much trouble to him ; perhaps he was concerned for the character of the Board brought into public notice by the interest which the appeal created ; else, how could he have forgotten the equalizing principle of the British Laws ; how could he have asserted that “the conduct of the Board had been *circumspect*”, when my appeal told him that they had condemned and punished me, without informing me that I was accused ; or “*lenient*,” when, although I was punished, I professed, and offered to prove myself innocent ! In another place, and upon a different occasion, I am sure, his Lordship could have expatiated with great ability on the horrors of an Inquisition, and the blessings of a free Constitution. These topics would have been quite relevant here ; yet, his Lordship did not think it *necessary* to touch upon them ; but when it might have been expected that he would reprimand the Board for their, suppose he chose to call it, *injudicious* conduct, he merely said, (*exercising* where he *disclaimed* jurisdiction,) that “the transaction was one which would have disgraced an ale-house.” Whether it was more disgraceful that a contest should arise in a company of young men, or that sedate men, the Heads of a College, should betray an irritation, which rendered them incapable of deciding between them, and afterwards, an obstinacy, which preferred injustice to an acknowledgment of error—whether the imprudence of the former, or the incapacity of the latter, reflects a greater disgrace on the University, the public will decide. Entertainments in College are sanctioned by their being frequent, and tolerated ; and whatever may have been the character of the entertainment in question, the odium of it should not fall upon *me* : I did not give the entertainment—I accepted an invitation to one, which, I was to presume, would be peaceable, and orderly, and becoming gentlemen. Unless a person for defending himself, is liable to the charge of rioting, and

unless a person assaulted is liable to the charge of assaulting—no part of the disgrace, no part of the criminality of the transaction, properly attaches to me; and yet, it was not this exactly, that his Lordship's inuendo insinuated: but I cannot more aptly take my leave of the subject, than by quoting the anxious, solemn, and impressive appeal to the consciences of the Visitors, with which the Statutes conclude—“*Conscientiam verò Visitorum apud Altissimum oneramus, et in visceribus Domini Nostri Jesu Christi hortamur, ut in faciendo et exequendo præmissa, solum Deum præ oculis habeant, et ut favore, timore, odio, prece, aut pretio, coloribus, aut occasionibus posthabitis quibuscunque, Visitationis, inquisitionis, correctionis, et reformationis officium diligentè impendant, et fideiè exequantur, sicut coram Deo in ejus extremo judicio in hoc casu voluerint reddere rationem.*”

POSTSCRIPT.

MY only motives in this Publication, having been the vindication of my character, and the assertion of those rights, which, in common with the independent members of the University, I claim to possess,—I now confidently resign my own, and the common cause, to the protection of PUBLIC OPINION; assured, that, before that tribunal, it will never be tolerated, that that, which the laws of nature, as well as those of society require—the expression of a just resentment, should be made penal; or that, in an institution which is *public property*, a SYSTEM should prevail, under which, not only the guiltiest is the most secure, but the most innocent is the most exposed to danger.

FINIS.