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OBSERVATIONS

ON

THE POWERS

OF

THE BENCHERS,

IN WHICH IS GIVEN

The Charter

Obtained by them in the Year 1792;

AND

THE RESOLUTIONS

OF THE

UTTER BAR,

Which led to the Repeal of that CHARTER.

Leges vigilantibus non dormientibus subveniunt.

DUBLIN :

PRINTED FOR C. P. ARCHER,

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1812.

OBSERVATIONS

ON

THE POWERS

OF

THE BENCHERS

IN WHICH IS GIVEN

THE CHARTER

Obtained by them in the Year 1792;

It is to be understood, and that the Benchers
of the City of London, in the Year 1792,
in which we THE RESOLUTIONS

OF THE

UTTER BAR,

Which led to the Repeal of that Charter.

Printed by J. G. & Co. Stationers, and
not to be considered a portion of any
other work published by the same

man of business, who devotes his
study to the Law of DUBLIN, to

PRINTED FOR C. R. ARCHER,

his residence at No. 44, Pall Mall, and
convenient to have the latest

Houses of the Orreachtas

OBSERVATIONS,

&c. &c.

IF it be an undeniable position, that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar; if in the obedience to law consists the security of life, liberty, and property, whilst the neglect of it, necessarily leading to the loss of all these, must eventually interfere with our temporal concern and happiness, though it may not be considered a business of paramount necessity in other men, it surely becomes the man of profession, who devotes his time and study to the laws of his country, to know also the peculiar laws by which he himself is governed, he could claim no indulgence if through his ignorance or inattention he became subservient to laws he did not understand, and

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to powers whose limits he could not rightly define, by what excuse could he gain our compassion, from whom it was impossible to conceal how dangerous an unlimited power is, that affords no defence for the weak, no shield for the innocent, in which justice is to be measured—by the constitution, the disposition, the temperament of the judge, and from whose decision there lies no appeal,—Is not this then a serious enquiry, and worthy our utmost attention and exertion to discover what are the powers of the Benchers? and how far are the Bar subservient to them? for though it may be said that one might safely grant unlimited power to the present men—yet who is there that lives under such a constitution as ours, would for any protection forego that of the laws? will the Benchers of the present day, however they may answer for themselves, ensure us against all extravagant use of power in the hands of others who “drest in a little brief authority” may be disposed to exercise it—if such should issue their commands, heedless how repugnant soever they might be to the feelings of an honorable profession—what defence for the Bar should then be in such a case? The defence of silence, to punishment however whimsical, unless, indeed, it might be allowed them the

pleasant privilege of carping at the mode of execution, like the harmless merriment of a Roman soldiery, which was considered but as a necessary appenage of triumph.

An enquiry would suggest the following questions:—What powers do the Benchers claim? How is that claim supported? Has there been any resistance or opposition on the part of the Bar to that claim? What has been the effect of that resistance? To which the charter obtained by the Benchers in the year 1792.—The entries and orders from the Society's books*—The resolutions of the Utter Bar, and lastly the act of 1793, repealing the act as far as it confirms the charter, may be considered as most likely to lead to satisfactory answers.

* The entries and orders are taken from Mr. Duhigg's History of the King's Inns—the Black Book is not convenient—Mr. Duhigg's acknowledged accuracy must supply the defect.

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CHARTER, &c.

GEORGE the Third, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, and so forth. To all unto whom these presents shall come Greeting.

WHEREAS *the professors of the Common Law* of our Kingdom of Ireland, have been for time whereof there is no memory of man to the contrary; a Society having, using, and enjoying divers liberties, franchises, privileges and immunities, and have been called and known by the name of the Society of the King's-Inns, Dublin; and the same having been highly approved by our Royal Predecessor, King Henry the Eighth, he by Letters Patent, bearing date the thirty-first day of July, in the year of our Lord, one thousand five hundred and forty-two; Granted to them certain Lands and Houses, theretofore possessed by the Friars Preachers, and situated near our City of Dublin, which grant was twice confirmed to them by our royal predecessor Queen Elizabeth, and afterwards by our royal predecessor

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King James the First, who granted the same to them in fee, to the end that it should be a perpetual residence for them and their successors. And by virtue of the said franchises and privileges, the said society have from time to time, made, ordained and used, divers wise and wholesome rules and orders, to be obeyed and kept by all persons studying, professing and practising the said science, in or any of the Courts of the Kings and Queens our royal predecessors.

AND WHEREAS in or about the year of our Lord one thousand seven hundred and forty two, the said Houses became ruinous and totally unfit for the said Society to reside in, or to hold their meetings, or pursue studies, or exercises therein, and they were unable to rebuild the same. Whereby the said rules and orders have not been so strictly and punctually observed, and in force as theretofore; and the study and practice of the profession of the Law have been neglected, and many irregularities have crept into the same, not only to the disadvantage and discredit of the said Society, but to the great detriment and injury of all our liege subjects of our said kingdom, by the encouragement and encrease of barratry and strife, proper means of discovering, discerning and judging of the capacity and fitness of those

who seek to be admitted into the said Society, and of means to prevent and reform any abuses, which may arise in their practice, being wanting from the neglect of that wholesome discipline, heretofore observed among them; and the professors of our said Law, being desirous to reform such abuses, and to that end to build for themselves halls and habitations, suited for their studies and professions, and to keep such good order and rule as may promote the purity of the said profession, and the administration of justice in our said realm, have humbly besought our aid therein.

NOW we being willing and desirous to assist them in such their good purpose, and to renew and confirm the said franchises, liberties, and immunities, and to grant the professors of the Law in this our kingdom of Ireland, such other franchises, liberties, immunities, powers and privileges, as may be necessary, and conducive to promote the study of the science of the Law, and good order, rule and practice, among the professors and practisers of it.

KNOW YE that we of our special grace, free will, and mere motion, by and with the advice and consent of our right trusty, and right well beloved cousin and counsellor, John, Earl of Westmoreland, our Lieutenant General, and General Governor of our said King-

dom of Ireland, and according to the tenor and effect of our letters, under our privy signet, and royal sign manual, bearing date at our Court at St. James's, the fourteenth day of February, one thousand seven hundred and ninety-two, in the thirty-second year of our reign, [and now inrolled in the rolls of our High Court of Chancery, in our said kingdom of Ireland. Have willed, ordained, constituted and appointed, and by these presents, for us, our heirs and successors; We do will, ordain, constitute and appoint, the professors of the Law, of and in our said kingdom of Ireland, heretofore called and known by the name of the Society of the King's Inns, Dublin, or by whatsoever name or names, they have been at any time called, known or incorporated, or whether they have been heretofore incorporated or not, and their successors to be appointed, elected and admitted, in manner hereinafter mentioned, to be for ever hereafter one body politic and corporate, in deed and in fact, and called and known by the name of the Society of the King's Inns, Dublin, and by that name to have perpetual being and succession, and to be capable to acquire, have, take and hold, lands, tenements and hereditaments, to them and their successors for ever, not exceeding in yearly value the amount of three

thousand pounds, at the time of the purchase thereof, and goods and chattels to any amount whatsoever. And to grant, let, assign, and dispose of the same at their will and pleasure. And that by that name, they may plead and be impleaded, sue and be sued, in any Court whatsoever, of us, our heirs and successors. And that the said Society may make, have and use a common seal; and that they and their successors may break, alter and change the same at their will and pleasure. And the said Society shall consist of Benchers, Barristers, and Practisers of the Law, or Attornies; and that none shall be permitted to speak or plead as Council, or appear or practice as an Attorney, in any Court of us, our heirs or successors, who have not, or shall not have first been admitted, and shall not continue Members of the said Society.

AND for the better direction, order, and government of the said Society, We do hereby constitute and appoint the Right Hon. John, Lord Fitzgibbon, our Chancellor of our Kingdom of Ireland, the Right Hon. Lord Viscount Clonmell, our Chief Justice of our Court of Chief Place in Ireland, the Right Hon. Hugh Lord Carleton, our Chief Justice of our Court of Common Bench in Ireland, the Right Hon. Sir John Parnell, Bart. Chancellor of our Court

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of Exchequer in Ireland, the Right Hon. Barry Yelverton, our Chief Baron of our Court of Exchequer, the Hon. Richard Power, Second Baron of our Court of Exchequer, the Hon. George Hamilton, Third Baron of our Court of Exchequer, the Hon. Robert Hellen, Second Justice of our Court of Common Bench, the Right Hon. Thomas Kelly, third Justice of our Court of Common Bench, the Hon. Alexander Crookshank, fourth Justice of our Court of Common Bench, the Hon. Peter Metge, fourth Baron of our Court of Exchequer, the Hon. Robert Boyd, second Justice of our Court of Chief Place, the Hon. Joseph Hewett, third Justice of our Court of Chief Place, and

our fourth Justice of our Court of Chief place in our name and stead to visit the said Society once in every year, or oftener if need shall be, and at such visitations to amend, reform, and correct every error, evil practice, and abuse, which by inadvertence or design may have been introduced into the same: and we will, ordain, and appoint that their successors, Lords Chancellors, Keepers or Commissioners of the Great Seal of our said kingdom, the Chief Justices of our said Court of Chief Place, and their fellows Justices of the same Court, the Chief Justice of our

said Court of Common Bench, and their fellows Justices of the same Court, the Chancellor and Chief Baron of our said Court of Exchequer, and the rest of the Barons of the same Court, all for the time being, shall for ever hereafter, in our name and stead, and in the name and stead of our heirs and successors in like manner, and for the purposes aforesaid, visit the said Society. And we further will, ordain, and appoint (here follows the names of the Benchers) be Benchers of the said Society, and that if any of the said Benchers or their successors, chosen in manner herein after mentioned, shall wilfully absent himself, without license, from the meetings and councils of the Bench, for the space of four whole successive terms, he shall from the last day of the last of the said terms be and be considered as no longer a Bencher of the said Society; and that the Benchers in council assembled, or the greater number of them, shall have power to amove any Bencher from his seat and place therein, for just cause; and that when any of the said members, or of their successors shall be appointed a Judge in any of our said Courts, or shall cease to continue in manner aforesaid to be a Bencher, or shall be removed, or shall die, so as that the number of Benchers shall thereby be reduced to twenty-four, or any smaller

number; then the residue of the said Benchers, or the greater number of them, in council assembled, shall immediately proceed to elect, and shall elect, one or such other number as may be necessary to compleat the number of Benchers to twenty-five, out of such of the Barristers of the said Society as shall have been, at the time when such vacancy happened, eight entire years full and perfect members of the said Society, and shall have attained to the degree of Senior-Reader, therein in manner herein after mentioned, and shall have publickly read, at the least, during one term in the Hall of the said Society; but so as that the number of Benchers shall never hereafter exceed twenty-five, and that the Benchers aforesaid and their successors to be elected in manner aforesaid, shall for ever hereafter have the rule and government of the said society, and order, direction, and disposal of all their estates real and personal, and of the rents, receipts, income and profits thereof; and shall have full power and authority to make rules and orders for and concerning the admission of Students into the said Society, and for their admission to the class of Mootmen, and for directing their study therein, and for and concerning their admission to the full and perfect state

of members of the said Society and Barristers, and to grant and confer the degrees of junior and senior readers therein, and to make rules and orders for the admission of persons to learn the business and practice of Attorneys, and for their admission into the said Society as members thereof; and to make rules and orders for the better government of the said Society, and every member thereof; and for the advancement of knowledge in the science and practice of the law, and to assess yearly, or other payments, and to impose the penalties of fine, forfeiture, suspension or expulsion, upon any member of the said Society, offending against the said rules, orders, or any of them, provided always, that such rules and orders, or any of them, shall not be binding on any member of the said Society, until the same shall have been approved of by the said visitors, or some seven of them, whereof our Lord High Chancellor, and the Chief Justice of our Court of Chief Place, or our Chief Justice of our Court of Common Bench, or our Chief Baron of our Court of Exchequer, all for the time being always shall be two: Provided also that no person shall be admitted to the degree of Barrister in the said Society from and after the first Day of Hilary Term, in the year of our Lord one thousand seven hundred

and ninety-three, unless he has been resident twelve whole terms in some one of the Inns of Court in our kingdom of Great Britain, nor until he shall have been presented by the Benchers to the said visitors, and they or the major part of them shall have signified their approbation of him, or that the said visitors shall have ceased by the space of one whole term to signify to the Bench their disapprobation of such person: Provided also that if any member of the said Society shall think himself aggrieved by any rule or order of the said Benchers made in term, he may at any time on or before the last day of that term, or if made in the vacation, on or before the last day of the ensuing term, appeal from the same to the said visitors, who may rehear the same; and if it shall seem fit to them so to do, reverse or vary such rule or order, any time within the ensuing vacation; but if not reversed or varied within that time, the same shall remain for ever in full force; and we will and ordain that the said Society may, if it shall seem to them expedient or necessary so to do, sue for and recover any fine, penalty, or forfeiture, under and for breach of any rule or order by them made, by action of debt, or on the case in any of our Courts of Chief Place,

Common Bench, or Exchequer, and apply any sum so recovered to the use and benefit of the said Society; and further, it is our will that such of the said Benchers as are not of our Council learned in the law, shall have place and audience, according to their respective antienty as Benchers in all our Courts, next after our said council; that the Barristers, Senior Readers, shall in like manner have place and audience next after the said Benchers; and the Barristers, Junior Readers, next after the said Senior Readers. And We further will, ordain, and command, that these our letters patent, or the inrollment thereof, in our High Court of Chancery, shall be in all things firm, valid and effectual in law, according to the true intention and meaning thereof, understanding and construing the same most beneficially for the said Society, provided always that these our Letters Patent be inrolled in the rolls of our High Court of Chancery, in our said Kingdom of Ireland, within the space of six months next ensuing the date of these presents.

IN WITNESS whereof we have caused these our Letters to be made Patent. Witness our aforesaid Lieutenant General and General

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Governor of our said Kingdom of Ireland, at
Dublin, the twenty-seventh day of February,
in the thirty-second year of our reign.

Exd.

Lucius O'Brien,
Clk. of the
Crown & Hanp.

(Seal.) O'BRIEN.

INROLLED in the Office of
the Rolls, of his Majesty's High
Court of Chancery of Ireland, the
second day of March, in the thirty-
second year of the Reign of his
Majesty King George the Third,
and examined by

J. F. Colles and M. Franks, Dep.
Gds. and Keepers of the Rolls.

Such is the charter, which may be considered the case made out on the part of the Benchers—in which they set forth in the recital, that the Society was from time immemorial, having franchises, &c. &c. that they made divers wise and wholesome rules for the government of the profession, &c. Whether the Society did exist beyond the limits of memory, may appear as much worth attention, as whether they deserved the approbation of Henry VIII. But it may be material to know who were the members of that Society which made those wholesome rules? and whether those wholesome rules extended to the Bar, for should it appear that the Society was originally a voluntary association, having the privilege like other clubs of making rules for their own management, even then it would be necessary to shew the legal extension of those rules to the bar, before the Benchers could gain any thing by shewing themselves the legitimate successors of that Society. In endeavouring to ascertain who were the members of the Society, it is not my intention to resort to any thing beyond the memory of man—such flights of the imagination may well suit those who have something to advance not altogether consistent with present opinions—mankind is not satisfied by conjecture, nor do we in general ascer-

tain the nature of an object by going to a distance, let us therefore look no further than to those documents that have escaped the hand of time, which, perhaps, after all, are quite sufficient to direct us in our enquiry.

Henry the VIIIth. in the 33d year of his reign, made a grant to the Society, of which the following is given by Mr. Duhigg, as a faithful translation.

“ In the 33d year of Henry the VIIIth, the king demised to John Allen, Chancellor ; Sir Gerald Aylmer, Chief Justice of the King’s Bench ; Sir Thomas Luttrell, Chief Justice of the Common Pleas ; Patrick Whyte, second Baron of the Exchequer ; Patrick Barnewall, Serjeant of the King ; Robert Dillon, Attorney-General ; Walter Cowley, Solicitor of the King ; *and to the other Professors of the law* ; the monastery or house of Friars Preachers, near Dublin ; and the site, circuit, ambit, &c. it then goes on to state the several premises demised ; which may be found more at large in Mr. Duhigg’s work, page 39.”

This grant was made for a term of 21 years ; queen Elizabeth granted a like number of years, and a further lease of 41 years to commence on its expiration.

It may be worth remarking, that had the

Society been capable of taking, that is, had they been a corporation, Henry the VIIIth, would have, no doubt, granted them the fee, considering they were so highly approved of by him—but supposing him to be not quite sure of their conduct, and that he made, as some have said, but an experiment, the same cannot be argued of queen Elizabeth, who shewed so strong a disposition to perpetuate their name—and who seems to have put it out of her own power by the length of the terms, and to have left to her successors judgment, any alteration which the effects of such experiments might have rendered necessary.

It cannot be exactly stated what the transactions of the Society were, immediately following the grant of Henry to the year 1607, when having fallen into disuse, it was thought necessary to revive it—the members have shewn no disposition to preserve their transactions, and posterity need not be very anxious to make up their deficiency.

In the year 1607, Sir Arthur Chichester, Lord Deputy, enrolled himself a member of the King's Inns, at the request of the Judges and Practisers, in order as it is said to encourage thereby the reestablishment of that Society. Mr. Duhigg makes the following remark, “the object and intent of this revival is not subject

to mistake or misrepresentation, it was bottomed on the principle of all voluntary associations, among wise and honest men, public interest and personal convenience," and then gives a faithful copy of the original entry.

"Imprimis—it is ordered, that forasmuch as the present restoration of the Society of the King's Inns, doth require an admission of the practisers, officers, attorneys, and others of the several courts, whose anciently is not yet sufficiently known; it is therefore, this day ordered, the admittances shall be received and entered in the book of admittances, as they shall appear and desire the same; yet notwithstanding, that each of the *several practitioners of the law*, officers, attornies, and others, shall enjoy the precedence of their antiquity, their several admittances in the said book notwithstanding.'

The next important order is one with regard to the distribution of chambers. A council was held on the 20th day of June, 1609, in which the following order relative thereto was made.

"It was this day ordered by the Judges, and *the whole Bench*, and likewise assented to *by the Bar*, that the Chambers in the King's Inns, shall be divided in manner following."

It cannot be said that the Bar mentioned in this order, are analogous to Benchers, since they seem to have been carefully distinguished from the Judges and the whole Bench.

At this time King's Inns became the fashionable resort of grandeur and good fellowship, lords, Prelates, and Commoners, of distinction, crowd the festive board, no doubt diffusing good humour around; nor were they wanting in materials for this purpose. King's Inns Society seem to have imitated the worthy example of Eastern Princes, whom no man could approach without a present. Accordingly we find that 1610, Donough, Earl of Thomond, solicited an admission, and gave an hogshead of wine to the house. On the same day, lord Butler, of Tullow Philim, became a member, and as the historian of the King's Inns, remarks, with a spirit suited to his age, bestowed two hogsheads of wine.

How then is the first question, who were the first members of that Society, which made those wholesome rules &c. to be answered—it cannot now be disputed, both from what is said in the recital of the Charter, and the word, “other professors of the law,” immediately following the names mentioned in the grant, that the original, the legitimate members were the Common Law professors. Do the Benchers

then claim as such to the exclusion of all other of that honorable name—but I shall be desired perhaps to look to the revival, and ask who were the members then; who were not, might as easily be answered; all others (beside the Profession) who had nothing to bestow in the way of patronage or influence, could not have been members—are the Benchers, then the happy representatives of that splendid mixture of rank, and fashion—of law and divinity? Do they thence derive their power over the Bar? this necessary leads to the consideration of the second question, whether those wholesome rules extended to the Bar.—Now though it could be proved that the Common Law professors chose to make rules for the government of the Society, and the Benchers, could prove, that they only at this day, are the Common Law Professors; still it would be necessary to shew that these rules extended to the profession; or should they think it more respectable to derive their authority from the revival, what authority it may be asked could a Society composed of many members, who did not belong to the Bar, have over a profession, some of whom did not belong to the Society; for the Bar, tho' they might have been members, were not obliged to be so—as appears by the first entry, “that the admittances shall be received and entered in the book of admittances, as they shall appear and

desire the same." And this is altogether put beyond dispute by the order of the 20th day of November, 1634.

"At a parliament of the King's Inns, it is ordered, that none shall be allowed to practise as a Councillor at Law, but such as shall be admitted of this Society." Denoting that to this time, Barristers did practise without any such admission. Thus as from individual vices we derive oftentimes public benefits; as from the most deadly poison can be extracted the medicine that reanimates—so do the acts of tyranny and oppression, more clearly distinguish the legitimate authority from the usurped power.

To this interference by a Society, many of whom did not belong to the profession; it is true the Bar submitted, for which Mr. Duhigg appears to have given the true reason, "that it was much easier and wiser to enter as members, than to apply for a mandamus." Even at this present day the doctrine of convenience would most likely prevail—however, in a subsequent period when admission was refused to Mr. John Fitzgibbon,* the Bar, I may say, found an able support in the then Lord Chancellor Windham, and Chief Justice Reynolds, who agreed in thinking that a person

* Mr. John Fitzgibbon was father to the late Lord Clare.

performing the legal requisites enforced by modern Statutes Law, and the ordinances enjoyed by prescriptive authority of the English Inns, had a right to be called to the Irish Bar; this account Mr. Duhigg gives on the authority of Mr. Dwyer Lyster.

I would now call on the Bar, seriously to consider the consequence of this aggression, and to warn them from thence never again to yield the most indifferent outwork of their privileges; for power unauthorised is not only encouraged by usurpations, but absolutely requires them. Thus the Benchers,* increasing in power as they decreased in number, resolved to unite to the favour of admission, the dreadful sentence of expulsion, pursuing for this purpose a plan, (according to the remark of the historian of the King's Inns,) not dissimilar to that invented by the requisition, who from the unresisting dead, heaped precedents on precedents, ready to be drawn forth as occasion should require, to render the living equally harmless.

How fortunate is it for mankind that the ambitious, as they become more powerful are less dangerous, and

“ That when they have attained the utmost round,

“ They then unto the ladder turn their back,

“ Look in the clouds scorning the base degrees

“ By which they did ascend.”

* The word Bencher first occurs in Queen Anne's reign.

Hence with a madness inconceivable, and as one would imagine with a thorough contempt of the parliament, to which they applied, the Benchers required of the legislature to legalize acts of oppression; they obtained an act confirming their charter; but mark the consequences, the Bar remonstrated, the Legislature was vindicated, and in nine months this favorite child of the Benchers was no more.

*Heu, misserande puer! si qua fata aspera rumpas,
Tu Marcellus eris.*

Ah wretched child, should you the rough Bar break,
If not a Lawyer, you'll a Bencher make.



RESOLUTIONS OF THE UTTER BAR.

“ WE the members of the Utter Bar, desirous that our motives for declining to accept the Charter, purporting to have been granted to the professors of the law by his present Majesty, may not be misconceived or misrepresented, have thought fit to submit the following reasons for our so doing: To the right honourable and honourable the Benchers of the ancient Society of King's Inns,

“ We object to the said Charter, because in its recital it calumniates the Society by false imputations, of encouragement and increase of barratry and strife ; of neglect of the study and practice of the law ; and of irregularities, disadvantageous and discreditable to the profession, and detrimental and injurious to the public.

“ Because, the recitals allege, as a colour for that grant, that the professors of the common law have been a Society immemorially enjoying franchises, which implies a corporation ; whereas it appears to us, that the Society has been a voluntary association, and thus it should seem, was done with a view that an arbitrary interference might bear the semblance of a mere act of regulation.

“ Because, the Charter professes to have been granted at the desire and instance of the Society in general ; whereas it was privately solicited and obtained by a few unauthorised individuals, without the general consent or knowledge of the Society, or, as far as we can learn of any of its constituent parts.

“ Because, the Charter commits the government of the Society irrevocably, and by law, to a small body, arbitrarily appointed without the consent of the governed ; and vacancies in that body are to be filled up by its own

members ; a mode of appointment notoriously tending to introduce, encourage, and perpetuate mal-administration :

“ Because, the Charter purports to create an arbitrary power of imposing unlimited fines, and of inflicting unascertained punishments, for undefined offences.

“ Because, the Charter introduces an intermediate body, of less competency than the Society at large, and of less ostensibility and responsibility than the Judges, on which it confers the power. In the first instance—of censure or fine, with consequent imprisonment, suspension, and expulsion :

“ Because, while the Charter confers those despotic powers, of creating and punishing offences, it prescribes no constitutional or just mode of trial, as to the fact of their commission ; but unites all the powers which the justice and prudence of our constitution, and of all free governments, anxiously separate.

“ Because, the powers which the Charter confers on the Benchers, are peculiarly dangerous to men engaged in the same pursuits with themselves, and may be productive of collusive practices, dishonourable to the profession of the law, and injurious to the public :

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“ Because, the mischief that may result from the abuse of those formidable powers vested in the Benchers, is not sufficiently guarded against by the *institution of* visitors, (even if that institution could, under any circumstances, be adequate to such a purpose) it not being mandatory to the visitors, but discretionary in them to hear complaints, and redress grievances; and the Benchers having it in their power, by critically timing their proceedings, to render morally impracticable a deliberate investigation, or an effectual redress by the visitors :

“ Because, the Charter purports to transfer from the body at large to a few, the whole property of the Society; and to vest in them irrevocably, and by law, the absolute disposal thereof.

“ Because, the Charter invests certain individuals of the Society, with a power of taxation, not resulting from bye-laws, consented to by the body, but unconstitutionally granted directly by the crown; and this we conceive, is not rendered less unconstitutional, or less grievous, by the statute purporting to confirm the Charter :

“ Because, there is just reason to apprehend, from some expressions in the Charter, that *useless, burthensome, and obsolete ex-*

ercises, distinctions and institutions, will be introduced, which would conduce to the ridicule and disgrace of the profession of the law in this kingdom, and may be employed as the means of favouring some individuals, and of persecuting and oppressing others :

“ Because, the Charter points at duties, which, in similar societies in England, have fallen into disgrace, or have been retained only to be commuted for fines: and which seem calculated for the increase of revenue rather than for the advancement of learning :

Because, the Statute of 1782, which gave a preference to academic degrees, being now repealed, and nothing adequate substituted in its place; the Charter makes no provision whatsoever, for a liberal education, preparatory to the study of the law, which must prove highly injurious to the reputation, dignity, and integrity of the future Bar.

“ Because, the whole system introduced by the Charter, affords, by its patronage, its arbitrary principles, and the means of oppression which it furnishes, an opportunity of establishing an undue influence over the members of the Society, tending to control them not only professionally as such, but also civilly and politically, as members of the community at large.

“ Because, the Charter holds out a temptation and means to the persons vested with authority under it, to promote and screen speculation, and to introduce and maintain a system of corrupt jobbing.”



I shall not weaken those manly resolutions by any remark, suffice it to say, that they had the effect they were intended to produce, in the year 1793, an act was passed repealing the former act of 1792, as far as it confirmed the letters patent, and leaving the Society, as if those letters patent never had been granted.

What therefore do the Benchers claim, notwithstanding this strong opinion of the legislature? they claim as members of a voluntary association, to the exclusion of all other Common Law professors, to have a controul over a profession not united thereto. Will the Bar submit to this claim? little then have they benefited by the resolutions; if the charter were only crushed to give rise to a power undefined. In vain have the profession exclaimed against, “ the inflicting unascertained punishments, for undefined offenses,” if the power

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still exists with this difference only, that now there is no appeal.

But some will tell you that power should be lodged somewhere (not undefined I hope) that it is now in the safest hands, and in conclusion gravely refer you to English practice, and though it might be answered that the previous education of Barristers, and the law of reputation so forcibly acting on the profession, and which must produce if any, the strongest obligation, would be of themselves a sufficient check, and render such power unnecessary; yet granting that I am mistaken, and that the honor of the profession is not (I have supposed it to be) like Cæsar's wife, not to be suspected; let us examine shortly, how far the analogy holds between the English and Irish practice.

In the Case of the King against the Benchers of Gray's Inns, on the prosecution of William Hart.—*Douglas*, page 339.

Lord Mansfield delivered the opinion of the Court.

“We have consulted,” says his Lordship, “the other Judges on the subject of this application, and I am prepared to state the result. The original institution of the Inns of Court, no where precisely appears, but it is certain they are not corporations, and have no constitution by charters from the crown; but all the

powers they have concerning the admission of the Bar, is delegated to them from the Judges, and in every instance their conduct is subject to their controul, as visitors," he then refered to several passages in *Dugdale's origines Judriciales*.

Now it should be premised that none of the degree of Serjeant can be a Bencher in the English Inns of Court. And this accounts for the stress laid by lord Mansfield (in an after part of the Case) on the redress being in the Judges, who still reserved to themselves the visitorial power—whereas, it is a well known fact that the Chancellor, Judges, and Serjeants, in Ireland, are Benchers.

In England, therefore the Judges have wisely parted with the originating power, that it might be conducted with more temper, but have cautiously reserved a visitorial controul over their delegates, lest they should be tempted to abuse it in England, therefore a clear power of appeal is made out distinct from that originating—in Ireland, there is either no power of appeal, or if there be an appeal *to the judges*—they will then have the felicity of trying their own acts and those of others, in which it is to be presumed, that that ancient, merciful maxim of law—*that no man shall cri-*

minate himself, must be laid aside for their convenience.—“*Utrum horum accipe mavis,*” He who would contend for the latter, must surely be more anxious to enjoy the power than partake of the discipline.

To conclude—these observations already given, may be thus shortly brought together: That it appears to have been truly stated in the Resolutions, that the Society was originally a voluntary association; that both from the recital in the Charter, *obtained by the Benchers*, and from the grant of Henry the VIIIth, the original members of that Society were the *Common Law Professors*; that to these Henry the VIIIth made a grant of the monastery of Friars Preachers, &c &c. for a term of Years, extended further by Queen Elizabeth for further terms of years, clearly denoting that the Society was not a corporation—that as there appears no proof to the contrary, it must now be granted, (especially as the grant was not to any particular branch of the Society, if there were any such) *that all the members, and not a particular set*, had the management of what they derived from the grant, and the making such rules as were necessary for the due government of

the Society ; for not only would the singularity itself of such a disposition, more easily supply proof, but it would be absurd without such proof, to come to a conclusion, contrary to the usual formation of all like associations, for the same reason it cannot be presumed that the rules of the Society extended to the Bar ; any more than at this present day it could be imagined that the rules of a circuit association affected the profession in general.

Again, at the revival in the year 1607, it is evident, that the consent of such of the Bar as were members, was necessary to the management of the Society's affairs, as appears in the orders concerning chambers ; and that up to the year 1634, no Barrister need have been a member of King's Inns. In a word, if it be a good prescription, that the professors of the Common Law, did make wholesome rules for the profession at large, by what means have the Benchers that power now to the exclusion of the professors in general—but if no custom can be considered good, the commencement of which can be shewn ; how can the order of 1634, shewing such commencement be got over ? unless, indeed, some one shall be hardy enough to assert, that

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the rules made by a voluntary association; not only extend to their own members, but even to a profession not of necessity belonging to it. Did the Benchers themselves believe this when they sought the Charter, and the act confirming that Charter? Did the Utter Bar assent to such a principle by their remonstrance? Has the act of 1793, been of no other effect than that of leaving the powers of the Benchers undefined? Are the Benchers all powerful, because they could not obtain an act, giving them even a limited jurisdiction?*

* The curious reader is referred to Mr. Duhigg's work; where (independent of the information) he will find much entertainment.—Mr. Duhigg strongly contends that King's Inns Society was but a branch of the English Inns of court. It may be worth remarking, that in this supposition he is borne out, by the preparation of Barristers for Colonies at this present day; as it would also account for the Judges and Serjeants being members, the visitatorial power remaining with the Judges in England.

FINIS.