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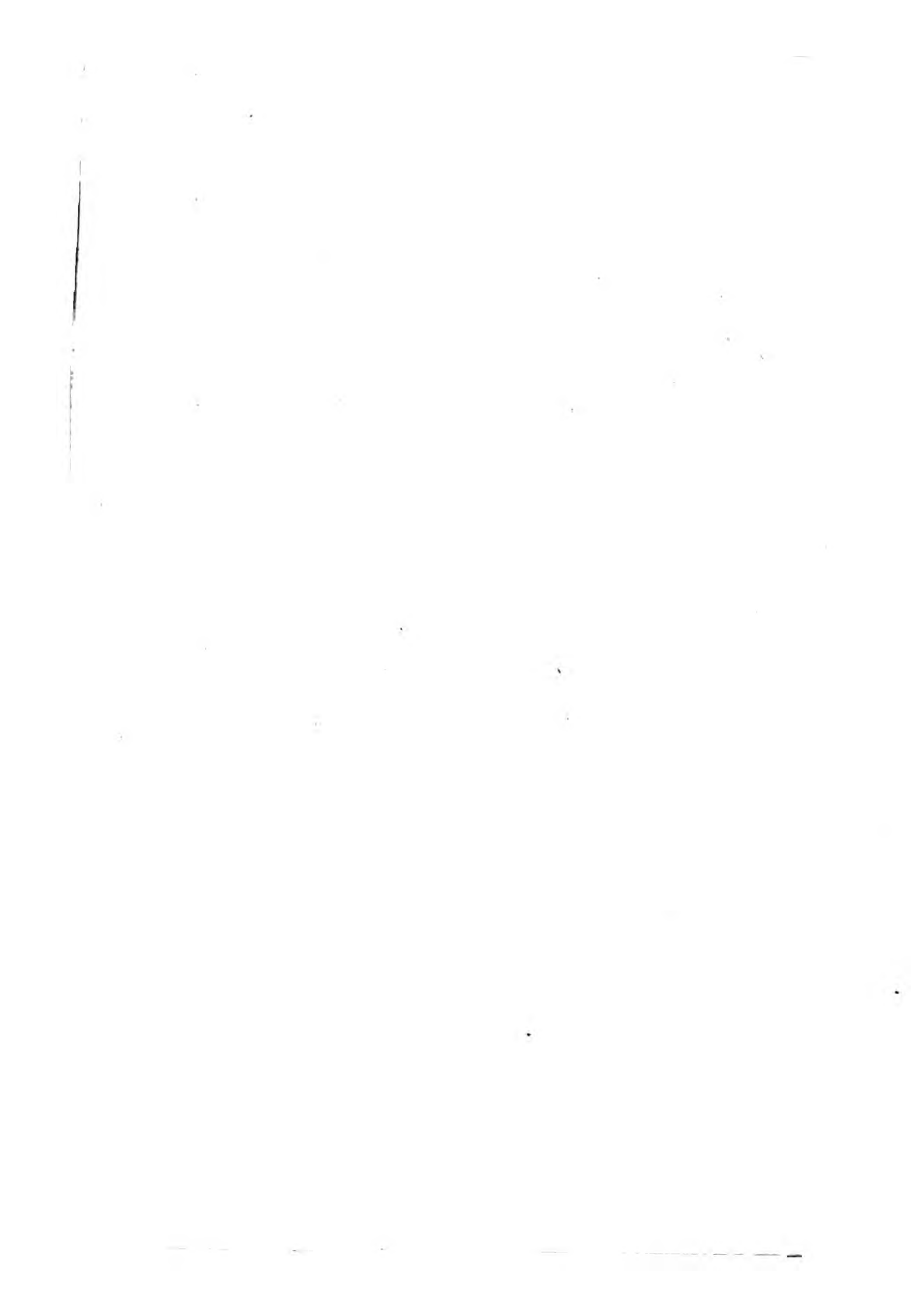
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A
DISCOURSE
ON THE
STUDY OF THE LAW;

BEING
AN INTRODUCTORY LECTURE,

READ IN THE PUBLIC SCHOOLS, OCTOBER XXV,
M. DCC. LVIII,

BY WILLIAM BLACKSTONE, Esq; D.C.L.
BARRISTER AT LAW,
AND VINERIAN PROFESSOR OF THE LAWS OF ENGLAND IN THE
UNIVERSITY OF OXFORD.

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A
DISCOURSE
ON THE
STUDY OF THE LAW.

MR VICE-CHANCELLOR, AND GENTLEMEN OF THE UNIVERSITY,

THE general expectation of so numerous and respectable an audience, the novelty, and (I may add) the importance of the duty required from this chair, must unavoidably be productive of great diffidence and apprehensions in him who has the honour to be placed in it. He must be sensible how much will depend upon his conduct, in the infancy of a study, which is now first adopted by public academical authority; which has generally been reputed (however unjustly) of a dry and unfruitful nature; and of which the theoretical, elementary parts have hitherto received a very moderate share of cultivation. He cannot but reflect that, if either his plan of instruction be crude and injudicious, or the execution of it lame and superficial, it will cast a damp upon the farther progress of this most useful and most rational branch of learning; and may defeat for a time

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the public-spirited design of our wise and munificent benefactor. And this he must more especially dread, when he feels by experience how unequal his abilities are (unassisted by preceding examples) to complete, in the manner he could wish, so extensive and arduous a task; since he freely confesses, that his former more private attempts have fallen very short of his own ideas of perfection. And yet the candour he has already experienced, and this last transcendent mark of regard, his present nomination by the free and unanimous suffrage of a great and learned university, (an honour to be ever remembered with the deepest and most affectionate gratitude) these testimonies of your public judgment must entirely supersede his own, and forbid him to believe himself totally insufficient for the labour at least of this employment. One thing he will venture to hope for, and it certainly shall be his constant aim, by diligence and attention to atone for his other defects; esteeming, that the best return, which he can possibly make for your favourable opinion of his capacity, will be his unwearied endeavours in some little degree to deserve it.

THE science thus committed to his charge, to be cultivated, methodized, and explained in a course of academical lectures, is that of the laws and constitution of our own country: a species of knowledge, in which the gentlemen of England have been more remarkably deficient than those of all Europe besides. In most of the nations on the continent, where the civil or imperial law under different modifications is closely interwoven with the municipal laws of the land, no gentleman, or at least no scholar, thinks his education is completed, till he has attended a course or two of lectures, both upon the institutes of Justinian and the local constitutions of his native soil, under the very eminent professors that abound in their several universities. And in the northern parts of our own island, where also the municipal laws are frequently connected with the civil, it is difficult to meet with a person of liberal education, who is destitute of a competent knowledge

lege in that science, which is to be the guardian of his natural rights, and the rule of his civil conduct.

NOR have the imperial laws been totally neglected even in the english nation. A general acquaintance with their decisions has ever been deservedly considered as no small accomplishment of a gentleman; and a fashion has prevailed, especially of late, to transport the growing hopes of this island to foreign universities, in Switzerland, Germany, and Holland; which, though infinitely inferior to our own in every other consideration, have been looked upon as better nurseries of the civil, or (which is nearly the same) of their own municipal law. In the mean time it has been the peculiar lot of our admirable system of laws, to be neglected, and even unknown, by all but one practical profession; though built upon the soundest foundations, and approved by the experience of ages.

FAR be it from me to derogate from the study of the civil law, considered (apart from any binding authority) as a collection of written reason. No man is more thoroughly persuaded of the general excellence of it's rules, and the usual equity of it's decisions; nor is better convinced of it's use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer. But we must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian: we must not prefer the edict of the praetor, or the rescript of the roman emperor, to our own immemorial customs, or the sanctions of an english parliament; unless we can also prefer the despotic monarchy of Rome and Byzantium, for whose meridians the former were calculated, to the free constitution of Britain, which the latter is adapted to perpetuate.

WITHOUT detracting therefore from the real merit which abounds in the imperial law, I hope I may have leave to assert, that if an englishman must be ignorant of either the one or the other, he had bet-

ter be a stranger to the roman than the english institutions. For I think it an undeniable position, that a competent knowlege of the laws of that society, in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful, I had almost said essential, part of liberal and polite education: And in this I am warranted by the example of antient Rome; where, as Cicero informs us^a, the very boys were obliged to learn the twelve tables by heart, as a *carmen necessarium* or indispenfable lesson, to imprint on their tender minds an early knowlege of the laws and constitutions of their country.

BUT as the long and universal neglect of this study, with us in England, seems in some degree to call in question the truth of this evident position, it shall therefore be the business of this introductory lecture, in the first place to demonstrate the utility of some general acquaintance with the municipal law of the land, by pointing out it's particular uses in all considerable situations of life. Some conjectures will then be offered with regard to the causes of neglecting this useful study: to which will be subjoined a few reflections on the peculiar propriety of reviving it in our own universities.

AND, first, to demonstrate the utility of some acquaintance with the laws of the land, let us only reflect a moment on the singular frame and polity of that land, which is governed by this system of laws. A land, perhaps the only one in the universe, in which political or civil liberty is the very end and scope of the constitution^b. This liberty, rightly understood, consists in the power of doing whatever the laws permit^c; which is only to be effected by a general conformity of all orders and degrees to those equitable rules of action, by which the meanest individual is protected from the insults and oppression of the greatest. As therefore every subject is interested in the preservation of the laws, it is incumbent upon every man to be acquaint-

^a De Legg. II. 23.

^b MONTESQUIEU'S Spirit of Laws, b. II. ch. 5.

^c *Facultas ejus, quod cuique facere libet, nisi quid vi, aut jure prohibetur.* Inst. I. 3. 1.

ed with those at least, with which he is immediately concerned; lest he incur the censure, as well as inconvenience, of living in society without knowing the obligations which it lays him under. And thus much may suffice for persons of inferior condition, who have neither time nor capacity to enlarge their views beyond that contracted sphere in which they are appointed to move. But those, on whom nature and fortune have bestowed more abilities and greater leisure, cannot be so easily excused. These advantages are given them, not for the benefit of themselves only, but also of the public: and yet they cannot, in any scene of life, discharge properly their duty either to the public or themselves, without some degree of knowledge in the laws. To evince this the more clearly, it may not be amiss to descend to a few particulars.

LET us therefore begin with our gentlemen of independent estates and fortune, the most useful as well as considerable body of men in the nation; whom even to suppose ignorant in this branch of learning is treated by Mr Locke^d as a strange absurdity. It is their landed property, with its long and voluminous train of descents and conveyances, settlements, entails, and incumbrances, that forms the most intricate and most extensive object of legal knowledge. The thorough comprehension of these, in all their minute distinctions, is perhaps too laborious a task for any but a lawyer by profession: yet still the understanding of a few leading principles, relating to estates and conveyancing, may form some check and guard upon a gentleman's inferior agents, and preserve him at least from very gross and notorious imposition.

AGAIN, the policy of all laws has made some forms necessary in the wording of last wills and testaments, and more with regard to their attestation. An ignorance in these must always be of dangerous consequence, to such as by choice or necessity compile their own testaments

^d Education. §. 187.

without any technical assistance. Those who have attended the courts of justice are the best witnesses of the confusion and distresses that are hereby occasioned in families; and of the difficulties that arise in discerning the true meaning of the testator, or sometimes in discovering any meaning at all: so that in the end his estate may often be vested quite contrary to these his enigmatical intentions, because perhaps he has omitted one or two formal words, which are necessary to ascertain the sense with indisputable legal precision, or has executed his will in the presence of fewer witnesses than the law requires.

BUT to proceed from private concerns to those of a more public consideration. All gentlemen of fortune are, in consequence of their property, liable to be called upon to establish the rights, to estimate the injuries, to weigh the accusations, and sometimes to dispose of the lives of their fellow-subjects, by serving upon juries. In this situation they are frequently to decide, and that upon their oaths, questions of nice importance, in the solution of which some legal skill is requisite; especially where the law and the fact; as it often happens, are intimately blended together. And the general incapacity, even of our best juries, to do this with any tolerable propriety has greatly debased their authority; and has unavoidably thrown more power into the hands of the judges, to direct, control, and even reverse their verdicts, than perhaps the constitution intended.

BUT it is not as a juror only that the english gentleman is called upon to determine questions of right, and distribute justice to his fellow-subjects: it is principally with this order of men that the commission of the peace is filled. And here a very ample field is opened for a gentleman to exert his talents, by maintaining good order in his neighbourhood; by punishing the dissolute and idle; by protecting the peaceable and industrious; and, above all, by healing petty differences and preventing vexatious prosecutions. But, in order to attain these desirable ends, it is necessary that the magistrate should understand

stand his business; and have not only the will but the power also, (under which must be included the knowledge) of administering legal and effectual justice. Else, when he has mistaken his authority, through passion, through ignorance, or absurdity, he will be the object of contempt from his inferiors, and of censure from those to whom he is accountable for his conduct.

YET further; most gentlemen of considerable property, at some period or other in their lives, are ambitious of representing their country in parliament: and those, who are ambitious of receiving so high a trust, would also do well to remember its nature and importance. They are not thus honourably distinguished from the rest of their fellow-subjects, merely that they may privilege their persons, their estates, or their domestics; that they may lift under party banners; may grant or withhold supplies; may vote with or vote against a popular or unpopular administration; but upon considerations far more interesting and important. They are the guardians of the english constitution; the makers, repealers, and interpreters of the english laws; delegated to watch, to check, and to avert every dangerous innovation, to propose, to adopt, and to cherish any solid and well-weighed improvement; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to their posterity, amended if possible, at least without any derogation. And how unbecoming must it appear in a member of the legislature to vote for a new law, who is utterly ignorant of the old! what kind of interpretation can he be enabled to give, who is a stranger to the text upon which he comments!

* INDEED it is really amazing, that there should be no other state of life, no other occupation, art, or science, in which some method of

* The several passages, which are printed between two asterisks, were omitted at the public recital; as they would have extended the lecture to a very inconvenient length.

instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical: a long course of reading and study must form the divine, the physician, and the practical professor of the laws: but every man of superior fortune thinks himself *born* a legislator. Yet Tully was of a different opinion: “It is necessary, says he^e, for a senator to be thoroughly acquainted with the constitution; and this, he declares, is a knowledge of the most extensive nature; a matter of science, of diligence, of reflexion; without which no senator can possibly be fit for his office.”

THE mischiefs that have arisen to the public from inconsiderate alterations in our laws, are too obvious to be called in question; and how far they have been owing to the defective education of our senators, is a point well worthy the public attention. The common law of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new dress and refine, with all the rage of modern improvement. Hence frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for specious embellishments and fantastic novelties. For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays (which have sometimes disgraced the english, as well as other, courts of justice) owe their original not to the common law itself, but to innovations that have been made in it by acts of parliament; “overladen (as lord Coke expresses it^f) with provisos and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law.” This great and well-experienced judge declares that in all his time he never knew two questions made upon rights merely depending upon the common law, and warmly laments the confusion introduced by ill-judging and

^e De Legg. III. 18. *Est senatori necessarium nosse rempublicam; idque late patet: — genus hoc omne scientiae, diligentiae, memoriae est; sine quo paratus esse senator nullo pacto potest.*

^f 2 Rep. Pref.

unlearned legislators. "But if, he subjoins, acts of parliament were "after the old fashion penned, by such only as perfectly knew what "the common law was before the making of any act of parliament "concerning that matter, as also how far forth former statutes had "provided remedy for former mischiefs and defects discovered by ex- "perience; then should very few questions in law arise, and the learn- "ed should not so often and so much perplex their heads to make "atonement and peace, by construction of law, between insensible and "disagreeing words, sentences, and provisoes, as they now do." And if this inconvenience was so heavily felt in the reign of queen Elizabeth, you may judge how the evil is increased in later times, when the statute book is swelled to ten times a larger bulk; unless it should be found, that the penners of our modern statutes have proportionably better informed themselves in the knowlege of the common law.*

WHAT is said of our gentlemen in general, and the propriety of their application to the study of the laws of their country, will hold equally strong or still stronger with regard to the nobility of this realm, except only in the article of serving upon juries. But, instead of this, they have several peculiar provinces of far greater consequence and concern; being not only by birth hereditary counsellors of the crown, and judges upon their honour of the lives of their brother-peers, but also arbiters of the property of all their fellow-subjects, and that in the last resort. In this their judicial capacity they are bound to decide the nicest and most critical points of law; to examine and correct such errors as have escaped the most experienced sages of the profession, the lord keeper and the judges of the courts at Westminster. Their sentence is final, decisive, irrevocable: no appeal, no correction, not even a review can be had: and to their determination, whatever it be, the inferior courts of justice must conform; otherwise the rule of property would no longer be uniform and steady.

SHOULD a judge in the most subordinate jurisdiction be deficient in the knowlege of the law, it would reflect infinite contempt upon himself and disgrace upon those who employ him. And yet the consequence of his ignorance is comparatively very trifling and small: his judgment may be examined, and his errors rectified by other courts. But how much more serious and affecting is the case of a superior judge, if without any skill in the laws he will boldly venture to decide a question, upon which the welfare and subsistence of whole families may depend! where the chance of his judging right, or wrong, is barely equal; and where, if he chances to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress!

YET, vast as this trust is, it can no where be so properly reposed as in the noble hands where our excellent constitution has placed it: and therefore placed it, because, from the independence of their fortune and the dignity of their station, they are presumed to employ that leisure which is the consequence of both, in attaining a more extensive knowlege of the laws than persons of inferior rank: and because the founders of our polity relied upon that delicacy of sentiment, so peculiar to noble birth; which, as on the one hand it will prevent either interest or affection from interfering in questions of right, so on the other it will bind a peer in honour, an obligation which the law esteems equal to another's oath, to be master of those points upon which it is his birthright to decide.

THE roman pandects will furnish us with a piece of history not unapplicable to our present purpose. Servius Sulpicius, a gentleman of the patrician order, and a celebrated orator, had occasion to take the opinion of Quintus Mutius Scaevola, the oracle of the roman law; but for want of being conversant in that science, could not so much as understand even the technical terms, which his counsel was obliged

to

to make use of. Upon which Mutius Scaevola could not forbear to upbraid him with this memorable reproof^z, "that it was a shame for a patrician, a nobleman, and an orator to be ignorant of the law under which he lived." Which reproach made so deep an impression on Sulpicius, that he immediately applied himself to the study of the law; wherein he arrived to that proficiency, that he left behind him about a hundred and fourscore volumes of his own compiling upon the subject; and became, in the opinion of Cicero^h, a much more complete lawyer than even Mutius Scaevola himself.

I WOULD not be thought to recommend to our english nobility and gentry to become as great lawyers as Sulpicius; though he, together with this character, sustained likewise that of an excellent orator, a firm patriot, and a wise indefatigable senator; but the inference which arises from the story is this, that ignorance of the laws of the land hath ever been esteemed dishonourable, in those who are entrusted by their country to maintain, to administer, and to amend them.

BUT surely there is little occasion to enforce this argument any farther to persons of rank and distinction, if we of this place may be allowed to form a general judgment from those who are under our inspection: happy, that while we lay down the rule, we can also produce the example. You will therefore permit your professor to indulge both a public and private satisfaction by bearing this open testimony, that in the very infancy of these studies among us, they were favoured with the most diligent attendance, and pursued with the most unwearied application, by those of the noblest birth and most ample patrimony: some of whom are still the ornaments of this seat of learning; and others at a greater distance continue doing honour to its institutions, by comparing our polity and laws with those of other king-

^z Ff. I. 2. 2. §. 43. *Turpe esse patricio, & nobili, & causas oranti, jus in quo versaretur ignorare.*

^h Brut. 41.

doms abroad, or exerting their senatorial abilities in the councils of the nation at home.

NOR will some degree of legal knowledge be found in the least superfluous to persons of inferior rank; especially those of the learned professions. The clergy in particular, besides the common obligations they are under in proportion to their rank and fortune, have also abundant reason, considered merely as clergymen, to be acquainted with many branches of the law, which are almost peculiar and appropriated to themselves alone. Such are the laws relating to advowsons, institutions, and inductions; to simony, and simoniacal contracts; to uniformity, residence, and pluralities; to tithes and other ecclesiastical dues; to marriages (more especially of late) and to a variety of other subjects, which are consigned to the care of their order by the provisions of particular statutes. To understand these aright, to discern what is warranted or enjoined, and what is forbidden by law, demands a sort of legal apprehension; which is no otherwise to be acquired than by use and a familiar acquaintance with legal writers.

FOR the gentlemen of the faculty of physic, I must frankly own that I see no special reason, why they in particular should apply themselves to the study of the law; unless in common with other gentlemen, and to complete the character of general and extensive knowledge; a character which their profession, beyond others, has remarkably deserved. They will give me leave however to suggest, and that not ludicrously, that it might frequently be of use to families upon sudden emergencies, if the physician were acquainted with the doctrine of last wills and testaments, at least so far as relates to the formal part of their execution.

BUT those gentlemen who intend to profess the civil and ecclesiastical laws in the spiritual and maritime courts of this kingdom, are of all men (next to common lawyers) the most indispensably obliged to
 apply

apply themselves seriously to the study of our municipal laws. For the civil and canon laws, considered with respect to any intrinsic obligation, have no force or authority in this kingdom; they are no more binding in England than our laws are binding at Rome. But as far as these foreign laws, on account of some peculiar propriety, have in some particular cases, and in some particular courts, been introduced and allowed by our laws, so far they oblige, and no farther; their authority being wholly founded upon that permission and adoption. * In which we are not singular in our notions; for even in Holland, where the imperial law is much cultivated and its decisions pretty generally followed, we are informed by Van Leeuwen¹, that "it receives its force from custom and the consent of the people, either tacitly or expressly given: for otherwise, he adds, we should no more be bound by this law, than by that of the Almain, the Franks, the Saxons, the Goths, the Vandals, and other of the antient nations." Wherefore in all points in which the different systems depart from each other, the law of the land takes place of the law of Rome, whether antient or modern, imperial or pontifical. And in those of our english courts wherein a reception has been allowed to the civil and canon laws, if either they exceed the bounds of that reception, by extending themselves to other matters, than are permitted to them; or if such courts proceed according to the decisions of those laws, in cases wherein it is controlled by the law of the land, the common law in either instance both may, and frequently does, prohibit and annul their proceedings^k: and it will not be a sufficient excuse for them to tell the king's courts at Westminster, that their practice is warranted by the laws of Justinian or Gregory, or is conformable to the decrees of the Rota or imperial chamber*. For which reason it becomes highly necessary for every civilian and canonist that would act with safety as a judge, or with prudence and reputation as an advocate, to know in what cases and how far the english laws have given sanction to the

¹ Dedicatio corporis juris civilis. Edit. 1663.

* HALE'S Hist. C. L. c. 2. SELDEN in Fletam. 5 Rep. Caudrey's Case. COKE on Artic. Cler. 2 Inst. 599.

roman; in what points the latter are rejected; and where they are both so intermixed and blended together, as to form certain supplemental parts of the common law of England, distinguished by the titles of the king's maritime, the king's military, and the king's ecclesiastical law. The propriety of which enquiry the university of Oxford has for more than a century so thoroughly seen, that in her statutes¹ she appoints, that one of the three questions to be annually discussed at the act by the jurist-inceptors shall relate to the common law; subjoining this reason, "*quia juris civilis studiosos decet haud imperitos esse juris municipalis, & differentias exteri patriique juris notas habere.*" And the university of Cambridge, in her statutes^m, has declared herself to the same effect.

FROM the general use and necessity of some acquaintance with the common law, the inference were extremely easy, with regard to the propriety of the present institution, in a place to which gentlemen of all ranks and degrees resort, as the fountain of all useful knowlege. But how it has come to pass that a design of this sort has never before taken place in the university, and the reason why the study of our laws has in general fallen into disuse, I shall previously proceed to enquire.

SIR John Fortescue, in his panegyric on the laws of England, (which was written in the reign of Henry the sixth) putsⁿ a very obvious question in the mouth of the young prince, whom he is exhorting to apply himself to that branch of learning; "why the laws of England, being so good, so fruitful, and so commodious, are notⁿ taught in the universities, as the civil and canon laws are?" In answer to which he gives^o what seems, with due deference be it spoken, a very jejune and unsatisfactory reason; being in short, that "as the proceedings at common law were in his time carried on in three different tongues, the english, the latin, and the french, that science

¹ Tit. VII. Sect. 2. §. 2.
^o c. 48.

^m COWELLI Instit. Jur. Anglican. in Proëmio.

ⁿ c. 47.

" must

“ must be necessarily taught in those three several languages ; but that
 “ in the universities all sciences were taught in the latin tongue only ;
 “ and therefore he concludes, that they could not be conveniently
 “ taught or studied in our universities.” But without attempting to
 examine seriously the validity of this reason, (the very shadow of which
 by the wisdom of your late constitutions is entirely taken away) we
 perhaps may find out a better, or at least a more plausible account,
 why the study of the municipal laws has been banished from these seats
 of science, than what the learned chancellor thought it prudent to give
 to his royal pupil.

THAT ancient collection of unwritten maxims and customs, which
 is called the common law, however compounded or from whatever
 fountains derived, had subsisted immemorially in this kingdom ; and,
 though somewhat altered and impaired by the violence of the times,
 had in great measure weathered the rude shock of the norman conquest.
 * This had endeared it to the people in general, as well because it's
 decisions were universally known, as because it was found to be excel-
 lently adapted to the genius of the english nation. In the knowlege
 of this law consisted great part of the learning of those dark ages ; it
 was then taught, says Mr Selden ^p, in the monasteries, *in the universi-*
ties, and in the families of the principal nobility. The clergy in par-
 ticular, as they then engrossed almost every other branch of learning,
 so (like their predecessors the british druids ^q) they were peculiarly re-
 markable for their proficiency in the study of the law. *Nullus clericus*
nisi causidicus, is the character given of them soon after the conquest by
 William of Malmesbury ^r. The judges therefore were usually created out
 of the sacred order ^s ; as was likewise the case among the normans ^t ;
 and all the inferior offices were supplied by the lower clergy, which
 has occasioned their successors to be denominated *clerks* to this day. *

^p In Fletam. 7. 7.

^q CAESAR de bello gal. 6. 12.

^r De. gest. reg. 1. 4.

^s DUGDALE Orig. jurid. c. 8.

^t *Les juges sont sages personnes & authentiques, —*

*comme les archevesques, evesques, les chanoines des eglises cathedraux, & les autres personnes qui
 ont dignitez in sainte eglise ; les abbez, les prieurs conventualx, & les gouverneurs des eglises, &c.
 Grand Coustumier, ch. 9.*

BUT

BUT the common law of England, being not committed to writing, but only handed down by tradition, use, and experience, was not so heartily relished by the foreign clergy; who came over hither in shoals during the reign of the conqueror and his two sons, and were utter strangers to our constitution as well as our language. * And an accident, which soon after happened, had nearly completed it's ruin. A copy of Justinian's pandects, being newly^u discovered at Amalfi, soon brought the civil law into vogue all over the west of Europe, where before it was quite laid aside^v and in a manner forgotten; though some traces of it's authority remained in Italy^x and the eastern provinces of the empire^y. This now became in a particular manner the favourite of the popish clergy, who borrowed the method and many of the maxims of their canon law from this original. The study of it was introduced into several universities abroad, particularly that of Bologna; where exercises were performed, lectures read, and degrees conferred in this faculty, as in other branches of science: and many nations on the continent, just then beginning to recover from the convulsions consequent upon the overthrow of the roman empire, and settling by degrees into peaceable forms of government, adopted the civil law, (being the best written system then extant) as the basis of their several constitutions; blending and interweaving it among their own feudal customs, in some places with a more extensive, in others a more confined authority^z.

NOR was it long before the prevailing mode of the times reached England. For Theobald, a norman abbot, being elected to the see of Canterbury^a, and extremely addicted to this new study, brought over with him in his retinue many learned proficients therein; and among the rest Roger surnamed Vacarius, whom he placed in the university of Oxford^b, to teach it to the people of this country. But it did not meet with the same easy reception in England, where a mild and ra-

^u Circ. A.D. 1130.

^v LL. Wisigoth. II. 1. 9.

^x Capitular, Hludov. Pii. IV. 102.

^y SELDEN in Fletam. 5. 5.

^z DOMAT's treatise of laws. c. 13. §. 9. Epistol. INNOCENT.

IV. in M. Paris. ad A.D. 1254.

^a A.D. 1138.

^b GERVAS. DOROBERN.

Act. Pontif. Cantuar. col. 1665.

tional system of laws had been long established, as it did upon the continent; and, though the monkish clergy (devoted to the will of a foreign primate) received it with eagerness and zeal, yet the laity who were more interested to preserve the old constitution, and had already severely felt the effect of many norman innovations, continued wedded to the use of the common law. King Stephen immediately published a proclamation^c, forbidding the study of the laws, then newly imported from Italy; which was treated by the monks^d as a piece of impiety, and, though it might prevent the introduction of the civil law process into our courts of justice, yet did not hinder the clergy from reading and teaching it in their own schools and monasteries.

FROM this time the nation seems to have been divided into two parties; the bishops and clergy, many of them foreigners, who applied themselves wholly to the study of the civil and canon laws, which now came to be inseparably interwoven with each other; and the nobility and laity, who adhered with equal pertinacity to the old common-law: both of them reciprocally jealous of what they were unacquainted with, and neither of them perhaps allowing the opposite system that real merit which is abundantly to be found in each. This appears on the one hand from the spleen with which the monastic writers^e speak of our municipal laws upon all occasions; and, on the other, from the firm temper which the nobility shewed at the famous parliament of Merton; when the prelates endeavoured to procure an act, to declare all bastards legitimate in case the parents intermarried at any time afterwards; alleging this only reason, because holy church (that is, the canon law) declared such children legitimate: but "all the earls and "barons (says the parliament roll^f) with one voice answered, that "they would not change the laws of England, which have hitherto "been used and approved." And we find the same jealousy prevailing

^c ROG. BACON, citat. per SELDEN, in Fletam. 7. 6. in Fortesc. c. 33. & 8 Rep. Pref.

^d JOAN. SARISBURIENS. Polycrat. 8. 22.

^e IDEM, ibid. 5. 16. POLYDOR. VER-

EIL. Hist. 1. 9.

^f Stat. Merton. 20 Hen. 3. c. 9. *Et omnes comites & barones una voce responderunt, quod nolunt leges Angliæ mutare, quæ hucusque usitatae sunt & approbatæ.*

above a century afterwards²; when the nobility declared with a kind of prophetic spirit, “that the realm of England hath never been unto “this hour, neither by the consent of our lord the king and the lords “of parliament shall it ever be, ruled or governed by the civil law³.” And of this temper between the clergy and laity many more instances might be given.

WHILE things were in this situation, the clergy, finding it impossible to root out the municipal law, began to withdraw themselves by degrees from the temporal courts; and to that end in 1217, the second year of Henry the third, they passed a canon in a ^{municipal} ~~national~~ synod⁴, forbidding all ecclesiastics to appear as advocates *in foro saeculari*; nor did they long continue to act as judges there, not caring to take the oath of office which was then found necessary to be administered, that they should in all things determine according to the law and custom of this realm⁵; though they still kept possession of the high office of chancellor, an office then of little juridical power; and afterwards, as it's business increased by degrees, they modelled the process of the court at their own discretion.*

BUT wherever they retired, and wherever their authority extended, they carried with them the same zeal to introduce the rules of the civil, in exclusion of the municipal law. This appears in a particular manner from the spiritual courts of all denominations, from the chancellor's courts in both our universities, and from the high court of chancery beforementioned; in all of which the proceedings are to this day in a course much conformed to the civil law: for which no tolerable reason can be assigned, unless that these courts were all under the immediate direction of the popish ecclesiastics, among whom it was a point of religion to exclude the municipal law; pope Innocent the fourth having⁶ forbidden the very reading of it by the clergy, because it's decisions were not founded on the imperial constitutions, but

² 11 Ric. 2. ³ SELDEN. Jan. Anglor. l. 2. §. 43. in Fortesc. c. 33. ⁴ SPELMAN'S Councils. vol. 2. ⁵ SELDEN, in Fletam, 9. 3. ⁶ M. PARIS ad A.D. 1254.

merely

merely on the customs of the laity. And if it be considered, that our universities began about that period to receive their present form of scholastic discipline; that they were then, and continued to be till the time of the reformation entirely under the influence of the popish clergy; (sir John Mason the first protestant, being also the first lay, chancellor of Oxford) this will lead us to perceive the reason, why the study of the roman laws was in those days of bigotry^m pursued with such alacrity in these seats of learning; and why the common law was entirely despised, and esteemed little better than heretical.

AND, since the reformation, many causes have conspired to prevent it's becoming a part of academical education. As, first, long usage and established custom; which, as in every thing else, so especially in the forms of scholastic exercise, have justly great weight and authority. Secondly, the real intrinsic merit of the civil law, considered upon the footing of reason and not of obligation, which was well known to the instructors of our youth; and their total ignorance of the merit of the common law, though the equal at least, and perhaps an improvement on the other. But the principal reason of all, that has hindered the introduction of this branch of learning, is, that the study of the common law, being banished from hence in the times of popery, has fallen into a quite different chanel, and has hitherto been wholly cultivated in another place. But as this long usage

^m There cannot be a stronger instance of the absurd and superstitious veneration that was paid to these laws, than that the most learned writers of the times thought they could not form a perfect character, even of the blessed virgin, without making her a civilian and a canonist. Which Albertus Magnus, the renowned dominican doctor of the thirteenth century, thus proves in his *Summa de laudibus christiferae virginis (divinum magis quam humanum opus) qu. 23. §. 5.* "Item quod jura civilia, & leges, & decreta scivit in summo, probatur hoc modo: sapientia advocati manifestatur in tribus; unum, quod obtineat om-

nia contra judicem justum & sapientem; secundo, quod contra adversarium astutum & sagacem; tertio, quod in causa desperata: sed beatissima virgo, contra judicem sapientissimum, Dominum; contra adversarium callidissimum, dyabolum; in causa nostra desperata; sententiam optatam obtinuit." To which an eminent franciscan, two centuries afterwards, Bernardinus de Bufti (*Mariale, part. 4. serm. 9.*) very gravely subjoins this note. "Nec videtur incongruum mulieres habere peritiam juris. Legitur enim de uxore Joannis Andreae glossatoris, quod tantam peritiam in utroque jure habuit, ut publice in scholis legere ausa sit."

and established custom, of ignorance in the laws of the land, begin now to be thought unreasonable; and as by this means the merit of those laws will probably be more generally known; we may hope that the method of studying them will soon revert to it's antient course, and the foundations at least of that science will be laid in the two universities; without being exclusively confined to the chanel which it fell into at the times I have been just describing.

* FOR, being then entirely abandoned by the clergy, a few stragglers excepted, the study and practice of it devolved of course into the hands of laymen; who entertained upon their parts a most hearty aversion to the civil law^a, and made no scruple to profess their contempt, nay even their ignorance^o of it, in the most public manner. But still, as the ballance of learning was greatly on the side of the clergy, and as the common law was no longer *taught*, as formerly, in any part of the kingdom, it must have been subjected to many inconveniences, and perhaps would have been gradually lost and overrun by the civil, (a suspicion well justified from the frequent transcripts of Justinian to be met with in Bracton and Fleta) had it not been for a peculiar incident, which happened at a very critical time, and contributed greatly to it's support.

THE incident I mean was the fixing the court of common pleas, the grand tribunal for disputes of property, to be held in one certain spot; that the seat of ordinary justice might be permanent and noto-

^a FORTESC. de laud. LL. c. 23. ^o This remarkably appeared in the case of the abbot of Torun, M. 22 E. 3. 14. who had caused a certain prior to be summoned to answer at Avignon for erecting an oratory *contra inhibitionem novi operis*; by which words Mr Selden, (*in Flet.* 8. 5.) very justly understands to be meant the title *de novi operis nuntiatione* both in the civil and canon laws, (Ff. 39. 1. C. 8. 11. and Decretal. not Extrav. 5. 32.) whereby the erection of any new buildings in

prejudice of more antient ones was prohibited. But Skipwith the king's serjeant, and afterwards, chief baron of the exchequer, declares them to be flat nonsense; "*in ceux paroles, contra inhibitionem novi operis, ny ad pas entendement:*" and justice Schardelow mends the matter but little by informing him, that they signify a restitution *in their law*; for which reason he very sagely resolves to pay no sort of regard to them. "*Ceo n'est que un restitution en leur ley, par que a ceo n'avomus regard, &c.*"

rious to all the nation. Formerly that, in conjunction with all the other superior courts, was held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to the other. This was found to occasion great inconvenience to the suitors; to remedy which it was made an article of the great charter of liberties, both that of king John and king Henry the third², that "common pleas should no longer follow the king's court, "but be held in some certain place:" in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. This brought together the professors of the municipal law, who before were dispersed about the kingdom, and formed them into an aggregate body; whereby a society was established of persons, who (as Spelman³ observes) addicting themselves wholly to the study of the laws of the land, and no longer considering it as a mere subordinate science for the amusement of leisure hours, soon raised those laws to that pitch of perfection, which they suddenly attained under the auspices of our english Justinian, king Edward the first.

In consequence of this lucky assemblage, they naturally fell into a kind of collegiate order; and, being excluded from Oxford and Cambridge, found it necessary to establish a new university of their own. This they did by purchasing at various times certain houses (now called the inns of court and of chancery) between the city of Westminster, the place of holding the king's courts, and the city of London; for advantage of ready access to the one, and plenty of provisions in the other⁴. Here exercises were performed, lectures read, and degrees were at length conferred in the common law, as at other universities in the canon and civil. The degrees were those of barristers (first stiled apprentices⁵ from *apprendre*, to learn) who answered

² C. 21. ³ Glossar. 334. ⁴ FORTESC. c. 48. ⁵ Apprentices of barristers seem to have been first appointed by an ordinance of king Edward the first in parliament, in the 20th year of his reign. (SPELM. Gloss. 37. DUGDALE'S Orig. jurid. 55.)

to our bachelors; as the state and degree of a serjeant^t, *servientis ad legem*, did to that of doctor.

THE crown seems to have soon taken under it's protection this infant seminary of common law; and, the more effectually to foster and cherish it, king Henry the third in the nineteenth year of his reign, issued out an order directed to the mayor and sheriffs of London, commanding that no regent of any law schools *within* that city should for the future teach law therein^u. The word, law, or *leges*, being a general term, may create some doubt at this distance of time whether the teaching of the civil law, or the common, or both, is hereby restrained. But in either case it tends to the same end. If the civil law only is prohibited, (which is Mr Selden's^v opinion) it is then a retaliation upon the clergy, who had excluded the common law from *their* seats of learning. If the municipal law be also included in the restriction, (as sir Edward Coke^x understands it, and which the words seem to import) then the intention is evidently this; by preventing private teachers within the walls of the city, to collect all the common lawyers into the one public university, which was newly instituted in the suburbs.*

^t The first mention I have met with in our lawbooks of serjeants, or countors, is in the statute of Westm. 1. 3Edw. 1. c. 29. and in HORN'S MIRROR, c. 1. §. 10. c. 2. §. 5. c. 3. §. 1. in the same reign. But M. PARIS in his life of John II, abbot of St. Albans, which he wrote in 1255, 39 Hen. 3. speaks of advocates at the common law, or countors (*quos banci narratores vulgariter appellamus*) as an order of men well known. And we have an example of the antiquity of the coif in the same author's history of England, A.D. 1259, in the case of one William de Buffy; who, being called to account for his great knavery and mal-practices, claimed the benefit of his orders, which

were totally unsuspected; and to that end *voluit ligamenta coisae suae solvere, ut palam monstraret se tonsuram habere clericalem; sed non est permissus.* — *Satelles vero eum arripens, non per coisae ligamina sed per guttur, eum apprehendens, traxit ad carcerem.* And hence Sir H. Spelman conjectures, (Glossar. 335.) that coifs were introduced to hide the tonsure of such renegade clerks, as were still tempted to remain in the secular courts in the quality of advocates or judges, notwithstanding their prohibition by canon.

^u *Ne aliquis scholas regens de legibus in eadem civitate de caetero ibidem leges doceat.*

^v In Flet. 8. 2.

^x 2 Inst. proëm.

IN this juridical university (for such it is insisted to have been by Fortescue¹ and sir Edward Coke²) there are two sorts of collegiate houses; one called inns of chancery, in which the younger students of the law used to be placed, “learning and studying, says Fortescue³, “the originals and as it were the elements of the law; who, profiting “therein, as they grow to ripeness so are they admitted into the greater “inns of the same study, called the inns of court.” And in these inns of both kinds, he goes on to tell us, the knights and barons, with other grandees and noblemen of the realm, did use to place their children, though they did not desire to have them thoroughly learned in the law, or to get their living by it’s practice: and that in his time there were about two thousand students at these several inns, all of whom he informs us were *filii nobilium*, or gentlemen born.

HENCE it is evident that (though under the influence of the monks our universities neglected this study, yet) in the time of Henry the sixth it was thought highly necessary and was the universal practice, for the young nobility and gentry to be instructed in the originals and elements of the laws. But by degrees this custom has fallen into disuse; so that in the reign of queen Elizabeth sir Edward Coke⁴ does not reckon above a thousand students, and the number at present is very considerably less. Which seems principally owing to these reasons: first, because the inns of chancery being now almost totally filled by the inferior branch of the profession, they are neither commodious nor proper for the resort of gentlemen of any rank or figure; so that there are now very rarely any young students entered at the inns of chancery: secondly, because in the inns of court all sorts of regimen and academical superintendance, either with regard to morals or studies, are found impracticable and therefore entirely neglected: lastly, because persons of birth and fortune, after having finished their usual courses at the universities, have seldom leisure or resolution sufficient

¹ C. 49.² 3 Rep. pref.³ *ibid.*⁴ *ibid.*

to enter upon a new scheme of study at a new place of instruction. Wherefore few gentlemen now resort to the inns of court, but such for whom the knowlege of practice is absolutely necessary; such, I mean, as are intended for the profession: the rest of our gentry, (not to say our nobility also) having usually retired to their estates, or visited foreign kingdoms, or entered upon public life, without any instruction in the laws of the land; and indeed with hardly any opportunity of gaining instruction, unless it can be afforded them in these seats of learning.

AND that these are the proper places, for affording assistances of this kind to gentlemen of all stations and degrees, cannot (I think) with any colour of reason be denied. For not one of the objections, which are made to the inns of court and chancery, and which I have just enumerated, will hold with regard to the universities. Gentlemen may here associate with gentlemen of their own rank and degree. Nor are their conduct and studies left entirely to their own discretion; but regulated by a discipline so wise and exact, yet so liberal, so sensible and manly, that their conformity to it's rules (which does at present so much honour to our youth) is not more the effect of constraint, than of their own inclinations and choice. Neither need they apprehend too long an avocation hereby from their private concerns and amusements, or (what is a more noble object) the service of their friends and their country. This study will go hand in hand with their other pursuits: it will obstruct none of them; it will ornament and assist them all.

BUT if, upon the whole, there are any, still wedded to monastic prejudice, that can entertain a doubt how far this study is properly and regularly *academical*, such persons I am afraid either have not considered the constitution and design of an university, or else think very meanly of it. It must be a deplorable narrowness of mind, that would confine these seats of instruction to the limited views of one or two
learned

learned professions. To the praise of this age be it spoken, a more open and generous way of thinking begins now universally to prevail. The attainment of liberal and genteel accomplishments, though not of the intellectual sort, has been thought by our wisest and most affectionate patrons^c, and very lately by the whole university^d, no small improvement of our antient plan of education; and therefore I may safely affirm that nothing (how *unusual* soever) is, under due regulations, improper to be *taught* in this place, which is proper for a gentleman to *learn*. But that a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in it's theory the noblest faculties of the soul, and exerts in it's practice the cardinal virtues of the heart; a science, which is universal in it's use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should have ever been deemed unnecessary to be studied in an university, is matter of astonishment and concern. Surely, if it were not before an object of academical knowledge, it was high time to make it one; and to those who can doubt the propriety of it's reception among us (if any such there be) we may return an answer in their own way; that ethics are confessedly a branch of academical learning, and Aristotle *himself has said*, speaking of the laws of his own country, that jurisprudence or the knowledge of those laws is the principal and most^e perfect branch of ethics.

FROM a thorough conviction of this truth, our munificent benefactor Mr VINER, having employed above half a century in amassing materials for new modelling and rendering more commodious the rude

^c Lord Chancellor CLARENDON, in his dialogue of education, among his tracts, p. 325. appears to have been very solicitous, that it might be made "a part of the ornament of our learned academies to teach the qualities of riding, dancing, and fencing, at those hours when more serious exercises should be intermitted."

^d By accepting in full convocation the remainder of lord Clarendon's history from his noble descendants, on condition to apply the profits arising from it's publication to the establishment of a *manège* in the university.

^e Τελευτα μαλιστα αρετη, οτι της τελειας αρετης χρησης εστι. Ethic. ad Nicomach. l. 5. c. 3.

study of the laws of the land, configned both the plan and execution of these his public spirited designs to the wisdom of his parent university. Resolving to dedicate his learned labours, “to the benefit of posterity and the perpetual service of his country^f,” he was sensible he could not perform his resolutions in a better and more effectual manner, than by extending to the youth of this place those assistances, of which he so well remembered and so heartily regretted the want. And the sense, which the university has entertained of this ample and most useful benefaction, must appear beyond a doubt from their gratitude in receiving it with all possible marks of esteem^g; from their alacrity and unexampled dispatch in carrying it into execution^h; and, above all, from the laws and constitutions by which they have effectually guarded it from the neglect and abuse to which such institutions are liableⁱ. We have seen an universal emulation, who best should understand, or most faithfully pursue, the designs of our generous patron: and with pleasure we recollect, that those who are most distinguished by their quality, their fortune, their station, their learning, or their experience, have appeared the most zealous to promote the success of Mr V^IN^ER’s establishment.

THE advantages that might result to the science of the law itself, when a little more attended to in these seats of knowledge, perhaps would be very considerable. The leisure and abilities of the learned in these retirements might either suggest expedients^k, or execute those

^f See the preface to the eighteenth volume of his abridgment.

^g Mr V^IN^ER is enrolled among the public benefactors of the university by decree of convocation.

^h Mr V^IN^ER died June 5, 1756. His effects were collected and settled, near a volume of his work printed, almost the whole disposed of, and the accounts made up, in a year and a half from his decease, by the very diligent and worthy administrators with the will annexed,

to whom that care was configned by the university. Another half year was employed in considering and settling a plan of the proposed institution, and in framing the statutes thereupon, which were finally confirmed by convocation on the 3d of July, 1758.

ⁱ See an account of this new institution in the postscript.

^k See lord B^AC^ON’s proposals and offer of a digest.

dictated

dictated by wiser heads, for improving it's method, retrenching it's superfluities, and reconciling the little contrarities, which the practice of many centuries will necessarily create in any human system: a task, which those who are deeply employed in business, and the more active scenes of profession, can hardly condescend to engage in. And as to the interest, or (which is the same) the reputation of the universities themselves, I may venture to pronounce that if ever this study should arrive to any tolerable perfection either here or at Cambridge, the nobility and gentry of this kingdom would not shorten their residence upon this account, nor perhaps entertain a worse opinion of the benefits of academical education. Neither should it be considered as a matter of light importance, that while we thus extend the pomeoria of university learning, and adopt a new tribe of citizens within these philosophical walls, we interest a very numerous and very powerful profession in the preservation of our rights and revenues.

FOR I think it is past dispute that those gentlemen, who resort to the inns of court with a view to pursue the profession, will find it expedient (whenever it is practicable) to lay the previous foundations of this, as well as every other science, in one of our learned universities. We may appeal to the experience of every sensible lawyer, whether any thing can be more hazardous or discouraging than the usual entrance on the study of the law. A raw and unexperienced youth, in the most dangerous season of life, is transplanted on a sudden into the midst of allurements to pleasure, without any restraint or check but what his own prudence can suggest; with no public direction in what course to pursue his enquiries; no private assistance to remove the distresses and difficulties, which will always embarrass a beginner. In this situation he is expected to sequester himself from the world, and by a tedious lonely process to extract the theory of law from a mass of undigested learning; or else by an assiduous attendance on the courts to pick up theory and practice together, sufficient to qualify him for the ordinary run of business. How little therefore is it to be wondered at,

that we hear of so frequent miscarriages; that so many gentlemen of bright imaginations grow weary of so unpromising a search¹, and addict themselves wholly to amusements, or other less innocent pursuits; and that so many persons of moderate capacity confuse themselves at first setting out, and continue ever dark and puzzled during the remainder of their lives!

THE evident want of some assistance in the rudiments of legal knowledge, has given birth to a practice, which, if ever it had grown to be general, must have proved of extremely pernicious consequence: I mean the custom, by some so very warmly recommended, to drop all liberal education, as of no use to lawyers; and to place them, in it's stead, at the desk of some skilful attorney; in order to initiate them early in all the depths of practice, and render them more dextrous in the mechanical part of business. A few instances of particular persons, (men of excellent learning, and unblemished integrity) who, in spite of this method of education, have shone in the foremost ranks of the bar, have afforded some kind of sanction to this illiberal path to the profession, and biased many parents, of shortsighted judgment, in it's favour: not considering, that there are some geniuses, formed to overcome all disadvantages, and that from such particular instances no general rules can be formed; nor observing, that those persons have frequently recommended by the most forcible of all examples, the disposal of their own offspring, a very different foundation of legal studies, a regular academical education. Perhaps too, in return, I could now direct their eyes to our principal seats of justice, and suggest a few hints, in favour of university learning:—but in these all who hear me, I know, have already prevented me.

¹ Sir HENRY SPELMAN, in the preface to his glossary, gives us a very lively picture of his own distress upon this occasion. “*Emisit me mater Londinum, juris nostri capeffendi gratia; cujus cum vestibulum salutaffem, re-*” “*periffemque linguam peregrinam, dialectum bar-*” “*baram, methodum inconcinnam, molem non*” “*ingentem solum sed perpetuis humeris sustinen-*” “*dam, excidit mihi (fateor) animus, &c.*”

· MAKING therefore due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the bar, in subservience to attorneys and solicitors^m, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: *ita lex scripta est*ⁿ is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.

NOR is this all; for (as few persons of birth, or fortune, or even of scholastic education, will submit to the drudgery of servitude and the manual labour of copying the trash of an office) should this infatuation prevail to any considerable degree, we must rarely expect to see a gentleman of distinction or learning at the bar. And what the consequence may be, to have the interpretation and enforcement of the laws (which include the entire disposal of our properties, liberties, and lives) fall wholly into the hands of obscure or illiterate men, is matter of very public concern.

THE inconveniences here pointed out can never be effectually prevented, but by making academical education a previous step to the profession of the common law, and at the same time making the rudiments of the law a part of academical education. For sciences are of a sociable disposition, and flourish best in the neighbourhood of each other: nor is there any branch of learning, but may be helped and improved by assistances drawn from other arts. If therefore the student in our laws hath formed both his sentiments and style, by perusal and imitation of the purest classical writers, among whom the his-

^m See bishop KENNET's life of Somner. p. 67.

ⁿ Ff. 40. 9. 12.

torians and orators will best deserve his regard; if he can reason with precision, and separate argument from fallacy, by the clear simple rules of pure unsophisticated logic; if he can fix his attention, and steadily pursue truth through any the most intricate deduction, by the use of mathematical demonstrations; if he has enlarged his conceptions of nature and art, by a view of the several branches of genuine, experimental, philosophy; if he has impressed on his mind the sound maxims of the law of nature, the best and most authentic foundation of human laws; if, lastly, he has contemplated those maxims reduced to a practical system in the laws of imperial Rome; if he has done this or any part of it, (though all may be easily done under as able instructors as ever graced any seats of learning) a student thus qualified may enter upon the study of the laws with incredible advantage and reputation. And if, at the conclusion, or during the acquisition of these accomplishments, he will afford himself a year or two's farther leisure, to lay the foundation of his future labours in a solid scientific method, without thirsting too early to attend that practice which it is impossible he should rightly comprehend, he will afterwards proceed with the greatest ease, and will unfold the most intricate points with an intuitive rapidity and clearness.

I SHALL not insist upon such motives as might be drawn from principles of oeconomy, and are applicable to particulars only: I reason upon more general topics. And therefore to the qualities of the head, which I have just enumerated, I cannot but add those of the heart; affectionate loyalty to the king, a zeal for liberty and the constitution, a sense of real honour, and well grounded principles of religion; as necessary to form a truly valuable english lawyer, a Hyde, a Hale, or a Talbot. And, whatever the ignorance of some, or unkindness of others, may have heretofore untruly suggested, experience will warrant us to affirm, that these endowments of loyalty and public spirit, of honour and religion, are no where to be found in more high perfection than in the two universities of this kingdom.

BEFORE

BEFORE I conclude, it may perhaps be expected that I lay before you a short and general account, of the method I propose to follow in endeavouring to execute the trust you have been pleased to repose in my hands. And in these solemn lectures, which are ordained to be read at the entrance of every term, (more perhaps to do public honour to this laudable institution, than for the private instruction of individuals *) I presume it will best answer the intent of our benefactor and the expectation of this learned body, if I attempt to illustrate at times such detached titles of the law, as are the most easy to be understood, and most capable of historical or critical ornament. But in reading the complete course, which is annually consigned to my care, a more regular method will be necessary; and, till a better is proposed, I shall take the liberty to follow the same that I have already submitted to the public. To fill up and finish that outline with propriety and correctness, and to render the whole intelligible to the uninformed minds of beginners, (whom we are too apt to suppose acquainted with terms and ideas, which they never had opportunity to learn) this must be my ardent endeavour, tho' by no means my promise to accomplish. You will permit me however very briefly to describe, rather what I conceive an academical expounder of the laws should do, than what I have ever known to be done.

HE should consider his course as a general map of the law, marking out the shape of the country, its connexions and boundaries, its greater divisions and principal cities: it is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet. His attention should be engaged, like that of the readers in Fortescue's inns of chancery, "in tracing out "the originals and as it were the elements of the law." For if, as

* See Dr Lowth's *Oratio Crewiana*, p. 365.

Justinian^p has observed, the tender understanding of the student be loaded at the first with a multitude and variety of matter, it will either occasion him to desert his studies, or will carry him heavily through them, with much labour, delay, and despondence. These originals should be traced to their fountains, as well as our distance will permit; to the customs of the Britons and Germans, as recorded by Caesar and Tacitus; to the codes of the northern nations on the continent, and more especially to those of our own saxon princes; to the rules of the roman law, either left here in the days of Papinian, or imported by Vacarius and his followers; but, above all, to that inexhaustible reservoir of legal antiquities and learning, the feudal law, or, as Spelman^q has entitled it, the law of nations in our western orb. These primary rules and fundamental principles should be weighed and compared with the precepts of the law of nature, and the practice of other countries; should be explained by reasons, illustrated by examples, and confirmed by undoubted authorities; their history should be deduced, their changes and revolutions observed, and it should be shewn how far they are connected with, or have at any time been affected by, the civil transactions of the kingdom.

A PLAN of this nature, if executed with care and ability, cannot fail of administering a most useful and rational entertainment to students of all ranks and professions; and yet it must be confessed that the study of the laws is not merely a matter of amusement: for as a very judicious writer^r has observed upon a similar occasion, the learner “will be considerably disappointed if he looks for entertainment without the expence of attention.” An attention, however, not

^p *Incipientibus nobis exponere jura populi romani, ita videntur tradi posse commoaiissime, si primo levi ac simplici via singula tradantur: Alioqui, si statim ab initio rudem adhuc & infirmum animum studiosi multitudine ac varietate rerum oneraverimus, duorum alterum, aut desertorem studiorum efficiemus, aut cum magno labore, saepe etiam cum diffidentia (quae plerum-*

que juvenes avertit) serius ad id perducemus, ad quod leviori via ductus, sine magno labore & sine ulla diffidentia maturius perducipotuissest. Inst. I. 1. 2.

^q Of Parliaments, 57.

^r Dr TAYLOR's preface to Elem. of civil law.

greater than is usually bestowed in mastering the rudiments of other sciences, or sometimes in pursuing a favorite recreation or exercise. And this attention is not equally necessary to be exerted by every student upon every occasion. Some branches of the law, as the formal process of civil suits, and the subtle distinctions incident to landed property, which are the most difficult to be thoroughly understood, are the least worth the pains of understanding, except to such gentlemen as intend to pursue the profession. To others I may venture to apply, with a slight alteration, the words of sir John Fortescue*, when first his royal pupil determines to engage in this study. "It will not be necessary for a gentleman, as such, to examine with a close application the critical niceties of the law. It will fully be sufficient and he may well enough be denominated a lawyer, if under the instruction of a master he traces up the principles and grounds of the law, even to their original elements. Therefore in a very short period, and with very little labour, he may be sufficiently informed in the laws of his country, if he will but apply his mind in good earnest to receive and apprehend them. For, though such knowledge as is necessary for a judge is hardly to be acquired by the lucubrations of twenty years, yet with a genius of tolerable perspicacity, that knowledge which is fit for a person of birth or condition may be learned in a single year, without neglecting his other improvements."

To the few therefore (the very few, I am persuaded,) that entertain such unworthy notions of an university as to suppose it intended for

* *Tibi, princeps, necesse non erit mysteria legis Angliæ longo disciplinatu rimare. Sufficiet tibi, — et satis denominari legista mereberis, si legum principia & causas, usque ad elementa, discipuli more indagaveris. — Quare tu, princeps serenissime, parvo tempore, parva industria, sufficienter eris in legibus regni Angliæ eruditus, dummodo ad ejus apprehensionem tu conferas animum tuum. — Nosco namque ingenii tui per-*

spicacitatem, quo audacter pronuntio quod in legibus illis (licet earum peritia, qualis iudicibus necessaria est, vix viginti annorum lucubrationibus acquiratur) tu doctrinam principi congruam in anno uno sufficienter nancisceris; nec interim militarem disciplinam, ad quam tam ardentem anhelas, negliges; sed ea, recreationis loco, etiam anno illo tu ad libitum perfrueris. c. 8.

mere diffipation of thought; to such as mean only to while away the aukward interval from childhood to twenty one, between the restraints of the school and the licentiousness of politer life, in a calm middle state of mental and of moral inactivity; to these Mr V I N E R gives no invitation to an entertainment which they never can relish. But to the long and illustrious train of noble and ingenuous youth, who are not more distinguished among us by their birth and possessions, than by the regularity of their conduct and their thirst after useful knowlege, to these our benefactor has consecrated the fruits of a long and laborious life, worn out in the duties of his calling; and will joyfully reflect (if such reflexions can be now the employment of his thoughts) that he could not more effectually have benefited posterity, or contributed to the service of the public, than by founding an institution which may instruct the rising generation in the wisdom of our civil polity, and inform them with a desire to be still better acquainted with the laws and constitution of their country.

T H E E N D.

P O S T S C R I P T.

IN order that the extent of Mr VINER's benefaction to the university of Oxford, and the encouragements now given (in consequence thereof) to the study of the law in that place, may be more universally understood, it is thought proper to subjoin to this discourse a short account of his will and effects, and of the establishment which has lately been formed by the university.

CHARLES VINER Esq; by his last will and testament, bearing date 29 December 1755, devised (*inter alia*) to the chancellor, masters, and scholars of the university of Oxford, whom he also appointed his executors, all the printed copies of his ABRIDGMENT and the residue of his real and personal estate not otherwise disposed of by his will, "to be applied, by and with the approbation of a majority of the members there in convocation to be assembled for that purpose, (on public notice given) for the nominating, appointing and establishing a professorship of the common law in the said university; and to put it upon a proper foot, that young gentlemen who shall be students there, and shall intend to apply themselves to the study of the common laws of England, may be instructed and enabled to pursue their studies to their best advantage afterwards when they shall attend the courts at Westminster; and not to trifle away their time there in hearing what they understand nothing of, and thereupon perhaps divert their thoughts from the law to their pleasures: that a certain, annual, handsome allowance be fixed upon to be made to such professor and his successors, to be chosen from time to time by the said university in convocation assembled;" and then directed that

a competent fund be raised from the surplus to continue his ABRIDGMENT at proper intervals. He also willed and desired, “that such professor so to be elected should be at least a master of arts or a bachelor of the civil law in the said university, and likewise a barrister at the common law; and should read a solemn lecture and lectures when and so often as such convocation should think proper and direct, so as such time of reading shall not interfere or be within the time of the law terms.” And his will farther was, “that after an ample provision, according to the judgment and approbation of the said convocation, shall be made and secured for such professor as aforesaid, the remaining part of the monies to arise from the sale of the residue of his said abridgment, &c, shall be disposed of, by and with the direction and approbation of such convocation assembled or to be assembled as aforesaid, for the constituting, establishing, and endowing one or more fellowship or fellowships, and scholarship or scholarships, in any college or hall in the said university as to such convocation shall be thought most proper for students of the common law; such fellow or fellows to be master or masters of arts, or bachelor or bachelors of civil law, and such scholar or scholars to be of two years standing at least at the time of election, and that one at least of such fellows should be proposed as a tutor to such students in the said university as shall be intended for such study; and that as often as a fellow or fellows die, or such fellowship or fellowships shall otherwise become vacant, the said scholar or scholars may from time to time succeed to such fellowship or fellowships, if approved of by the said convocation; otherwise some other to be chosen or nominated by them, whom they shall think more proper. And in case such professorship as is before mentioned shall at any time or times become vacant, his will was that such convocation shall from time to time nominate and appoint a proper successor or successors; but in such case he would recommend it to them to appoint such fellow, or one of such fellows as aforesaid, in case he or either of them shall be really deserving to succeed to such vacancy.”

MR

MR VINER's estate and effects were found to consist, on the 27th of January 1758, of upwards of 8000 *l.* in money; of a freehold estate of 9 *l. per annum* in possession; of a certain reversion (after one very antient life) of a copyhold estate of 30 *l. per annum*; of a reversion (depending on a contingency) of another freehold estate of 51 *l. per annum*; and of a number of books, then unfold, which on a moderate calculation may produce about 3000 *l.* but, if all sold at their present prices, will amount to 500 *l.* more.

IN the execution of this trust the university has ordained and decreed in substance as follows;

1. THAT the accounts of this benefaction be separately kept, and annually audited by the delegates of accounts and professor, and afterwards reported to convocation.

2. That a professorship of the laws of England be immediately established, with a salary of 200 *l. per annum*^{*}; the professor to be elected by convocation, and to be at the time of his election at least a master of arts or bachelor of civil law in the university of Oxford, of ten years standing from his matriculation; and also a barrister at law of four years standing at the bar.

3. THAT such professor (by himself, or by deputy to be previously approved by convocation) shall read one solemn public lecture on the laws of England and in the english language, in every academical term, at certain stated times previous to the commencement of the common law term; or forfeit 20 *l.* for every omission to Mr VINER's general fund: and also (by himself, or by deputy to be approved, if occasional, by the vice-

^{*} It is recommended to the professor by the house of convocation to pay Mr VINER's widow an annuity of 50 *l. per annum* during her natural life; at the expiration of which the

copyhold estate abovementioned will also fall in, towards completing the farther purposes of this benefaction.

chancellor

chancellor and proctors; or, if permanent, both the cause and the deputy to be annually approved by convocation) shall yearly read one complete course of lectures on the laws of England and in the english language; consisting of sixty lectures at the least, to be read during the university term time, with such proper intervals that not more than four lectures may fall within any single week. That the professor shall give a month's notice of the time when the course is to begin, and shall read gratis to the scholars of Mr VINER's foundation, but may demand of other auditors such gratuity as shall be settled from time to time by decree of convocation: (which gratuity is at present settled to be four guineas for the first course, and two for the second; but nothing for any future attendance) and that for every of the said sixty lectures omitted, the professor, on complaint made to the vice-chancellor within the year, shall forfeit 40 s. to Mr VINER's general fund; the proof of having performed his duty to lie upon the said professor.

4. THAT every professor shall continue in his office during life, unless in case of such misbehaviour as shall amount to bannition by the university statutes; or unless he deserts the profession of the law by betaking himself to another profession; or unless, after one admonition by the vice-chancellor and proctors for notorious neglect, he is guilty of another flagrant omission; in any of which cases he shall be deprived by the vice-chancellor, with consent of the house of convocation.

5. THAT out of the residue of the said effects such a number of fellowships with a stipend of 50 l. *per annum* and scholarships with a stipend of 30 l. be established, as the convocation shall from time to time ordain, according to the state of Mr VINER's revenues: and that at present two scholarships be established, and one fellowship next afterwards, as soon as the revenues will permit.

6. THAT every fellow be elected by convocation, and at the time of election be unmarried, and at least a master of arts or bachelor of civil law, and a member of some college or hall in the university of Oxford;
the

the scholars of this foundation or such as have been scholars (if qualified and approved of by convocation) to have the preference: that, if not a barrister when chosen, he shall be called to the bar within one year after his election, but shall reside in the university two months in every year, or in case of non-residence shall forfeit the stipend of that year to Mr VINER's general fund.

7. THAT every scholar be elected by convocation, and at the time of election be unmarried, and a member of some college or hall in the university of Oxford, and shall have been matriculated twenty four calendar months at the least: that he proceed to the degree of bachelor of civil law with all convenient speed; (either proceeding in arts or otherwise) and previous to his taking the same, between the second and eighth year from his matriculation, shall be bound to attend two courses of the professor's lectures, to be certified under his hand; and within one year after taking the same shall be called to the bar: that he shall annually reside six months till he is of four years standing, and four months from that time till he is master of arts or bachelor of civil law; after which he shall be bound to reside two months in every year; or, in case of non-residence, shall forfeit the stipend of that year to Mr VINER's general fund.

8. THAT the scholarships shall become void in case of non-attendance on the professor, or not taking the degree of bachelor of civil law, being duly admonished so to do by the vice-chancellor and proctors. And both fellowships and scholarships shall expire at the end of ten years after each respective election; and shall become void in case of gross misbehaviour, non-residence for two years together, marriage, not being called to the bar within the time before limited, (being duly admonished so to be by the vice-chancellor and proctors) or deserting the profession of the law by following any other profession. In any of which cases the vice-chancellor, with consent of convocation, shall declare the place actually void.

9. THAT

9. THAT in case of any vacancy of the professorship, fellowships, or scholarships, the profits of the current year be ratably divided between the predecessor or his representatives, and the successor; and that a new election be had within one month afterwards, unless by that means the time of election shall fall within any vacation, in which case it shall be deferred to the first week in the next full term. And that before any convocation shall be held for such election, or for any other matter relating to Mr VINER's benefaction, ten days public notice be given to each college and hall of the convocation itself and the cause of convoking it.



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