who appeared, accepted 9th Nov.r Dr B & ye Recused held a Ct, declared the Recusation did not appear to them to be a legal Proceeding (you will find the Recusation is pointed out by the Statutes) & wd defer naming Arbiters till it was proved to be the Custom, Law of the University - Jones protested - The Arbiters met & declared that on the Allon of Recusation, the 3 Drs were improper by reason of their Domesticity - 7th Dec.r Mr Scroop exhibited this Arbitration, requested the Vice Ch.r & 2 Proctors to nominate 3 others in lieu of those recused; 13th Dec.r they did not, so the Ct went on; 2 of the Recused met, & rejected the Recusation - No Ordinary Act can be done, unless there be 3 Judges, yet 2 of these took upon them to do a Judicial Act, i.e. set aside the Recusation; from this Mess.rs Scroop & Jones protested & offered to proceed on the Merits

22 Dec.r The 3 recused & 2 others said Mr Craven had a right to appeal, the other 3 withdrew & dissented

24 Dec: The Unrecused Drs Kelly, Newcome, Mess.rs Allen & Stincome decreed Mr Craven to be a Person inhibited from Appeal, as unworthy, being accused of breaking the Peace & dismiss'd the Appeal

28th Dec: the Recused & 2 others made a contrary Decree from wch we appeal, as also from all other Nullitys & Grievances to be collected from the Acts of the several Judges - The 1st Qu: therefore is wh: the Judges recused are Competent, 2° wh: the Decree is right? we shall after the first beg the Opinion of the Ct.

Dr Blackstone.. The Charters are necessary; the Rule of the Civil & Canon Law to recuse Judges - they must shew that such prevails in the Vice Chancellor's Ct unless it is the Usage of the Academical Cts, they are bound by Charters & Customs, the Charters, Statute shd be exhibited, we are not prepared on this Point

Dr Wynn... In the Appeal there is not a Syllable more than the formal Words; I put it to the Gentlemen, wh.r any Person reading the Libel wd find out a Word of these matters; why did they not appeal, if the Delegates would proceed notwithstanding the Recusancy; they cd not go on through out protesting

Soll.r Gen.l.... The Gentlemen cant be Strangers, tho, they are not so well informd, as they wd otherwise have been - No Surprize appears on the Books of Proceedings transmitted -

Judges.... The Words null & void includes a great deal

Dr Wynn... The Recused not appointing Arbiters was an Appealable Act, the Proctors by not appealing acquiesced -

Sollic.r Gen.l... By refusing to appoint Arbiters, he confesses the Recusancy. 13 Eliz: restored those Charters, Ld Coke declaring them void as to common & Civil Law

Judges.... Supposing the Time for making the Stand was on the Grievance but if all is included in the Mode of Proceeding - If a Writ of Error on a Judgement, it says only null, yet you may shew it was wrong; if so we may go on to the Question of Recusation: The Appellts undertake now, to shew it to be according to the practice of ye Civil Law - The Prasertion is not a Specification of any particular Grievance, it is general, & involves the Idea of Nullity

Barons Adams
Justice Yates
Drs Marriot
Macham

If the Respondents have neglected any Documents, they must bear the Inconvenience

Stat: of All Souls, to punish

De domibus Oppidanorum non frequentandis

De manutenentibus Oppugnatoribus &c Etiamsi intra Collegium quod cunque

Delegates
Feb: 13 1766....

Dr Blackston

Mr Craven on the first Admonition departed; some time after, some of the Company came into his Chamber, & said some time; he did not suffer the Proctor to enter his Chamber, not in defiance of ye Procuratorial Authority but believing he had exceeded his Power; he did not think his Refusal to surrender his Company, was impeding

The Proctor in the Execution of his Office - If any Offence is committed in the University or in a private College it is said to be equally amenable to the Vice Chanc.r By the Statute, being at a Public House a Bone hour, makes the Delinquent liable to one Penalty, being there at another Hour, a higher Penalty is incurred - neither the Proctor's Accusation, nor Mr Cravens Defence, is to be taken for Truth - The Plea on one Side, is that the Offence was committed in the University at large; the Cause of the Protest is the Claim of Authority by the Proctor, not in the V. Ch.rs Ct - The Proctor introduced another matter arisseing from Mr Cravens Answers only - wh.r the Proctor has a power by the Statute to enter private Colleges - separates the 2 Qu.ns - no Instance of Recusation being made - All Souls & St Johns have most Doctors, resident who these are compose the Delegates - Marantæ Speculum - Dr Wood says the Vice Chan.r cannot be recused, as who shd imprison him? who cd be put in his Place, if Mr Craven had refused - Both the ..... & Assessors, are appointed by him, it wd be trifling, must a new one be made, the same Rule must run thro, the whole - The Statute Sequempiam recusavorit 1636 - no Corporation can make a Bye Law not warranted by Custom; if an expticit Statute is not binding, much less would one be that is Hypothetical - These Statutes were framed by Sir Henry Marten, Judge of ye Prerogative, being sent to him by Bp Laud - If the Recusancy be admissible, the arbiters cd proceed exparte, the Domesticity is not one of 40 Causes mentioned by Marantæ: this is not proved - Drs of Divinity & A.B. have not much familiarity, especially at All Souls

A The Delegates must be composd of resident Drs of Law - . . . .

B. The Statute says the guilty party is to appear on his knees ask pardon, & be imprisoned . . . .

2d Qu: That the V. Ch.r has power over Causes arisseing in private Colleges admit, but deny that Proctors are authorized to exercise it - Colleges, as Corporate Bodies are distinct from the University, wch existed before the Colleges - They have no Jurisdiction in Domestic interior Faults, but in enormous ones, as Felony &c. on Roles of hand are amenable in the V. Ch.rs Ct - Colleges are like private Houses, the Warden is the Head of the Family - The Statutes are only mere Bye Laws, if contrary to Law, they are void: Shall a Proctor search private Chambers to find Delinquents - General Warrants, Excise Laws, are inconsiderable Instances of Tyranny, if compared with the power claimed by the Proctors, they cd pursue a Delinquent into a private House! tho, contrary to the Law of England - This Statute is only conditional, it is an Infringement on publicy private Right -

Dr Wynne... The Objection taken in Limine was by a Recusation; the 1st Qu: is wh.r this has taken away the Jurisdiction - 2dly. wh.r this practice is allowd & admitted - 3dly. wh.r the mode & Form alledged by the Proctors ought to be received?

As to the Law in Gails Observationes Practicæ. Lib. 3. There appears a Recusation allowd by the Civil & Canon Law -

In the Civil, an ordinary Judge cannot be recused

By the Canon, an Ordinary, even a delegate Judge can

A to be administred or else a general allon. of Recusation is offer'd without expressing the

only an Oath of Calumny at first is . . . . expressing the Cause - Arbiters are appointed - According to Castrensis, & Alciatus the Arbiters are to take Cognizance of the principal Cause - Oughton 277. says the Causes are to be set forth - A Recusation in the Civil Law is very different from what is contended for - A Bishop sued for Dilapidations before his Chancellor, yet there was no Recusation thought of - The Practice of Recusation is now unknown in the Cts of Arches, Admiralty & Prerogative - Does such a Practice prevail in the Chancellor of Oxford's Ct? is it adapted to their Proceedings - It is not a Delegation for a particular purpose, it is an ordinary Ct, therefore it had not the Character stamp'd on it by the Canon Law Rule; they are appointed for the year at a stated Time - The Compiler of the Statute had in Contemplation that there was such a Practice mentiond in the Books - I must observe that the Gentlemen who stated this Objection were themselves ignorant of such Contemplation & practice. It never was law, that it shd be referred to the unrecused Judges to determine by themselves, where did the Gentlemen find that? no arbiters were named on one Side the others name Arbiters - The Recusatory Allon. 1st Ct Day - 2d Wilson said he had more . . . . . 3d then another . . . . . they proceeded to proof, but non constat what the Proofs were - They recused the Judges, the Arbiters carried their Judgement to the V. Ch.r & Proctors,