Officers of the University in Domibus Oppidanorum, in plateis,
It is admitted, if an Offence is committed within the District of
the University, the Offender is amenable to the V. Ch.r you wd
not confine the Power to apprehending & prosecuting—
The University does not consist of Streets, Houses, but of
Scholars, Officers, Members; it is not the Colleges wch constitute the University, but the whole.
There is the same right to enter a College as a House from
the Words, reason of the Statute— the University Jurisdiction &
that of the College flow from different Sources; the one, from
the Crown, the other from the Individual, they may coincide
to reform Manners & preserve Discipline; it is not the habit
& matriculation, but the living in the Precinct; what a
System of Policy is laid down? (a name of Discipline, Education
wd be an Asylum of Defiance, like White Friars— No Instance
of any abuse of the Authority, yet you are desired to let
loose the Flood Gates of Irregularity; Should the Proctors
have asked leave, the Heads of Colleges also applied; decency
alone would be the best grounds to found the Authority of the
University; the Heads of Colleges have no power to take
Cognizance of the Delinquents of other Colleges, but they call
in the Aid of the University—

Dr Harris — I am Council for the University as well as for Mr Scroop;
Mr Craven first appeared absolutely on the 3d of May— there can
be no Protest to the Jurisdiction after Issue Joined; before I
enter on the Recusaney, I must remove the Objection, that
the Ordinary Judges cannot be recused, but an Assessor;
Mr Blackstones Arg.t that the Civil Law is not the Rule of
the University Ct but it is made up of the Proceedings of both
Civil & Canon Law cannot well hold
Sir Tho.s Hetley, 14 R. 2. & H8— In Fitzherberts Nat: Brev: Sub
Tit: de Excommunicato capiendo &c. from hence I collect
it is an Ecclessiastical Ct too— Stat.t to substitute to a
Recusaney— From Dr Ayliff that he was expelled, but q reason
was, for writing agt the Statutes of the University— It was
not malum in se— Ayliffe's ancient & present State of the
University— Dr Wood wd not be recused, he was Assessor, & the
action given by the Recusant, he proceeded but the Convoca-
tion annulled the Proceedings, & the Delegates confirmd that
Sentence, declaring the V. Ch.r & Assessors cd be recused for
just reasons— it is a Solecism to say a delegate can be an
ordinary Judge, & the Commentators on the Code says he may
be— Recusation ties up the Hands of the Judge; he must
wait to have the reasons given; whatever he does, is
null, tho, else the Act wd be valid— Gail 1 B. 31 Obs:—
the Libel of Recusation was given to the Arbiters; they cd
not hear the reasons; from their own mouths. the
recused Judges confess the reason of Recusaney by agreeing
to appoint Arbiters, as being of All Souls— If the recusation
is proper we have a Sentence in our favor, for Mr Scroop
protested that Mr Craven had no right to appeal— Quod in
notoris non appellandum est is the ancient Decret:
Gregor: Lib: 9. The Petition of the V. Ch.r of Oxford in 1631 to
the King, that the Peace had been disturbed by Tho.s Ford;
being ordered to give a Copy of his Sermon &c by the Statute
he cd not appeal; this shews there was a Statute of this kind
before Bp Lands time; If an All Souls man on a question of
privilege of All Souls was to offer to be a Witness, he wd be
refused by the Ct; a fortiori more objectionable as a Judge, but
The Proctor is bound by Oath to go in quest of Delinquents;
what Exemptions, Charter, or Custom has All Souls? at last
comes a single Statute containing no more than those of all
other Colleges— on insulting the Proctor in ..... vel extra—

those Gentlemen seem to have had the rage of Judging very strong—

what means extra? ... Hawk. Pl. Cr. If a debtor escapes into a House, the
Officer may demand Entrance, if refused, may break it open, but not
finding his Prisoner, he acts at his peril— The Delinquent is to be
imprisond, who is to find him? the Proctor, he must search after him.
This not a Case of meum or tuum, it is of a lighter nature; a Sanctuary
cannot be a Plaw to annoy another from; wch Mr Craven is accused of—
I hope when you give Sentence, you will fix a Stigma on Gentlemen
who force themselves into Judgement—

Dr Calvert... Our first Objection, "that it is anullity on account of the Recusaney by
the Statute of the University & the Civil & Canon Law" the Gent.n were
aware of, & denied the University to be governd by the Canon, Civil Law—
no Authority was cited to prove this; when the Charters were granted
they might elect what Law they wd proceed on — at the Head of Dr Woods
Book is a Letter the Civil Law wch you are so fond of
the Canon Law is partly adopted: no Ct it is purely Civil or Roman Law,
the Canon Law Cts proceed by the Civil Law in many Cases, it is mixd
according to Circumstances & Things; there is no Trace of the Common
Law; In the proceedings by the Canon Law, there is an Appeal from
every Step; by the Civil Law only from a definitive Sentence
..... on our favor, that if the Common Law prevails there is no
Recusation— an injudicious act.n of the Statute .....
but I believe it does not appear to be an Injudicious Interpretation of
Recusaney, it is stronger than if Categorical, it is but hypothetical,
supposes it to have been what has before happend & so adopted— It is
provided by the Statute, that if a deficiency of the degrees appointed
the V. Ch.r & Proctors may elect from other degrees— If there was no Doctrine
of Recusaney, suppose the Proctors themselves were of the Convocation
wd it not be absurd that they must judge in their own Cause; there
might be Instances of Judges recused, but none of Judges who ever
intruded themselves after— 124 years ago a Judge was recused— In the
Dr Edmunds was of Cambridge — MSS. of Dr Edmunds, in a case of Recusation, another delegate was ap-
pointed by 3 Delegates nominated by the Vice Chanc.r & Assessors;
the 2 Universities are similar in many Instances; the University
Ct is sine figura Judicij, & their Proceedings are not to be considerd
strictly, as they wd be in other Cts— The Oath of Calumny is estab-
lished as sufficient by the Civil Law; & here the Libel of Recusa-
tion was regularly given in — In all regular formal Cts there is
a day given to the Party; but the V. Ch.r gave Sentence, ordred
Execution the same Day; It was a Contumacy established & well known
in Summary Cts the notoriety serves for Proof; the Arbiters determind
on the proofs, but it is not returnd in the Process, from whence the
Gentlemen infer, there was none; the reasons they proceeded on are
immaterial, you do not sit to determine the Sentence of the Arbiters.
Sine figura Judicij— the Reason was such a Blot as cd not be got
over, wh.r the Arbiters had determined or not— Maranta, "Judex
"potest recusari, & interea suspenditur Sententia Pt 6. N. 24. the two
recused Judges themselves pronounced, they were not well recused
for themselves & for their absent Brother; (Dr Bever) I hope then
we shall never be sent back again— Neither by Civil, Canon, or
Common Law, shd a Judge be so in his own Cause— the Declaration of the
V. Ch.r is taken for part of the Sentence mistakenly; Privilege is always
stricti Juris, they are to shew it; the Comparison of private Houses is agt
them, for by the Statute the Houses of the Oppidants may even be searchd
we dont pretend to that— From the manner in wch the Origin of the
University has been deduced by Dr Blackston, it follows that the
University being founded previously, the Colleges as subsequent in point
of time were subservient; therefore any such Immunity claimed by
them, wd not be received agt that of the University established: the Arg.t
holds as to any 2 Colleges, but not as to the University, the Fellowships of
Colleges have distinct Officers, take no Oath, as they do to q.e University
If the Head of a College is applied to, & he shd refuse, the Power wd be
baffled: Absurdity might make him refuse, he has a right— If we asserted
the Domestic Government, wh.r the Youth shd attend Chapel Lectures, the
doctrine might hold, but in public Offences it is different; Suppose
Persons go to a diff.t College from their own, & commit an Offence, how