ed they be amenable? a fortiori the Master of the College cant, if the Proctor cannot - The Stat: of the University directs how the Delinquent can be punishd for an Offence committed agt the Discipline of the University; ed the Stat: of All Souls punish in the same manner - It ed not order the Delinquent on his knees in the Congregation House, nor fine him 40s to the University, much less incarcerate him - It is the University Prison he is to be committed to, the Gaoler ed not receive him but by virtue of that Sentence; If there is power to incarcerate the Right to follow, is a natural Consequence; the matter is too serious for a slight determination - A Spirit of resisting Discipline is popular & receives abettors enough - a Dean or Master may not always be found —

Dr Blackstone... I am in no pain for the Discipline, cannot perceive it in danger, tho the Doctrine laid down, shd not prevail, It has subsisted a Century without any such Attempt - The Gentn argued as supposing the Allegn proved, tho, it is only an Accusation. The Presumption is in favor of the answers on Oath - There is no doubt that any Offence committed in the University falls under the Cognizance of the University - they shd have reversed only part of the V. Chrs Sentence, viz. the Pursuit - The old Statute is not produced tho, mentioned in Chancellor Lauds Body of Statutes compiled by the Delegates, confirmd by the King & You can't take judicial Notice of the Proceedings by the Civil Law unless proved - The University may be governd by local Usages; Common Canon, Civil Law Precedents shd be shewn; the presumption is strong that the doctrine of Recusation is not Academical Law. The Civil & Canon Law is nowhere purely received, in France nor Holland; Dr Aylifs Book is of no Authority; he was expelled for a Contempt sued by Dr Gardiner of All Souls, for reflecting on & scandalizing him in it - The Gentlemen might have found this on the Record, if there were as such a Case at Oxford; the Register of the Delegates has been searchd without effect - Dr Calverts quotation from Drd Eden may be Law at Cambridge, but an Usage at Oxford will not follow from thence - the Dr was mistaken in the other Case, an Argument cant be drawn, as it is not a Legal Determination - There is one of a Physician Deft at Christ-Church - The present Proctors employd a military Judicial Office - one of the Proctors objected, but it was overruled as to the Recusation - Recusation might hold in every Instance equally; such a Doctrine is not to be received - I am sorry to hear any, sitting under the Commission ed be recused - a Delegated Judge shd mean a deputed one vice alterius; but these Delegates are selected at the Commencement of the Year, for the whole year - they are as much Ordinary Judges as the V. Chr for a Year - It is said the Option by Charter once determined can't be altered or wavering - Shall a Cause be hung up, because in case of the Recusation, it is admitted, no Practice is settled, wch shews it never happened - What sort of Arbiters were these? Ex parte Arbiters never before undertook to decide; they were as officious as the Judges recused - Notwithstand: the Rigour.. of the Proceedings agt the 3 Preachers in Lauds time, there was no reason to recuse the Delegates, who were the Principals of Maudlin, & Exeter - These Delegates were specially named, wch shews there was no Statute then existing yet notwithstanding all the Noise, not a word is said of the Recusation; The V. Chrs Decree says pursue Delinquents; the Proctors are not parallell to Constables; it is a non sequitur: the Law of the University, is, that it shall recede .. to the College Statutes - The Senior, is Dean by the Constitution; he may be delated before the V. Chr for any Offence known to the Proctors - If your Ldps shd decide on this point, it must be extrajudicially, as Mr Solicr Genl desired; so that I argue it extrajudicially - The words of the Sentence comprehend all

Times, pursuit is various; Delinquent Gownsmen includes all; into any Colleges, includes every College, & every part of it; these are general Terms - a Head of a House writing another, is to be brought on his Knees; the Proctor can demand Entrance &c, strange Consequences - all Heads of Houses will be as carefull as any casual Magistrate - The Head of a House can turn the Stranger out, send for a Proctor to take him; what passd in Lauds Chancellorship, shews the Sense of the University at that time; Dr Frewen the V. Chr was wrote to by the Abp in 1639, to destroy Good Fellowships he excused himself by saying, they were out of the reach of the University Officers - Dr Aylifs was served with the Citation in his own College Hall & therefore refused to obey, & Sentence went by Contumacy —

Dr Wynne.... I beg a few words to the present Objection of the Recusation; different Law is urged, as well as different Arguments - a Delegated Judge is for a particular Cause, but an Ordinary Judge for a particular purpose in all Causes. Gail 13. N. Tit: de Recusatione Judicis - As to recusatory Libels Mr Solr Genl says, they follow the Civil Law; the Proceedings have not shewn it; they have adherd neither to Canon or Civil Law; By ye Civil Law the Arbiters must determine on the principal Cause; they dont appear to have appointed Arbiters in the Case of Drd Eden, but another Delegate was appointed; they were really Delegates so might legally be recused; if the University had on their Records any Such Practice I wd not contend wh: they shd proceed wholly by the Civil or Canon Law or Usage; the Custom is not known to the Judges or the Society, before you admit it there must be a way pointed out - The moment Judges were named .. the Proctors swore them into their Office; this Practice tho. antiquated is attempted to be set up; it is not a preamble but a part of the Decree; as good an Objection as can be to a Judges Decree, is, that it is incongruous, does not adhere to the Point, Mr Craven gave his Protest, his Answers under it; no doubt the V. Chr grounded himself on the Answers, it ed not come out else; your Ldps may confirm part & reverse part; the Statute wch says alibi, means only in the University, it cannot apply to the Colleges themselves: the V. Chr had not enormous Crimes, like Felony &c. in Contemplation: the Gentn of the Colleges wd be attentive to discipline tho, the Relaxation of it, has been so tragically set forth - the Inference from the Statute of incarcerating &c is drawn, that the College cant punish in the same manner; no such thing is said to be necessary here the Note Writer left the Ct.

Mr Popham.... N.B. This shd have been inserted after Dr Wynns Speech Feb. 13 .....

We contend the Cts of the University are not civil, common Law Jurisdictions; it is incumbent on them to shew, it is so governd; the King cant grant Authority to hold plea, contrary to the Law of the Land - Hales Pl: Cor: in H6. The Recusation is unknown in our Law; analogous to a Juror; what Oughton says does not much differ; it must fall under some of the general Descriptions; how will the Law draw the line of Intimacy to settle Competency - the Direction is given to the Sheriff to summon the Neighbours on a Jury because they are supposed to be best acquainted with ye Persons & Matter in Issue - Mr Scroop submitted, then protested agt Mr Cravens right of Appeal, because he was accused de gravioribus Criminibus; the Proctor has submitted to 2 Jurisdictions; a Person may be struck out of the University Book, yet remain a Member of a College; the Statutes neither directly nor indirectly give a power to enter private Colleges; I shd be sorry to have it insinuated that it wd relax the Discipline; it is such a Disrespect to the Heads &c as no one can entertain: It is not to be considerd as an University Cause; it is too disrespectfull to think they wd thus suffer it to be carried on at a private Expence —