AN

ADDRESS

TO THE

PARLIAMENT OF GREAT BRITAIN,

ON THE

CLAIMS OF AUTHORS

TO THEIR OWN

Copy-Right.

THIRD EDITION; NOT PUBLISHED.

BY

A MEMBER OF THE UNIVERSITY OF CAMBRIDGE.

1813.

AN

ADDRESS,

&c.

THE right of Authors to their own COPY has been often brought under consideration: the opinions of the ablest Lawyers and the most enlightened men were divided on the subject. The House of Lords, however, at last, decided for the public, and it is no longer a legal question; but as there is now a bill pending in Parliament to amend the Statute of the 8th of Anne, respecting literary property, the present Address is offered, to show how the question stands at this time among the parties concerned.

Authors are deprived of the *common law-right* to their own labors, because it was feared that, by permitting them to have an exclusive property in their literary works, the public would be injured. This is the substance of every argument, however ingeniously diversified, that has been used, to show the necessity of limiting the duration of literary property to the author; and, the general principle of expediency, the only plausible argument to wrest it from him.

When the great question of *copy-right* first underwent a full discussion, the only Judge in the King's Bench who opposed it

as the author's property, was Mr. Justice Yates; with him it was considered as of a nature too incorporeal and evanescent to have a specific value, yet he allowed it to be sufficiently substantial to exist for a term of years, to be circumscribed by the law, and to be protected by it.

A speech made to a public assembly, a public lecture for which the author is paid by his audience, a sermon preached by a Bishop from his manuscript, or a charge delivered by an Archdeacon to the diocesan clergy; are not too evanescent to be protected; not by Statute, but by *common law*; and no man is permitted to derive any profit from either, *except the author*, even though the sale should be confined to the very persons to whom the instruction, advice, or information, were given. This is the law as it now stands, and is founded upon the principles of the common law of England.* It is therefore clear that it is not the *incorporeal nature of ideas* which has created the real difficulty of securing them to the author, and of acknowledging him to be true owner; but he is deprived of his ownership as a measure of policy. At this time, I trust, it will not be difficult to show, that the guardians of the public entertained groundless apprehensions on this point.

That the question of *copy-right* may be clearly and distinctly before the reader, I will first recite the Acts of the Legislature, which have been made at different times in aid of literature.

The Licensing Act of the 13th and 14th of Charles II. compelled all Printers and Booksellers to enter whatever they printed

* Upon this point, my Lord Mansfield has thus expressed himself:—"No *disposition*, no *transfer of paper* upon which the composition is written, marked, or impressed, (though it gives the power to print and publish) can be construed a *conveyance of the copy*, without the author's express *consent to print and publish*; much less against his will.

"The property of the copy, *thus secured*, may equally go down from generation to generation, and possibly continue for ever; though neither the author nor his representatives should have any manuscript whatsoever of the work, original, duplicate, or transcript."

With respect to copy-right *after* publication, he adopts this opinion: "He who pays for a literary composition buys the *improvement, knowledge*, or *amusement*, he can derive from it: but the *right* to the work itself, the copy-right, remains in *him* whose industry composed it. The buyer might as *truly* claim the *merit of the composition* by his purchase, as the right of *multiplying copies* and *reaping the profits*."

in the Register of the Stationers' Company, and enacted that all Printers should reserve three copies of every newly-printed book; one for his Majesty's library, and one for each of the Universities of Oxford and Cambridge. This Act expired on the 9th of May, 1679. It was afterwards revived, but finally expired in 1694.

In the 8th year of Anne, an Act was made for the *encouragement of learning*, by which the author, or his assignee, possesses an exclusive copy-right for fourteen years, and is enabled to recover penalties for the invasion of his property; and if the author should survive that term, the same privileges extend to fourteen years more: and of all newly-printed books, by this statute, nine copies of each are given to the six Universities of England and Scotland, and the Libraries of his Majesty, Sion College, and the Advocates' Library in Edinburgh; and lest books should be sold at too high a price, the Act contains a provisionary clause, vesting a power in certain persons therein named, to regulate the same according to their judgment.[1]

By an Act for the suppression of Seditious Societies, made in the 31st of George III. c. 79. §. 29., one copy of every book printed is to be deposited with the printer.

By an Act of the 41st of George III. c. 107., the author is compelled to give two additional copies to Trinity College, and the King's Inns in Dublin.

By these several Acts, the author is now deprived of twelve copies of every book he prints.

After various Star-chamber regulations for printing, and charters granted to a body of Booksellers, to guard against the dissominating *heretical, schismatical, blasphemous, seditious, and treasonable books*, an Act was passed in the 13th and 14th years of the reign of Charles the Second, to continue in force for two years only, to compel all Printers to enter the works they printed in the Register of the Stationers' Company.[2] This Licensing

[1] This last clause, thirty years afterwards, being found to be wholly useless, was repealed in the 12th of George II. c. 36.

[2] The first charter of the Stationers' Company originally comprehended 97 persons, who were Booksellers, Stationers, Printers, or persons connected with these occupations. It was granted in the year 1556, and it recited that the

Act invested the Stationers' Company with great power, and gave them a complete monopoly of the whole trade, with all its ramifications, of printing and bookselling, and the importation of foreign literature, and for which, in return, they were to act as watchful agents for the Crown, to protect it from slander and detraction, and to give three copies of every book they published, as specified in the Act. The author here is entirely left out of the question; nor, indeed, can it be said that his interest was much involved in it. The Act itself was only to last two years. Literature was not then a trade. Genius was but of little value as a saleable commodity, and the whole of this kind of property was in the hands of the Booksellers; the small donation, therefore, of three copies of every work they printed, was a very inconsiderable equivalent for the great advantages which were given to them by the Act.

From this time the names of Milton, Dryden, and Newton, produced a new æra in literature and science, and literary property became more and more an object of consideration to the trader, though it remained of little importance to the author.

The ultimate sale of the copy-right of the Paradise Lost to Milton's widow, in 1680, produced no more than eight pounds; and in 1698, Jacob Tonson paid Dryden for his verses *2l.* 13*s.* 9*d.* per hundred: and the author's copy-right was then secured to him or his assignee at *common law*, or was supposed to be so. The Bookseller, however, complained, and had reason to complain, that his property was invaded by adventurers, without principle and without property, and that by common law they were not provided with the means of punishing the offenders, nor of remunerating themselves for the injury they sustained: under this impression, they petitioned Parliament in the 8th of Anne, to remedy this evil. In one of their cases is the following statement: "By *common law*, a bookseller can recover no more *costs* than he can prove *damages*: but it is impossible for him to prove the tenth,

grant was made *to prevent the renewal of great and detestable heresies.* It authorised the members of the Company to search for books, &c. and though the Crown had no right over the trade of printing, it was ordered, "that no man should exercise the mystery of printing unless he was of the Stationers' Company, or had a licence."

nay, perhaps the hundredth, part of the damage he suffers; because a thousand counterfeit copies may be dispersed into as many different hands all over the kingdom, and he not be able to prove the sale of ten. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit (no man of substance having been known to offend in this particular, nor will any ever appear in it); therefore the only remedy by the *common law*, is to confine a beggar to the rules of the King's Bench or Fleet; and there he will continue the evil practice with impunity. We, therefore, pray that CONFISCATION of counterfeit copies be one of the penalties to be inflicted on offenders."[1]

This is part of the prayer set forth by the members of the Stationers' Company, and its object is clear; and under color of giving *encouragement to learned men to compose and write useful books*, an Act was obtained which required the entry of every book in the Register of the Stationers' Company, to enable the proprietor of such book to claim the benefits of the statute, and from that entry, if the book was afterwards reprinted without the consent of the true owner, the offender was to forfeit one penny per sheet, for every sheet found in his possession, half the penalty to the king, and the other half to the informer, and to destroy and make waste-paper of the whole of the impression.

This provision was to continue in force for twenty-one years for all books already published, and for fourteen years for all that were in future to be published; and if the author should survive the latter term, then he or his assignee was entitled to fourteen years more; but for this latter fourteen years, the statute makes no provision, by penalty or otherwise, to secure the property to the owner. For the advantages this Act was supposed to confer on the booksellers, they were to give nine copies to three public libraries, and the six universities of England and Scotland.

This was the sense of the Act, always so understood, as well by the universities, as by authors and booksellers; and upon this ground the Act of the 41st Geo. 3. gave two copies to the King's Inns and Trinity College, Dublin, that they ~~might~~ have the same privileges and rights as the English and Scots universities. The sixth section

[1] Ibid. 2318.

of the Act, most unequivocally implies this interpretation of the statute of Anne.

"VI. Provided also, and be it further enacted, That from and after the passing of this Act, in addition to the nine copies now required by law, to be delivered to the warehouse-keeper of the said Company of Stationers, of each and every book and books, which shall be entered in the register-book of the said Company; one other copy shall be in like manner delivered for the use of the Library of the said College of the Holy Trinity of *Dublin*, and also one other copy for the use of the Library of the Society of the King's Inns, *Dublin*, by the printer or printers of all and every such book and books, as shall hereafter be printed and published, and the title to the copy-right whereof shall be entered in the said register-book of the said company; and that the said college, and the said society, shall have the like remedies for enforcing the delivery of the said copies; and that all proprietors, booksellers, and printers, and the warehouse-keeper of the said company, shall be liable to the like penalties for making default in delivering the said copies for the use of the said college, and the said society, as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid."[1]

By this Act it is evident that, if books were not entered in the register-book of the Stationers' Company, no claim by the English universities was supposed to exist, which was clearly founded upon this plain reason, that if a book was not entered, it could claim no benefit under the statute, and with this impression of its interest and meaning, it was always an affair of calculation by the author or bookseller, whether nine copies were more, or less, than equivalent to the risk of the work's being pirated; and if the risk was thought to be less, it was not entered: this was the case with respect to two of the most expensive works ever published in this country,—Boydell's Shakspeare, and Macklin's Bible: it was thought by the proprietors of these works, that the protection offered to them by the Act of Anne, was not equivalent to the nine copies, and therefore these works were not entered at the Stationers' Hall; neither did

[1] 41 Geo. III. c. 107. § 6.

the universities take any exception to this discretionary power, in these, or in any other similar instances, from the passing the Act of Anne, 1709, till the year 1810, when the University of Cambridge tried their claim against Walker, for a copy of Fox's History of James II. and obtained a verdict on the *latter of the statute*.

This is a brief statement of what the Stationers' Company supposed they had obtained by the Act of Anne, and the extent of what they believed the Parliament intended to grant, so far as concerned the protection of their property, and their remedy by law; nor was it till the year 1774, in the case of Donaldsons and Becket, sixty-six years afterwards, that the booksellers discovered that this Act, which was meant to protect their property, in reality took it away.

From the decision in the House of Lords, which took place upon this occasion, nine judges out of twelve decided that the author's property in his own productions was more valuable before the statute of the 8th of Anne than since: in other words, the statute of the 8th of Anne abridged his right, so that from the misconception of the nature of this Act, as by subsequent interpretation it has been understood, the author had his right *taken* away, and his property *given* away at the same time, and without receiving any compensation. And it ought to be remembered, that the property thus given away, is not *imaginary* and *evanescent*.

As early as the establishment of the Stationers' Company, there are records entered upon their books, which show their belief of the existence of a common-law principle which gave to the owners of intellectual property as entire and exclusive a right as could be possessed by manual labor or by purchase.

In the year 1559, persons were fined for *printing other men's* COPIES, and in 1573, there are entries which take notice of the *sale of the* COPY, and the *price*.

In 1582, there are entries of an express proviso, "that if it be found *any other has right to any of the copies*, then the *licence*, touching such of the copies *so belonging to another*, shall be void."[a]

A decree of the Star-Chamber, in 1637, expressly supposed a copy-right to exist otherwise than by patent, order, or entry in the Register of the Stationers' Company, which could *only* be by

[a] Vide Bur. p. 2313.

COMMON-LAW: and the Licensing Act, in the reign of Charles II. 1662, supposes an *ownership at common-law*. In that Act, the Chancellor and Vice-Chancellor of the Universities, are forbidden to meddle with, or licence the printing of, any book, the right of printing whereof doth "solely and properly belong to any particular person or persons, without his or their consent first obtained in that behalf."[1] The *sole property* of the owner is here acknowledged in express words, as a *common-law right*: and in the case of *Atkins* and *the Stationers' Company*, the House of Lords acknowledged the common-law right.[2]

Such cases, and many more might be cited, show that, down to the Act of Anne, there could have been no doubt entertained, by the body of booksellers, of the permanency and perpetuity of their literary property: and how far, in their opinion, this statute affected their common-law right, may be clearly seen in the progress of an action brought by seventeen booksellers of London against twenty-four booksellers of Edinburgh, in the year 1746, to recover damages under the statute for an invasion of their property,[3] in which they insist that the statute of the 8th of Anne gave an additional security by penalties during a limited time, to property which existed *before*; and that it was a declaratory Act and a penal statute, and that the Court of Chancery had always understood it in this sense, and given relief accordingly.

Sir Joseph Jekyll, in 1735, granted an injunction to restrain one Walker from printing the *Whole Duty of Man*, because it was considered to belong to the plaintiff *Eyre*, though the book had been originally published in 1657.

Lord Talbot, in 1736, granted an injunction against one Falkner, an Irish bookseller, for printing Pope's and Swift's Miscellanies, the property of the plaintiff, Motte.

Lord Hardwicke, in 1739, in the case of *Tonson and others*, against *Walker*, granted an injunction to prevent the defendant from printing Paradise Lost. The original assignment was made in 1667. These were severally acquiesced under. And in the case of *Millar* against *Taylor*, for printing Thomson's Seasons, in

[1] 13 and 14 Charles II. c. 33. § 3.

[2] Bur. 2315. Carter. 89. [3] Bur. 2319.

1768, in the Court of King's Bench, before Lord Mansfield, Mr. Justice Yates, Aston, and Willes, it was decided by the Court, that the COPY of a book, or literary composition, belonged to the author by the COMMON-LAW, and that the COMMON-LAW RIGHT of authors, to the copy-right of their *own* works, was not taken away by the statute of Anne.[1] This decision of the Judges of the Court of King's Bench was only a confirmation of what had been uniformly understood to be the law of the land, as well before as after the passing the Act of the 8th of Anne. But in the case of Donaldsons and Becket, in 1774, the House of Lords made a new decree, and voted the common-law right to be merged in the statute of Anne.

Previously to this time, the universities of England and Scotland, and the three public schools of Eton, Westminster, and Winchester, had entertained the same opinion as the Company of Stationers with respect to the perpetuity of literary property; but on this decision of the Lords, they petitioned Parliament to bring in a Bill for the *advancement of learning*, to secure to themselves a perpetual copy-right in all books which had heretofore been deemed their property, or which might at any future time become so; and to this effect an Act was passed in the 15th year of his present Majesty.

Thus the universities preserved their perpetual copy-right; the King also retains his copy-right for ever by common law;[2] but the authors lost theirs by an Act which was meant to strengthen the power of the Stationers' Company, and to give an additional protection and security to their property.

Before the case of Millar and Taylor was argued in the Court of King's Bench, in 1768, no legal investigation had ever been made of the nature and extent of the right of COPY; and here it was decided, in favor of the authors, as a common-law right, notwithstanding the statute of Anne. When the opinions of the Judges were taken in the House of Lords, in the case of Donaldsons and Becket, respecting the common-law right of authors to their *own copy*, before the statute, nine Judges of the twelve decided, that the literary productions of an author were as much his own

[1] 4 Bur. 2407. [2] 4 Bur. 2405.

property as that which belongs to any other man, produced by his manual labor; and that an exclusive and perpetual copy-right belonged to him, or his assignee, at *common-law*, upon the same principles of natural justice. And, as to literary works *before* publication, however they may be circulated orally, or given away by transcript, the Judges have been always *unanimous*, that the sole and exclusive right of such works belongs to the author, and so it is now received, as the common law of England."

If the same statements and reasoning which led to these conclusions in the minds of such men as Lord Hardwicke and Lord Mansfield, in 1763, had been fully brought before the legislature in the reign of Anne, it is difficult to conceive that any act could have passed for the *encouragement and benefit of learned men*, which, to use Lord Mansfield's words, should be in direct opposition to natural principles, moral justice, and the fitness of things.

At common law, every one enjoys the reward of his labor, and he enjoys it for ever; and, as Mr. Christian has well expressed it, if any private right ought to be preserved more sacred and inviolable than another, it is that where the most extensive benefit flows to mankind from the labor by which it is acquired; and intellectual property, though differing from the substantial form of tangible things; yet, under whatever denomination of right it may be classed, it is founded upon the same principles of general utility to society, which is the basis of all other moral rights and obligations.

'Thus considered, an author's copy-right ought to be esteemed an inviolable right, established in sound reason and abstract morality.[2]

It is a general opinion, that the interest of the Author is closely combined with the privileges of the Bookseller, and that they each partake in common in the disadvantages of any restraint or tax that the law may think fit to impose on the sale of books.

At first sight it might seem that any privilege granted to the Booksellers, or security to them, would also be an advantage to

[1] See the case of Lord Clarendon's Representatives and Gwynn, cited by Lord Mansfield, Bur. 2398.

[2] Black. Com. vol. II. p. 407. A Note.

the Author, and this is now the language of the *Trade;* but as I am not of the same opinion, I shall make my statement with impartiality, and if I am wrong I shall be glad to be set right, as *correct truth*, in all its parts, is my sole object in the investigation of this whole question. In the first place, it is quite evident that the Bookseller, as bookseller, cannot be injured by any limitation that the law may think fit to prescribe to intellectual labor, as the Author can in no case expect to be paid for more than he has the power to sell. Consequently, every limitation to common-law principles in this question must bear wholly upon the Author; and in proportion to his restraints and limitations, he alone will be injured.

By the extinction of the common-law right in Authors to their works, Booksellers, from their power of combining together as a body, have not been injured in the copy-right they have purchased, from time to time, in the same degree, as the solitary scholar.

That this may be more perspicuous, it may be necessary to observe that after a Bookseller has purchased the Author's limited term, he can at any time bring the whole property, or any proportion or share of it, into the market among his own fraternity, as *Omnium* or *Scrip* is brought into the Stock Exchange, and thus combine the interests of the most numerous or the most wealthy in the trade; and when the *copy-right* has no longer any validity by the Act of Anne, they have this resource against, what they call, the irregular trader--They can easily purchase or procure, at a small expense, some additions, in the shape of Note or Anecdote, to incorporate or append to the expired copy-right, and thus it becomes renovated for another fourteen years, at least so far as these notes and additions; which, although they may be very trifling, or perhaps of no importance at all, yet they will secure to the Edition a decided preference in the market. Besides, by combining together, they can always, in some degree, favor the sale of their own edition in preference to any other that may be published in hostility to the general interest. The efficiency of the system cannot be better illustrated than by a simple statement.

On the 8th of October, 1812, the *copy-right* of Cowper's Poems was put up to sale among the members of the trade in thirty-two

shares. Twenty of these shares were sold at 212*l.* a share, including printed copies in quires to the amount of 82*l.* which each purchaser was to take at a stipulated price, and twelve shares were retained in the hands of the proprietor. This work, consisting of two octavo volumes, was satisfactorily proved at the sale to nett 884*l.* per annum. It had only two years of *copy-right*, and yet this same copy-right, with the printed copies, produced, estimating the twelve shares which were retained, at the same price as those which were sold, the sum of 6764*l.*[1] Had the author himself been to dispose of this expiring *right*, he would doubtless have been reminded of the Statute of Anne, and twice the annual

[1] These shares were bid for in money, and then printed copies of books in quires were to be taken, as I have observed, at a stipulated price. The exact sum in money was 130l. for each share, except the first, which was sold for 110l. and the copies in quires were appended, to the amount of 82l. to each share: so that without taking this condition into the account, the nett sum in money for the whole copy-right would be 4140l. and supposing the eighty-two pounds' worth of paper and printing to be at the *cost-price*, the stock in hand would amount to 2624l. which, at the lowest calculation, if considered as *material*, could not possibly nett a less sum as profit; consequently, the stock in hand would be underestimated at three years' consumption, allowing the annual profit to be 831l. as stated at the sale; so that the sum of 4140l. may be said, in this mode of stating the case, to be given for the *copy-right* of a book one year after its term, by the Statute of Anne, was expired.

Cowper's Poems on sale which were to be taken at a stipulated price by the purchasers of shares of *copy-right*, were different editions of different sizes, suited to the market.—The present editions upon sale are, one in 8vo. with plates 1l. 6s. one 8vo. without plates 1l. 1s. one foolscap 8vo. 14s. one ditto of inferior printing and paper 7s. one 12mo. stereotype, 9s. These are the prices to the public, in boards. Each edition is in two volumes.

Every edition of a Book of 750 is calculated to pay all the expenses of *every kind*, when half the number are sold; and if the edition consists of 1500 copies, less than half is calculated to pay the expenses: and if the book be ornamented with prints, they are taken into the general estimate, and the price of the book is regulated accordingly. Every new book consisting of one or two 8vo. volumes is calculated to cost 30l. to advertise it, which makes a part of the first estimate, but in subsequent editions this sum is necessarily diminished in proportion as the book is known and established.

That the reader may be in possession of a correct statement of the expenses of an edition of a book, the *items* of expense of the last edition of Shakspear in 21 volumes, which I have been favored with by an Editor, may be at once satisfactory and curious.

The edition consisted of 1250 copies, making 21 volumes in 8vo. and each copy was published in boards for eleven guineas.

amount of the profits, under the limitation of the Statute, would exceed what, in reason, he could have had any right to claim or expect. This statement speaks so clearly, that, I trust, it cannot be at all necessary to illustrate the facts by any comment; but it may not be unnecessary to remind the reader, that the Author of the *Task* was obliged, at the decline of his life, a life chequered with more than ordinary calamity, to be assisted and relieved by the Crown, and that Johnson, who bought his works, was, without dispute, one of the most liberal booksellers in the trade.

When so many arguments have been advanced against the evils of perpetual copy-right *to Authors*, and the injury that the Public would sustain by giving to learned men the sole enjoyment of their labors, and the exclusive right to the result of that study, which, for their whole lives, consigned them to solitude; it surely cannot be generally known that at this day COPY-RIGHT, even in Shakspear, is a monopoly, and sold as regularly in the Booksellers' market as if it belonged to the Poet's heirs at law; and a share in Shakspear's works to any member of the trade is now just as good property as a share in the 3 per cents. In like manner, copy-right in Milton, and Dryden, and Pope, &c. is as much a

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Since the printing of this Pamphlet, another edition of Shakspear has been published, in 21 vols. price 12 guineas.

part of the personal property of a Bookseller, and disposed of at his death or otherwise, as the shelves in his shop, yet no harm is supposed to result from this commercial arrangement; *Authors* are the only persons to be feared, lest they may do injustice to the Public by withholding their works after they have once published them, or, in subsequent editions, by corrections, spoil them. This alarm appears to me to be very ill-founded, which the Public will one day or other know, if they have not found it out already; our purest and best Authors will be so disfigured by annotation, and increased in price by increased bulk, that the first edition of an Author will be called for. This has already happened with respect to Shakspear, and the edition of Milton, in duodecimo, of 1711, is still the most correct. In the reign of Anne, a provision to take care of the Public was inserted in the Booksellers' Penal Statute, investing certain persons of high rank and distinction with a power to regulate the price of books if the Bookseller sold them too dear; but the private interest of individuals is a better security to the Public, and in such cases they regulate affairs of trade far better than any legislature ever did or can do, and this useless clause was, thirty years afterwards, repealed.

As the booksellers are praying for an extension of copy-right, when it has been shown how little advantageous it would be to them, as in the case of Cowper's works, from their power of uniting together, to effect the same result, it has been asked of the author of this pamphlet, why, under these circumstances, they should require any legal extension of copy-right, when the authors alone are represented to be the only persons who can be benefited by such legal extension, and, that being the case, "authors ought to be very much obliged to booksellers for their present exertions in their behalf;" but here the bookseller is in a double capacity; as a vender of books, he is a mere bookseller; but as a holder of copy-right, he is in the place of an author; and the powerful opposition that Edinburgh and Dublin can make to the London trade, makes it desirable to the London bookseller to extend his *legal* term of copy-right.

I have already observed, that individuals always had exclusive copy-right in England, till the year 1774, and down to that time there is no instance of any complaint, from the public, of this ima-

ginary evil of monopoly. 'The Paradise Lost was in the hands of one family for nearly a century,' and of that book, it is well known, editions were never wanted which were not as immediately supplied.

I shall now say a few words on the reasoning of Mr. Christian, as the Advocate of the University claims, as he has printed a statement of all the facts upon which the University rests its claim of *right* to a copy of every book printed in the United Kingdom.

The statute of Anne has undoubtedly conferred on the University this legal right, nor shall I contend against it. To canvas the origin of property, would lead to useless speculations, incapable of producing any salutary conclusions; yet in this case, I trust, it may be clearly shown, that at the time the statute was made, the Commons of England were not then in possession of all the facts which appeared to make their legislative interposition necessary, nor did the Act, when made, contemplate its present consequences.

This claim by the University is contended by their Advocate to be just and equitable, upon the ground that it is only a substitution for one previously existing, far more valuable and important: I shall therefore consider their claim in that view.

The basis on which he rests the equity of his case, is founded upon the grant of Henry VIII. to the University of Cambridge, to print, *omnes et omnimodos libros*; which, according to his opinion, entitled them to print other men's COPIES, and which being taken from them by the Act of Anne, they received, in lieu of this *right*, one copy of every new book that was printed.

A very moderate, and, I must say, a very inadequate compensation, provided this right existed at all, or that this grant was a compensation for its abandonment.

Much stress has been laid by Mr. Christian upon this patent or privilege, which, he says, the king had a more than ordinary pretension to grant, because *it is said* that Hen. VI. brought the art of printing into this country at his own charge and expense.[2] This argument, allowing it to have all the weight that he considers it to

[1] 'The elder Tonson bought a half-share of Paradise Lost in the year 1683, and seven years afterwards he bought the other half, which property was transmitted to his son, and after his death in 1769 was sold by auction to the trade.

[2] Vindication of the Right of the Universities, p. 5.

be *legally* entitled to, could only extend to printing as a mechanical invention, which in no way affects the author as to the copy-right of his own property, and the King of England *never had the prerogative* to take away, at his will and pleasure, any right that belonged to one subject to give it to another. As to the part respecting compensation, as this appears to me so very extraordinary an assertion, to avoid misrepresentation, or the suspicion of unfair comment, I will recite the words of the learned author himself:

"When the copy-right Act of Queen Anne gave the author the sole right of printing and publishing his work for fourteen years, *the King's grant to the Universities was in effect revoked.* It became therefore reasonable and equitable that some provision should be made for the universities; and surely a copy of every new publication, or of each edition of every work, which gave the author or editor a copy-right, was a cheap compensation for the right which the universities before possessed. Their previous right was to print at least one copy of every new book for each of its members; and all they got in exchange was a single copy for the whole during the continuance of the author's or editor's copy-right of fourteen or twenty-eight years."

"The grant of the Crown to the Universities to print all manner of books, which was *annulled by the Copy-right Act* with respect to new publications, is a strong authority to prove the reason and justice of the right of the universities to a copy of every new publication."[1]

These opinions are so clear and distinctly expressed that they leave no room to doubt as to their meaning; and when, in the course of the short pamphlet which contains them, Mr. Christian has quoted or referred to the statute of Anne no less than fifteen times, and has employed nearly eight pages in an analysis of the statute, clause by clause, and section by section, so far as any part of the Act could be supposed to bear upon the present question;[2] I feel distrust in myself while I quote the ninth section of the same

[1] Vindication of the Right of the Universities, p. 7 and 18.

[2] Mr. Christian's analysis extends to the five first sections, after which, he concludes by saying, "The statute contains six more short sections; but they do not appear to affect the present question." Vindication, &c. p. 24.

statute, which, in my apprehension, is in direct opposition to his main assertion. The words of the section are,

8th of Anne, c. 19, § 9.

"Provided that nothing in the Act contained shall extend, or *be construed to extend, either to prejudice or confirm any right that the said universities*, or any of them, or any person or persons *have, or claim to have*, to the printing or re-printing any book or copy already printed, or *hereafter to be printed.*"

After reading this section, how it be possible to understand that any former grant of the King, by patent, or otherwise, of a right to print any sort or description of books, was in effect *revoked* or *annulled* by this statute of Anne, I am wholly at a loss to conceive.

The universities at this day have all the privileges they ever had, and when the perpetuity of their own *copy-right* was wrecked in common with that which belonged to others by the decree of the Lords in 1774, in the very next session of Parliament their lost *common-law rights* were restored to them by statute.[1]

The grant of nine copies by the Act of Anne to the Universities and Public Libraries was, as I have already stated, founded upon the same principles as the grant of the three copies by the Licensing Act of the 13th and 14th Charles II. and in both cases, if the Legislature can be supposed to have considered authors as involved in them, it can be understood in no other way than as a sumptuary tax may be supposed to operate on those who sit at the loom, or the pale artist that turns the lapidary's wheel. Copy was entirely in the hands of the booksellers, and, from our knowledge of those times, it is not at all difficult to see how the author was then situated with his patrons. He who was so unfortunate as to hope for a subsistence by literature, must have been completely within their power, when such a man as Dryden found it necessary to solicit the presence of Lord Bolingbroke, to screen himself from being ill treated by a bookseller, who exercised the authority of a taskmaster.[2]

[1] 15 of Geo. III. c. 53.

[2] "To the mercantile ruggedness of that race the delicacy of the poet was sometimes exposed. Lord Bolingbroke, who in his youth had cultivated poetry,

The trade of literature, and not its production, was the sole view of the Legislature. In the Licensing Act, the grant was a slight tax upon the printing and the commerce of books, to give something to the scholar for the great advantages that Act gave to the trader; and when these benefits ceased by the expiration of the Act, the claim of the Universities expired with it. When the booksellers prayed for new privileges by the Act of Anne, the universities, for the same reasons, were then included; and as Scotland and England, by the Act of Union, had now the same Parliament, copies of books for the Scots Universities were also added. This seems to be the true reason, and to be wholly independent of reference to any previous right that Oxford or Cambridge had to print other men's copies.

"The booksellers and purchasers of copy-right have no intrest in the present question. Whether nine or ninety copies are given away, it is all one to them. They can calculate their loss and gain, advantage and disadvantage, to the greatest nicety: they can ether give the author less, or make the public pay more; and therfore they have no interest in the present question."[1]

Mr. Christian observes, that "the rights of *poor students* aght to be held as sacred as those of *poor authors*."[2] All rights, if they be just, ought to be sacred to whomsoever they belong. Bu can those be said to be just which take from the *poor author*, b an arbitrary assessment, the earnings of his genius and his indutry, for which he has no return? Neither, in my apprehension, i the doctrine very sound that permits one man to be injured that another may be benefited, however in some extreme cases the necessiy of the distressed may temper justice with compassion; but here, even by the Professor's own declaration, the *poor student* is *not* the person whose cause he is advocating; "for a *very small proption*

related to Dr. King, of Oxford, that one day, when he visited Dryden they heard, as they were conversing, another person entering the house. 'This' said Dryden, 'is Tonson. You will take care not to depart before he goes away; for I have not completed the sheet which I promised him; and if you leave me unprotected, I must suffer all the rudeness to which his resentment can propt his tongue.'" Dr. Johnson's Life of Dryden, vol. ii. p. 99.

[1] Vindication of the Right of the Universities, &c. p. 12—34.

[2] Ibid. p. 7 and 34.

of the members of the university reside long enough to derive much benefit from the public library."[2]

The extent of the tax now enforced by the university, according to Mr. Christian's own calculation, cannot be less than 4400*l.* per annum, for *valuable* books,[3] not to say any thing of countless numbers of publications which cannot be supposed to come under this denomination, and without taking into the account 52 Reviews and Magazines, producing more than a thousand a-year, and 316 Newspapers and Weekly Journals, per week, which, if averaged at sixpence each, would amount to 4500*l.* both together operating as an annual tax of upwards of 5500*l.* more: all of which are within the statute of Anne.[4] It is, however, argued by Mr. Christian, that although this would be a positive loss to the universities and public libraries, yet it is only a negative loss to the author; for if "all the copies of an edition are sold, the author will receive sufficient remunration for his labor after giving his copies, and if they are not sold the donation will cost him nothing."[5] This assertion is ex-

[2] Vindication of the Right of the Universities, p. 11.

"The public library of the University of Cambridge is not open to undergraduates, nor graduates under the degree of A. M. Even those who have taken the degree of Bachelor of Arts, must wait three years for the *toga virilis*, before they can derive any benefit from the university library in their own right; and then they have the full use of it, as a circulating library. Oxford, upon the present occasion, would have much more reason to complain, if that University thought it consonant to its dignity, to join in the prosecution of authors; since the use of the Bodleian is not refused, by Convocation, even to an undergraduate, properly recommended, to derive all the advantages from the library, in the same manner and to the same extent as if he were a Doctor in Divinity. When an undergraduate has taken his Bachelor of Arts degree, he is admitted to the use of the library in his own right.

[3] "The revenue necessary to purchase the *valuable* books, which I conceive we are at present intitled to, cannot be estimated, I apprehend, at less than 4400*l.* a-year." This is Mr. Christian's estimation of the worth of the *valuable* books only to one claimant. *Vindication* p. 10.

I have put the amount agreeably to the donation of eleven copies. It may however be urged, that the statute of the 41st of George III. which intended to give the copies to Ireland, might be evaded, but I trust that my not availing myself of this flaw will not be considered as an inaccuracy in the statement.

[4] The statute in the preamble comprehends "books and other writings." See the Case of Clementi and Goulding, East. T. R. Vol. II. p. 214.

[5] Vindication, &c. p. 8.

traordinary in a gentleman who is an author himself. Among the privileges which the university enjoys, it has a drawback upon paper, which *poor authors* have not: but the printer, by the usage of trade, is always paid for his labor by the number of 250 at a time; that is, if he prints only ten copies of a work, he is paid the same precisely as if he printed 250 copies; if he is commissioned to print 251 copies, he is paid for printing 500; if 501, he is paid for 750; and so on in that ratio. This circumstance is always taken into consideration by the author who has a book to print, and it is his interest to estimate rather under than over the probable demand for his book, because he is very seldom rich, and it would destroy his little profits if he were to have a dead stock of paper, which he is obliged to pay for at three months' credit, at a very high price, while he is obliged to give the bookseller nearly two years' credit[1]; and, secondly, because it is always a gratifying feeling for him to be conscious that his work will not be sold for waste paper; and, with a *valuable* book, one of these two things must always happen, that if the author prints a discreet number they will be all sold, and the latter copies at an advanced price, if the demand is not sufficiently great for him to re-print it; or, if he prints more than there happens to be a demand for, he is injured, or ruined, by his imprudence: numerous instances of both kinds might be cited; so that in the former case, the author not only gives away the whole original price of his book, but somewhat more, and, in the latter, the universities are benefited by that which is the cause of his ruin.[2]

[1] This statement is founded upon documents in the possession of the author, but Mr. Rees informs him that this extent of credit is not general in the trade; that ten or twelve months is the practice of their house, and that they often advance money to authors at different times when they are in need.

[2] Mr. Brand's History of Newcastle was for a long time upon brokers' stalls, from his imprudence in printing too large an impression; while the works of Horace Walpole, almost as soon as they were published, doubled or trebled their price. If Mr. Fox had been as imprudent as the bookseller in publishing his History, and had been so unfortunate as to be a *poor author*, he would have been ruined by the edition of his book; for though a name quite as attractive as that of a Horace Walpole or Earl of Orford, yet this same History, which was sold to the public for 1*l.* 16*s.*, was soon afterwards to be bought in St. Giles's for ten or twelve shillings; and upon one occasion there were no less than thirteen hundred copies sold for seven shillings a copy.

On a general view of this question, from the facts I have stated, it is obvious, that the Act of Anne, which is expressly made for the encouragement of learned men to write useful books, never could have had in contemplation the depriving these very men of not less than four thousand four hundred pounds a-year; neither does it appear more probable, as Mr. Justice Willes has observed, that the Bill which was intended to *secure* the property of authors, could be meant to operate as an Act *to take it away*.

Under these circumstances, it is for the legislature to consider the merits of the case, and if it be *just*, to restore the authors to their lost rights; but if this should be incompatible with any measure of policy that may be more expedient, it is sincerely to be hoped that they may not be made a party to any Act, however plausible, and be "brought with divers glossing colors to the House,"[1] which may increase the pensioners on the literary fund.

As the demand of the University of Cambridge, according to their Advocate, "*is made to encourage learning*," I hope the Vice-Chancellor and the Heads of Houses will re-consider the nature and extent of their claim, and assist their adventuring sons to obtain the same privilege which they obtained for themselves by the Act of the 15th of George III. or, at least, that they will refrain from taking from them, that, for which they give them nothing in return.

Upon the decision of the Lords, which gave the Act of Anne its restrictive meaning, as Lord Camden was one of the most eloquent of those who opposed the perpetuity of literary property, I shall conclude this address with a comment on the conclusion of that speech, in which his Lordship thus expressed himself: "Glory is the reward of science; and those who deserve it, scorn all meaner views. I speak not of the scribblers for bread, who tease the press with their wretched productions. Fourteen years are too long a period for their perishable trash. It was not for gain that Bacon, Newton, Milton, Locke, instructed and delighted the world. When the bookseller offered Milton five pounds for his Paradise Lost, he did not reject it, and commit his poem to the flames, nor did he accept this miserable pittance as the reward of his labor;

[1] Milton's Prose Works, 8to. vol. i. p. 172.

he knew that the real price of his work was immortality, and that posterity would pay it."

In this eloquent declamation, with great deference to my Lord Camden, I am at a loss to find the argument. If glory be the reward of learning and science, why are not those who possess these eminent qualities permitted so to live that they may be capable of enjoying the respect that is due to their genius and attainments? Should they who merit every thing have nothing? should those who administer to civilization, to refinement, to the polish of society, to the highest luxury of our intellectual existence, be themselves in obscurity, and unknown? Because Milton deserved and has obtained an immortality, ought his grand-daughter to have been contented, had she begged her bread in the streets? and ought WE to be satisfied who have been *delighted and instructed* by her grandfather, that she was poor, and glad to receive alms at our hands? Because there are some unworthy writers who are scribblers for bread, and some scribblers more unworthy, who are rich enough to be independent of the smiles and frowns of fortune, yet why should the public, in either case, be abridged of their prerogative, to patronize or reject these trifles as they may see good? The name of Howard, and the ancient and illustrious dignity of a Duke of Norfolk, could not force his *Thoughts, Essays, and Maxims*, into a second edition,[1] nor could an Act of Parliament, with all the magnificence of paper and typography, and the influence of office, rescue Small Pybus's SOVEREIGN from a premature oblivion: it must, therefore, be equally unnecessary and unavailing to make an Act of Parliament to preserve *perishable trash* for fourteen years, which the public will not permit to live more than as many days or weeks; and to define by law the works that shall live

[1] The title of this book is THOUGHTS, ESSAYS, AND MAXIMS, CHIEFLY RELIGIOUS AND POLITICAL: *By Charles Howard, Esq. of Greystock, in Cumberland*: and there was no object for which the author was more anxious than that the book should arrive at the *honor* of a second edition. Mr. Howard, in common with the wits of his time, frequented the Chapter Coffee-house, and so long as nine years after the publication of his book, when he was in possession of the title of DUKE OF NORFOLK, he said one day to Foote in the coffee-room, "Foote, my THOUGHTS are going to a second edition:" to which Foote answered, "I am glad of it, my Lord Duke, *Second thoughts are best.*" But this desirable event never took place.

no longer, is to measure all authors on the iron bed of Procrustes. Although it be a noble incentive to enthusiasm to have a prospect of immortality in fame, and, when obtained, no ornament becomes a library so well as the resemblance in marble of an eminent Poet, Historian, or Philosopher; yet, my Lord, it should not be forgotten, that when he was alive he was a man.

A Summary of the Case.

There was *copy-right* in literary property, *after* publication, to the Author or his assignee at common law, always understood, believed, and acted upon, till the year 1774, and the Chancellors of England uniformly recognized the common-law right down to that time.

Upon the question of, Whether the common-law right was taken away by the Statute of Anne? the Judges were divided, six for the question, and six against it;* and the Lords turned the balance in favor of the Statute.

The copy-right *before* the work be printed and *sold*, however distributed or dispersed, still remains the property of the Author or his assignee at common law.

The King's copy-right of works which have been bought by him or his predecessors, he retains as his exclusive property, at common law.

The Universities and the Public Schools have perpetual and exclusive copy-right in their literary property, restored to them by the Statute of the 15th of George III. 1775.

The Booksellers lost their perpetual copy-right in the year 1774, by the Act which they obtained in the 8th of Anne. But by the power which they have, as a body, of combining together, they have been able to parry the loss, so as only to feel its effects in a very slight degree.

The Authors lost their perpetual copy-right by this same Act of Anne, and by no indiscretion of their own; and they have no means of parrying the effects of that loss.

* Lord Mansfield, as a Peer of Parliament, upon this occasion did not deliver his legal opinion as a judge, but in his place supported his former decision against the statute.

No subsequent Act of Parliament has been made to restore to Authors the exclusive right of their own talents and industry; but they are now compelled, by a learned Body which Parliament has restored to *their* lost right, to pay 440*l.* a year, to be enforced by that very Statute by which authors lost their *common-law* right: for, "Booksellers and purchasers of copy-right are, upon the present occasion, entirely *hors de combat.*" [1]

Much fear has been entertained lest a rigid adherence to the rule of right in ordinary cases, which gives to an owner exclusive possession to his own property, should be injurious to the public, if extended to Authors with respect to their literary productions. This apprehension seems to have been groundlessly entertained by the Parliament in the reign of Anne, and a provision to take care of the public was inserted into the Booksellers' Penal Statute of that reign, that certain persons of high rank and distinction were to regulate the price of books if the bookseller sold them too dear. But the private interest of individuals is a better security to the Public, and in such cases they regulate affairs of trade far better than any Legislature ever did or can do; and this useless clause was, thirty years afterwards, repealed.

It has been already observed, that individuals always had exclusive copy-right in every book that ever had been written in England till the year 1774, and down to that time there is no instance of complaint from the public of this imaginary evil of monopoly. The Paradise Lost was in the hands of one family for nearly a century; and of that book, it is well known, editions were never wanted which were not as immediately supplied.

It is therefore prayed, that the Vice Chancellor, and the Heads of Houses of the University of Cambridge, would re-consider their claim, and assist literary men in soliciting Parliament to gain the same privilege for Authors as they obtained for themselves in the 15th of George III.; and let it not be said in the emphatic words of Dryden, "that they who teach wisdom by the surest means shall generally live poor and unregarded, as if they were born only for the public, and had no interest in their own well being, but were to be lighted up like tapers, and waste themselves for the benefit of others."

[1] Vindication of the Right of the Universities, p. 12.

The Arguments of Lord Mansfield, in favor of the Author's perpetual Copy-right, and of those Judges whose Arguments he read, approved, and adopted.

From premises either expressly admitted, or which cannot, and therefore never have been denied, conclusions follow, in my apprehension, decisive upon all the objections raised to the *property* of an author, in the *copy of his own work*, by the *common law*.

I use the word "Copy," in the *technical* sense in which that name or term has been used for ages, to signify an *incorporeal right* to the *sole* printing and publishing of somewhat intellectual, communicated by letters.

It has all along been expressly admitted, "that, by the *common law*, an author is intitled to the copy of his own work *until* it hath been once printed and published by his authority;" and "that the four cases in Chancery, cited for that purpose, are *agreeable to the common law*; and the relief was *properly* given, in consequence of the legal right."

The property in the copy, *thus abridged*, is *equally* an incorporeal right to print a set of intellectual ideas or modes of thinking, communicated in a set of words and sentences, and modes of expression. It is *equally* detached from the manuscript, or any other *physical* existence whatsoever.

The property thus abridged is *equally* incapable of being violated by a crime *indictable*. In like manner, it can only be violated by another's printing without the author's consent: which is a *civil* injury.

The only *remedy* is the same; by an action upon the case for damages, or a bill in equity for a specific relief.

No action of *detinue*, *trover*, or *trespass quare vi et armis*, can lie; because the *copy thus abridged* is *equally* a propeity in *notion*, and has *no corporeal tangible* substance.

No *disposition*, no *transfer* of paper upon which the composition is written, marked, or impressed, (though it gives the *power*

to print and publish,) can be construed a *conveyance of the copy*, without the author's express *consent* "*to print and publish*;" much less *against* his will.

The property of the copy, *thus narrowed*, may *equally* go down from generation to generation, and possibly continue for ever; though neither the author nor his representatives should have any manuscript whatsoever of the work, original, duplicate, or transcript.

Mr. *Gwynn* was intitled, undoubtedly to the *paper* of the transcript of Lord *Clarendon's* History; which gave him the *power* to print and publish it, after the fire at *Petersham*, which destroyed one original. This *might* have been the *only* manuscript of it in being. Mr. *Gwynn* might have thrown it into the fire, had he pleased. But at the distance of nearly a hundred years, the *copy* was adjudged the property of Lord *Clarendon's* representatives; and Mr. *Gwynn's* printing and publishing it *without their consent*, was adjudged an *injury to that property*; for which, in different shapes, he paid very dear.

Dean Swift was certainly proprietor of the *paper* upon which *Pope's* Letters to him were written. I know, Mr. *Pope* had *no* paper upon which they were written; and a very imperfect memory of their contents; which made him the more anxious to stop their publication;—knowing that the printer had got them.

If the copy belongs to an author, *after* publication, it certainly belonged to him before. But if it does not belong to him after; where is the common law to be found which says "there is such a property before?" All the metaphysical subtleties from the nature of the thing may be *equally* objected to the property before. It is *incorporeal*: it relates to ideas detached from any *physical* existence: There are *no indicia*: another may have had the same thoughts upon the same subject, and expressed them in the same language *verbatim*. At what time, and by what act does the property commence? The same string of questions may be asked, upon the copy before publication: is it *real* or *personal*? does it go to the heir or to the *executor*? being a right which can only be defended by action, is it, as a chose in action, *assignable* or not? can it be *forfeited*? can it be taken in *execution*? can it be *vested in the assignees* under a commission of bankruptcy?

The common law, as to the copy before publication, cannot be found in custom.

Before 1732, the case of a piracy *before* publication never existed: it never was put, or supposed. There is not a syllable about it to be met with any where. The regulations, the ordinances, the Acts of Parliament, the cases in *Westminster-Hall*, all relate to the copy of books *after* publication by the authors.

Since 1732, there is not a word to be traced about it; except from the four cases in chancery.

Besides, if all *England* had allowed this property two or three hundred years, the same objection would hold, "that the usage is *not immemorial*:" for printing was introduced in the reign of *Edw.* 4th, or *Hen.* 6th.

From what source, then, is the *common* law drawn, which is admitted to be so clear, in respect of the copy *before* publication?

From *this* argument—because it is *just*, that an author should reap the pecuniary profits of his own ingenuity and labor. It is *just*, that another should not use his name, without his consent. It is *fit*, that he should judge when to publish, or whether he ever will publish. It is *fit* he should not only choose the time, but the manner of publication; how many; what volume; what print. It is *fit* he should choose to whose care he will trust the accuracy and correctness of the impression; in whose honesty he will confide, not to foist in additions: with other reasonings of the same effect.

I allow them *sufficient* to show "it is agreeable to the principles of right and wrong, the fitness of things, convenience and policy, and therefore to the common law, to protect the copy *before* publication."

But the *same* reasons hold, *after* the author has published. He can reap no pecuniary profit, if, the next moment after his work comes out, it may be printed upon worse paper and in worse print, and in a cheaper volume.

The 8th of Queen *Anne* is no answer. We are considering the *common* law, upon principles *before*, and *independent* of that Act.

The author may not only be deprived of any *profit*, but *lose* the expense he has been at. He is no more master of the use of his own *name*. He has no control over the *correctness* of his own work.

He cannot *prevent additions*. He cannot *retract errors*. He cannot *amend*; or *cancel* a faulty edition. Any one may print, pirate, and perpetuate the *imperfections*, to the disgrace, and against the will of the author; may propagate sentiments under his name, which he *disapproves*, *repents*, and is *ashamed of*. He can exercise no discretion as to the *manner* in which, or the *persons* by whom his work shall be published.

For these and many more reasons, it seems to me just and fit "to protect the copy *after* publication."

All objections which hold as much to the kind of property *before* as to the kind of property *after* publication, go for nothing: they prove *too much*.

There is *no peculiar* objection to the property *after* except that the copy is *necessarily made common*, after "the book is once published."

Does a transfer of paper upon which it is *printed*, necessarily transfer the copy, more than the transfer of paper upon which the book is *written*?

The argument turns in a circle, "The copy is made common, because the law doth not protect it: and the law cannot protect it, because it is made common."

The author does not mean to make it common: and if the law says "he ought to have the copy after publication," it is a several property, easily protected, ascertained and secured.

THE WHOLE then must finally resolve in this question, "whether it is agreeable to *natural principles*, moral *justice* and *fitness*, to allow him the copy, *after* publication, as well as *before*."

The *general consent* of this kingdom, for ages, is on the *affirmative* side. The *legislative* authority has *taken it for granted*; and interposed *penalties* to *protect it for a time*.

The *judicial opinions* of those eminent lawyers and great men who *granted* or *continued* INJUNCTIONS, in cases *after* publication, *not within* 8 Queen *Anne*; uncontradicted by any book, judgment, or saying; must weigh in *any* question of law; much more in a question of mere theory and speculation as to what is agreeable or repugnant to *natural principles*. I look upon *these* injunctions as *equal* to any final decree.

Whoever has attended the court of chancery, knows that if an

injunction in the *nature* of an injunction *to stay waste* is *granted upon motion*, or *continued after answer*, it is in vain to go to *hearing*. For such an injunction *never* is granted upon motion *unless* the *legal property* of the plaintiff be *made out*; nor continued after answer, *unless* it still *remains clear*, allowing all the defendant has said. In *such* a case, the defendant is always advised, either to *acquiesce*, or *appeal*: for, he never can make a better *defence* than is stated upon his own answer.

The case of *Millar* against *Taylor*, was not sent from the Court of Chancery to the Court of King's Bench, upon any doubt of theirs. There never was a doubt in the Court of Chancery, till a doubt was raised there from decency, upon a *supposed* doubt in *this* Court, in the case of *Tonson* and *Collins*. There is not an instance of an injunction refused, till it was refused upon the grounds of that doubt. The Court of Chancery *never* grant injunctions in cases of this kind, where there is any *doubt*. No *injunction* can be obtained *till* the Court is satisfied "that the plaintiff has a *clear legal right*." A *doubtful* legal title must be tried at law, before it can be made the ground of an injunction. Injunctions of *this* kind are rightly and properly refused. In a *doubtful* case, it would be *iniquity* to grant them; because, if it should come out "that the plaintiff has *no* legal title," the defendant is injured by the injunction, and can have no reparation.

If it be agreeable to natural principles, to allow the copy *after* publication, I am warranted by the admission which allows it *before* publication, to say, "this is *common law*."

There is another *admission* equally conclusive.

It is, and has all along been admitted, "that by the *common* law, the KING's copy continues *after* publication; and that the unanimous judgment of the Court of King's Bench, in the case of *Baskett* and *The University of Cambridge*, is right."

The *king* has no property in the art of printing. The ridiculous conceit of *Atkins* was exploded at the time.

The *king* has no authority to restrain the press on account of the subject-matter on which the author writes, or the manner of treating it.

The *king* cannot, by law, grant an exclusive privilege to print any book which does not belong to himself.

Crown-copies are, as in the case of an author, civil property: which is deduced, as in the case of an author, from the king's right of original publication. The *kind* of property in the crown, or a patentee from the crown, is just the *same*; incorporeal, incapable of violation but by a civil injury, and only to be vindicated by the same remedy, an action upon the case, or a bill in equity.

Acts of Parliament are the works of the *legislature*: and the publication of them has always belonged to the King, as the *executive* part, and as the *head and sovereign*; and in this property the king might grant a *concurrent* right; but no idea was ever entertained "that the first edition of Acts of Parliament made the copy *common*." And yet any man may transcribe an Act of Parliament, or a record: and any person may make laborious searches and abstracts from records, and have a right to print them.

Lord HARDWICKE reasoned in the same way, in the case of *Manby and others* against *Owen and others*, on 8th *April*, 1755, relating to the Sessions-Paper. The plaintiffs had bought the Sessions-Paper of my Lord Mayor, and had (I think) given him a hundred guineas for it. And upon an affidavit "that the Lord Mayor had always appointed the printers of that paper; and that it was usual for the Lord Mayor to take a sum of money for it; and that the defendant had pirated it:" Lord HARDWICKE considered the grant as property in the copy, and granted the injunction upon the foot of *property*; and never dreamt "that the first edition of it made it *common*." This was acquiesced under: and the defendants were not advised to proceed further. Nothing is more manifest, than that the injunction proceeded upon the infringement of the plaintiff's property: for, *as a contempt of the court* of the *Old Bailey*, the Court of *Chancery* would not have interfered. But they were of opinion "that the *copy* was *transferred* to the plaintiff, and that it was *not made common* by the first publication."

If the Common Law be so in *these* cases, it must also be so in the case of an *author*. All the reasoning "that subsequent editions should be *correct*," holds equally to an *author*. His *name* ought not to be used against his will. It is an *injury*, by a faulty, ignorant, and incorrect edition, to disgrace his work and mislead the reader.

The copy of the *Hebrew* Bible, the *Greek* Testament, or the *Septuagint*, does not belong to the King: it is *common*. But the

English translation he *bought*: therefore it has been concluded to be *his property*. If any man should turn the Psalms, or the writing of *Solomon*, or *Job*, into verse, the King could not stop the printing or sale of such a work: it is the author's work. The King has no power or control over the subject-matter: his power rests in *property*. His whole right rests upon the foundation of *property in the copy* by the *Common Law*. What *other* ground can there be for the King's having a property in the *Latin Grammar*, (which is one of his ancientest copies,) than that it was originally composed at *his expense*? Whatever the *Common Law* says of *property* in the KING'S case, *from analogy to the case of authors*, must hold *conclusively*, in my apprehension, *with regard to* AUTHORS.

The SUBJECT *at large* I have had frequent opportunities to consider. I have travelled in it for many years. I was counsel in most of the cases which have been cited from chancery: I have copies of all, from the register-book. The first case of *Milton's* Paradise Lost was upon my motion. I argued the second: which was solemnly argued, by one on each side. I argued the case of *Millar* against *Kincaid* in the House of Lords. Many of the precedents were tried by my advice. The accurate and elaborate investigation of the matter in the case of *Millar* and *Taylor*, and of *Tonson* and *Collins*, has *confirmed* me in what I was *always* inclined to think, "that the Court of Chancery did *right* in giving relief upon the foundation of a LEGAL *property in authors*; independent of the entry, the term for years, and all the other provisions annexed to the security given by the Act of *Anne*."

' Lord Mansfield's reasoning upon the different clauses of this statute, as to its restrictive meaning, is as follows: "I always thought the objection from the Act of Parliament, the most *plausible*. It has generally struck at *first view*. But, upon *consideration*, it is, I think, impossible to *imply* this act into the *abolition* of the Common Law right, if it *did* exist: or into a declaration 'that *no* such right *ever existed*.'"

The BILL was brought in, upon the petition of the proprietors, to *secure* their property *for ever*, by *penalties*; the only way in which *they thought* it *could* be secured: having had *no experience of any other*; there being no example of an action at law tried, or any idea that a bill would lie for an injunction and relief in equity."

An alteration was made in the committee, to *restrain* the *perpetual* into a *temporary* security.

It is certainly not agreeable to natural justice, that a *stranger* should reap the *beneficial pecuniary produce* of *another* man's work. *Jure Naturæ æquum est, Neminem, cum Alterius Detrimento et injuria fieri locupletiorem.*

It is wise in any state to encourage letters, and the painful researches of learned men. The easiest and most equal way of doing it, is, by securing to them the property of their own works. Nobody contributes, who is not willing: and though a good book may be run down, and a bad one cried up, for a time; yet, sooner or later, the reward will be in proportion to the merit of the work.

A writer's fame will not be the less, that he has bread without being under the necessity of prostituting his pen to flattery or party, to get it.

He who engages in a laborious work (such, for instance as *Johnson's Dictionary*) which may employ his whole life, will do it with

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The argument drawn from the clause to regulate the *price* of books, cannot hold. That clause goes to *all* books; is *perpetual*; and follows the act of *Hen.* 8.

The words "*no longer*" add nothing to the *sense*; which is exactly the same, whether these words are added, or not.

The word "*resting*," in the title, cannot be argued from as declaratory "that there was *no* property *before*." The *title* is but once read; no part of the Act. In the *body*, the word "*secured*" is made use of.

Had there been the least intention to *take* or *declare* away every pretence of right at the *Common* Law, it would have been *expressly* enacted; and there must have been a *new preamble*, totally different from that which now stands.

But the legislature has *not* left their meaning to be found out by *loose conjectures*. The *preamble* certainly proceeds upon the ground of a *right of property* having been *violated*; and might be argued from, as an *allowance* or *confirmation* of such a right at the *Common Law*. The remedy enacted against the violation of it being *only temporary*, might be argued from as *implying* there *existed* no right *but* what was secured by the act. *Therefore* an *express saving* is added, "that nothing in this act contained shall extend or be construed to extend to *prejudice* or *confirm* any right, &c." *Any* right is, manifestly, any *other* right than the *term* secured by the Act. The Act speaks of *no* right whatsoever, *but* that of *authors*, or *derived* from *them*. No *other* right could possibly be *prejudiced* or *confirmed* by any expression in the Act. The *words* of the *saving* are adapted to this right: "*book* or *copy* already printed, or *hereafter* to be printed."—They are not applicable to *prerogative* copies. *If* letters patent to author or his assigns could give any right, they might come under the generality of the saving. But, so little was such a right in the *contemplation* of the legislature, that there is not a word about *patents* in the *whole* Act. *Could* they have given any right, it was not *worth* saving; because it never exceeded fourteen years.

more spirit, if, besides his own glory, he thinks it may be a provision for his family.

I never heard any inconvenience objected to literary property, but that of *enhancing the price* of books. An owner may find it worth while to give more correct and more beautiful editions; which is an advantage to literature: but his *interest* will prevent the price from being unreasonable. A *small* profit in a *speedy* and numerous sale, is much larger gain, than a *great* profit upon each book in a *slow* sale of a less number.

Upon every principle of *reason*, *natural justice*, *morality*, and *common law*, upon the evidence of the *long received opinion* of this property, appearing in ancient proceedings, and in law-cases; upon the clear sense of the *legislature*; and the opinions of the *greatest lawyers* of their time in the Court of *Chancery*, since that Statute; the RIGHT *of an author to the* COPY *of his works* appears to be *well-founded*. And I hope the learned and industrious will be permitted from henceforth, not only to reap the *fame*, but the PROFITS of their ingenious labors, without interruption, to the honor and advantage of themselves and their families.