



AN
ENQUIRY
INTO THE
NATURE and ORIGIN
OF
LITERARY PROPERTY.



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ENQUIRY

INTO THE

NATURE and ORIGIN

OF

LITERARY PROPERTY.



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A N
E N Q U I R Y
I N T O T H E
N A T U R E a n d O R I G I N
O F
L I T E R A R Y P R O P E R T Y .

W H E N the Right of the Author in
his Copy was first agitated, I confess that I was prejudiced in its Favour. I considered it as the noblest Inheritance which could be transmitted to Posterity. If the Law was so sollicitous in protecting that Property which was frequently acquired by Fraud, Rapine and Extortion, what Reason could be assigned why it should abandon, to every Invader, Literary Property, which being the genuine Offspring of the Mind is more peculiarly our own. Such Reflections as these occur to every one at the first View. But when

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I would have examined the Principles on which it was founded, they proved so unsubstantial, so void of Reality, that they eluded my Search. In the Course of this Inquiry, I was forced to exercise a Poetical Faculty in giving Limbs and Features to this airy Phantom, that I might the more easily combat it; that is, I supposed it to be endowed with Qualities not such as really exist in it (for it is imaginary) but with those which are generally attributed to it. In investigating the Nature and Limits of any Property, if it be *real*, the more we contemplate it the greater Certainty we shall find; on the other hand, if it be *chimerical* such a Research will lead us into Doubts and Perplexities, Contradictions and Absurdities. Let us mark the Analogy, and observe the Difference between this and other Property. The Question is as follows.

WHETHER at Common Law an Author and his Assigns have a perpetual and exclusive Right of selling and vending his own Works? In the Discussion of this Question, it is necessary to inquire whether a Property may be obtained in a Copy, and if it may, whether such a perpetual exclusive Right may be founded on it.

PROPERTY is either corporeal or incorporeal. It may be again divided into original and derivative. It is admitted that this Property principally consists in the Ideas.

tho' it be likewise inherent in the Form and Composition of the Piece by which it is most easily distinguished and ascertained. Therefore it is incorporeal, yet it totally differs from every other incorporeal Right which the Law acknowledges either *original* as Bonds, Contracts and Obligations, (for these arise from Compact and Agreement of the Parties) or *derivative*, as Estovers, Advowsons, and Rights of Common, which imply a prior Property from whence they issue. A Manor must be created before the Right of Common can subsist; nor can Estovers be granted 'till Property is first gained in the Wood; a Church must be endowed, e'er the Right of Presentation arises. This original incorporeal Right, if it exists at all, must necessarily partake of the Nature and Qualities of a corporeal Property. A strange Phæ-nomenon!

AN exclusive Property cannot be obtained in every Idea that we perceive, nor in every Sentiment that occurs to us; because Nature has framed us with similar Organs, so that the same Objects must necessarily make similar Impressions on them. " It may be " said, that by Labour and long Study " we may detect the hidden Qualities, and " discover the remote Relations of Things, " which if we publish for the publick Good, " we may claim a Property in them, to

“ which we are intitled as to corporeal Things by Occupancy and Improvement.” Be it so. Therefore Sir *Isaac Newton* demonstrating on the Principles of Geometry, the Laws of the Universe, and the Phænomena of Light and Colours, has acquired an exclusive Property in them by Occupancy, as the first Discoverer, then by employing his Labour on that which was of common Right he has converted it to his own Use and Emolument. It shall be governed by the Rules of other Property. As if the Children could inherit, or the Wife was dowable of his lofty and sublime Conceptions. This ideal Property essentially differs from the Property of corporeal Things, infomuch that in the latter what is already acquired to us, cannot become the Property of a Stranger by his employing more Labour on it. If any one without my Permission builds on my Soil, or cultivates my Land, he can neither claim the House or gather the Fruits of his Industry. It is otherwise with respect to intellectual Labours, we may improve the Discoveries of others without invading their Property. The Interest of Literature demands it. The Learning of the present Age may be considered as a vast Superstructure, to the rearing of which the Geniusses of past Times have contributed their Proportion of Wit and Industry ; to what

Purpose would they have contributed if each of them could insist that none should build on their Foundations? We may derive a Property from the Ideas of others, not only by improving and adding to them, but meerly by employing more Labour on them. Thus the Translator gains an Interest in the Ideas of an original Author, perhaps contrary to the Will of that Author; whereas in real Property the latter Right must flow from the Act of the first Proprietor. Whence arises this notable Difference? from hence, if I mistake not, that in ideal Property the derivative Right neither diminishes nor subtracts from the original one, therefore there is no Injury done. It is otherwise in real Property, where the former Right diminishes in Proportion as the latter increases. Hence the Consent of the first Proprietor is necessary. I admitted but now for Argument's sake, that an exclusive Property might be acquired in our Ideas by Occupancy and Improvement. Whoever will consider the Deductions that have been made from these Premises will find them repugnant to every established Notion of Property. If the true and peculiar Property in the Book is inherent in the Ideas, and is gained by Improvement, Whence arises the Right of the Translator? If by Occupancy, whence the Right of the Improver? Can there be many original ex-

clusive Properties all existing in the same Subject, separate and independant? It is an Abuse of Words to call that a Property which every one may seize at Pleasure, and enjoy in common with the first Possessor.

AGAIN, every thing susceptible of Property, which lies unpossessed, according to the Law of Nature, may be gained by Occupancy: By the common Law of *England* it rests in the King, tho' the Subject in special Cases may be an Occupant. So no Species of Property in this Country is without a Proprietor. To whom then do the Copies of antient Authors appertain? The first Proprietors and their Representatives are long since no more. They are not a Derelict, neither is there an exclusive Possession gained of them; for the Booksellers daily multiply new Impressions without Restraint. The King indeed hath at Times granted by Patent an exclusive Priviledge of publishing particular Editions. This affects not the Copy, but the Manner and Form of Printing; since it restrains not any Person from publishing other Editions of the same Author. Hence it follows, that the Copies of antient Authors (and all Copies are of the same Nature) are no more susceptible of Property than the Elements of Air and Water, which are for the common Benefit of Mankind.

LET us put the Case stronger. Suppose a grave and perhaps a reverend Commentator had discovered in the Dust of some old Library, a Manuscript of *Menander*; with what Extasy would he seize this valuable Acquisition? What a Field of Criticism would it discover to him? much learned Pains would be employed on the Punctuation; many refined Conjectures and verbal Criticisms would be displayed on the Text. At length it is published. The Editor could not even in this Copy derive to himself an exclusive Right by Occupancy or Improvement; nor can the King grant to him the sole Right of printing it for a Term of Years*; *because he is not the Inventor, nor is it of a publick Nature and Importance, relating to the Good and Benefit of the Subject.*

THO' it must be admitted that the Copies of antient Authors cannot be exclusively possessed, yet the Translators of these Authors claim a Property in their Translations, founding their Right on a meer Nullity.

HITHERTO I have admitted the Principles on which this fantastick Property is founded. I have pursued them in their Consequences, which have appeared inconsistent with themselves, and repugnant to every other Species of Property. It may

* 3 Mod. Earl of Yarmouth, vers. Darrel.

now be proper to take a View of the Principles from whence these Consequences have been deduced, if they should appear as frivolous and unsubstantial, our Judgment must acquiesce in a full and satisfactory Conviction.

IT is said that this Property principally exists in the Ideas, tho' it be likewise inherent in the Form and Composition of the Piece by which it is most easily distinguished and ascertained.

LET us first examine whether our Ideas are susceptible of Property. Simple Ideas being obvious to all, cannot be exclusively possessed by any. "Perhaps it may be said, that the Author claims a Property in the Knowledge, Sentiment, and Doctrine, contained in his Book." All these are composed of simple Ideas, and arise from our Perception of their Agreement or Disagreement. Perception is a Power or Quality of the Mind. To possess this Power exclusively, is to restrain all Men from exercising their Faculties on their own Ideas. Perception is an Accident, the Mind is the Substance. Perception is an Accessory, the Mind is the Principal. It is absurd to claim a Property in the Accessory or Accident, when the Substance or Principal is incapable of it. Therefore we cannot pretend to limit Mankind in the Exercise of their Faculties, 'till we have proved

ourselves intitled to a special Property in their Minds.

IF a Sentiment, Thought, or Doctrine, is capable of Property, it is necessary that the Proprietor should signify to all Men his Intention of converting it to his separate Use. Otherwise he cannot complain of a Trespass. In corporeal Things this is done by Occupancy. If two Persons in a State of Nature, should have been willing to possess themselves of the same Fruit or Animal, the Dispute must have been decided by the Strength and Courage of the Parties. To prevent Hatred, Animosity, and Bloodshed, Mankind tacitly agreed, that what could not be enjoyed by all, should become the Property of the First-Taker. This is the Origin of Property. The Principle on which it is founded is an excellent Rule to direct us to its Object. No incorporeal derivative Right which the Law has hitherto acknowledged, can be possessed by different Proprietors, so that the Right of one neither diminishes the Right of the other, nor both together subtract from the corporeal Estate on which they depend*. But a Sentiment or Doctrine may, at the same instant, be en-

* For Instance, several Persons claim Estovers in a Wood, if there be sufficient for all, these Rights interfere not one with another: But the Estate of the Owner is less valuable in Proportion to the Number of Claimants.

joyed by all Men. One might as well pretend to exclude all others from the Benefit of a refreshing Breeze, or the View of a beautiful Prospect: Because we first felt the one, or saw the other. What Title can the Proprietor of an Original Sentiment, derive to himself from Improvement? He has discovered this Sentiment, by exercising his Faculties about his Ideas: And has communicated it to all Men; whose Minds must necessarily perform the same Operation in perceiving it. Thus all equally improving it, have an equal Title.

As this Property cannot be acquired by Occupancy or Improvement, so the pretended Proprietor cannot by these Means signify to all Men his Intention of appropriating it. The only Method taken to deprive Men of the common Use of a Sentiment, is by publishing it to all. Which is absurd,

It is evident, that the Property of the Book exists not in the Ideas, nor in the Sentiment or Doctrine composed of them, much less can it exist in the Form and Composition, for that is an Accident which never can be the Subject of Property, of which the Substance is incapable.

ADMITTING the Author's Property in his Copy, (the contrary of which has been fully proved) I will examine whether it be such a one as will support a perpetual ex-

clusive Right. I will consider by the Way, what has been advanced in its Favour, by the Author of *A Letter to a Member of Parliament*, whose Arguments may be fairly reduced to this Position :

A LITERARY COMPOSITION is of common Utility, and its Possession easily ascertained, therefore it is susceptible of Property.

To prove a Thing susceptible of Property, it must be demonstrated not only to be of common Utility, but that a restrained Use and separate Enjoyment of it is more beneficial to Mankind, than a common and free Participation. For instance, Seas, Lakes, and Rivers, are essential to the Life and Existence of all Animals. Possession may be taken of them, and their Limits marked out*. According to the Law of Nature, they lie in common. By the Law of *England* the Subject may possess a Fishery, or the Soil of a Lake or River. But he cannot Claim the Water itself, much less hinder the free Use or Navigation of it. Is not Water in its Nature as capable of being possessed as Land? Certainly. But the general Interest of Mankind, which restrains the common Right with respect to

* Several Nations exercise Dominion over many Seas: But this Dominion first arose either from a valuable Consideration to all other Nations, such as scouring the Seas from Pirates, or by keeping Light-Houses, or from Agreement.

Land demands the free and promiscuous Use of the other Elements. So if this exclusive Property be prejudicial to the Advancement of Learning, or if it be extremely difficult to be ascertained, the Law will not afford it Countenance or Protection.

FIRST, of the Difficulty of ascertaining Literary Property.—Whoever reflects on the Number of excellent Books that have been written on every Subject, and compares with them the Productions of modern Authors, will find very few of the latter, whose Sentiments are new or original. Authors who seek Redress for Invasion of their Property, must prove the Originality of their Sentiments. This, as a Fact must be submitted to the Discretion of a Jury. It may perhaps be difficult to determine, whether an Author would be more embarrassed in proving his Case, or the Jury in giving their Verdict, especially, if the Subject of the Composition be an abstract Science. If an Improvement is made on the Discoveries of another, may a Suit be instituted for a literary Trespass? Admitting in favour of Learning, that a reasonable Improvement might intitle us to a Property in the Ideas of another, how shall the just Degrees be ascertained? By the Law of *England* the Judges can alone determine what is reasonable and what un-

reasonable. Learned as they are, they must be unequal to such a Task, which requires universal Reading, and universal Knowledge. The Courts of *Westminster* would be filled with Suits hitherto unheard of. Poet would commence his Action against Poet, and Historian against Historian, complaining of literary Trespasses. Juries would be puzzled, what Damage to give for the pilfering an Anecdote, or purloining the Fable of a Play. What strange Changes would necessarily ensue. The Courts of Law must sagely determine Points in polite Literature, and Wit be entered on Record.

IN order to ascertain the true Measure of Damages, it must first be discovered wherein the Property lies. It has been proved not to inhere in the Sentiment or Doctrine, much less in the Form and Composition of the Piece. Let us suppose for a Moment, that it varies according to the Nature of the Work, but that it is always to be there found, wherein the excellency of the Book consists. In Poems and Orations, the Property exists in the Harmony of Periods, the Elegance of Diction, and Propriety of Metaphors, sometimes in the richness of Invention, and turn of Thought. In Plays, Novels, and Romances, it should be discovered in the Truth of Character, the Vein of Humour, the

Sentiment and Conduct of the Story. All these are written more for the Entertainment, than the Improvement of the Reader. But as common Utility is affirmed to be the Basis of this Property, the Law will protect it in Proportion as it is useful. Meer Pleasure is not the Object of the Legislature. The Law will no more restrain us from intermeddling with their Property, than from intercepting a beautiful Prospect seen from our Neighbour's House; something, indeed, may be alledged in Favour of Mathematicians, Lawyers, and Divines, and all others, the Merit of whose Compositions lies principally in the Sentiment and Doctrine, because their Works are calculated for the Improvement of Mankind and good of Society. But to Point out their several Excellencies, and thereby determine the Magnitude of the Injury received from the Invasion of Property, would be a perplexing Task to the most learned Jury, or the most discerning Judge.

It will be necessary to deduce the History of literary Property, to trace its Origin, to examine the Opinions of the politest Nations of Antiquity, and to point out the Time precisely, when the Notion of the Author's perpetual exclusive Right first arose. I will then enter into a Disquisition, whether it hath been favourable or prejudicial to the Cause of Literature. In dis-

cussing this Point, I shall chiefly consider, what Influence it has had on those Authors who subsist by their Pen: Such as Poets, Historians, and all those who treat of popular Subjects. The abstract Writers expect but little Profit from the Sale of their Works, because they address themselves to the Apprehensions of the few.

The History of Literary Property.

THE first Bards strolled from House to House. In those hospitable Ages, the Doors of the great Men were always open to them, at whose Tables they came as welcome Guests. When they had partaken of the Repast, and cherished their Genius with free Draughts of Wine, they sang the warlike Exploits of their Host, or celebrated the Valour of his Ancestors, little dreaming of Property in those unpremediated Strains which flowed from the Warmth of their Fancy. In process of Time, when Arts were more cultivated, and Men became civilized, Poets demanded a Price for their Labours. For the Trade of an Author is very antient. *Pindar* would not compose an Ode in Honour of a Victor in the Athletic Games, for a less Sum than the most eminent Statuary would have demanded for a Statue of exquisite Workmanship. He would trust indeed to

the Generosity of a King, recommending at the same Time, the princely Virtue of Munificence. Sometimes the lyric Poets, the dramatic Poets, always contended with a View of gaining a Prize, proposed by one or other of the *Grecian* States. The Rhetoricians, as *Lycias* and *Isocrates*, subsisted partly by keeping an Academy, partly by composing judiciary Orations for either Side, as they were retained. It has been known, that the same Rhetorician has composed Orations for Plaintiff and Defendant in the same Cause. Some Authors, particularly the Historians, have been influenced by nobler Motives than a Desire of Gain. It was Reward enough to *Herodotus* and *Thucydides*, to recite their Histories at the Olympic Games, where they received the united Applause of assembled *Greece*.

AT *Rome* dramatic Pieces were exhibited to the People, at the private Expences of the Officers of State, and they were composed at a fixed Price for that Purpose. After the Introduction of the polite Arts, there were few of the great Men who did not dedicate their leisure Hours to Philosophy or the Muses. Hence Authors were generally encouraged, and they frequently borrowed their Patron's Houses to recite their Compositions to numerous Audiences, by which they acquired both Money and Reputation.

IT is evident, that neither the Authors nor their Assigns, in the Republics of *Greece* and *Rome*, ever claimed an exclusive Right in their Copies after their Publication. I challenge the Advocates of this Species of Property, to cite a Passage from the Laws of those States, where it is directly or indirectly countenanced. In the Institutes the contrary is expressed; If *Titius* composes a Poem, a History, or Oration, on your Paper, you are still the Proprietor and not *Titius*, for the Writing is but accessory. An Opinion truly absurd, but it is sufficient to prove the Sentiments of the Antients with respect to Literary Property. I will admit, that an Author who composed a Poem for a fixed Price, might have instituted a Suit for the Performance of the Contract. It may now be proper to enquire, whether this perpetual exclusive Right tends to promote the Cause of Learning. Or whether antient or modern Authors have the greater Incentives to excel. Authors are influenced either by a Love of Fame, or a Desire of Gain, and sometimes by both. As either of these Passions predominate, the Composition is more or less excellent. The Antients were smitten with a Love of Glory; if they had a Desire of Gain, it was a subordinate Passion, not owing to a sordid Disposition, but to the low Estate in which Fortune had placed

them. The Prizes proposed by the *Grecian* States, excited the noblest Emulation. The Poets exerted the utmost Powers of their Genius, either to preserve the Reputation which they had acquired, or to tear the Laurel from the Brows of their Competitors. To this may be attributed the excellency of the *Grecian* Poets.

*Graius Ingenium, Graius dedit ore rotundo
Musa loqui, præter Laudem nullius avaris.*

THE *Romans* took a different Course. Their excellent Writers, by the Liberality of their Patrons, were placed in a State of Affluence: So that they had leisure to polish and refine their Compositions. There was a mutual Exchange of Benefits between the Author and his Patron. The Patron conferred Riches on the Author, which was requited with Fame and Immortality. Unhappily this Project of Encouragement succeeded not so well. Gratitude, and the Ambition of transmitting our Name to Posterity, are feeble Excitements to the exertion of our Faculties, when compared with the noble Rivalry that subsisted between the *Grecian* Bards. Poets are an idle Race of Men. They are no sooner at their ease, than they are fatigued with the Labour of Composing. *Horace*, who at first subsisted by Writing, has the Impudence frequently to Complain of his

Laziness, when by the Munificence of *Mæcenæ*, he enjoyed an ample Revenue. This is perhaps the Reason, why the *Grecians* excelled the *Romans* in Composition. In *England*, the revival of Letters was co-eval with the Introduction of Printing. Our Authors had but little Encouragement, either by public or private Liberality. A Custom then first arose, by which they claimed the sole Right of multiplying Impressions of their Books. Authors by their little Attention to their Affairs, were generally in distressed Circumstances. They could not wait the slow returns of Profit, arising from the Sale of their Works; but were obliged to sell them to the Bookseller for a gross Sum, which might relieve their present Necessity. From that Instant the Author became a Slave to his Bookseller, who estimating Wit and Learning by the Bulk, imposed the severest Tasks. How could any Thing great or noble be expected from Writers, whose Genius was depressed, and Spirits broken by this Oppression.

NOTWITHSTANDING this we may boast of *Shakespeare*, *Otway*, and *Dryden*, who tho' they subsisted by their Pen, might vie in Genius with the greatest Poets of Antiquity. Unhappy indeed, that they had not Leisure to polish and refine their Works, that their Poverty obliged them to Humour, instead of correcting the Taste of the

People. To this imaginary Right, we may attribute the want of Elegance and Correctness in our *English* Authors, who have subsisted by Writing, to this may be attributed their Servitude to Bookfellers, which of all others, to a liberal Mind, is the most intolerable.

THIS perpetual exclusive Right, could never be executed, till the Art of Printing was introduced. The great Labour of Transcribing so much, enhanced the Price of each Book, that the Purchasers were few, and the Gains of the Author small. This I apprehend to be the Foundation of the Right: When Printing was introduced into *England*, it became a Part of the Prerogative. In Virtue of which all Books were licensed, and this Licence was construed to extend to the Author alone and his Assigns. When the Prerogative was limited, and the Liberty of the Press established, this Right must of Necessity vanish. But the Right of printing Bibles, Books of Common Prayer, and Law Books, are still vested in the King, and have been granted by him at different Times. This Right is purely founded on Maxims of Policy, because these Books are of public Importance Matters of public Concern, and Thing. that relate to Government, were never left to any Man's liberty to print that would. This cannot be made a Precedent in Favour

of the Right claimed in other Copies, which stand on a different Foundation.

THIS therefore is a new Right, arisen within the Time of Memory; but no original incorporeal Right, which is not founded on Agreement of the Parties, can at this Day be created. What numerous Inconveniences would arise, if every Man could at his Pleasure, create a new Species of Property, to the Support of which he might demand the Aid of the Law, however repugnant to its Principles. As if the wild Imaginations of Men were to controul the Law, and not the Law to curb their Extravagancies. The Courts have been ever jealous of new Inventions, even of those which are founded on its most unquestioned Principles, 'till Experience and length of Time has given them a Sanction. The perpetual exclusive Right of which we now treat, hath as yet received no Countenance from the Courts, and it has been demonstrated to be incompatible with every legal Principle. It is observable, that it may as well be extended to many other Things which were never as yet imagined to be susceptible of Property. For instance, an Author composes a Tragedy, of this he makes two Profits. The Copy is Sold to the Bookseller: The Right of Representation to the Manager of the Theatre. These Rights are in every respect perfectly

alike. The Common Law has favoured neither the one nor the other: Yet is it contended, that the Purchaser of the Copy shall recover in Damages against those who multiply Impressions of his Book; whereas the Manager who purchased the Right of Representation, can have no Remedy against his Brother-Manager, who gains an undue Profit, by representing the Piece, for which the former paid a valuable Consideration. Compare the Pretensions of the Advocate, to his Reward with those of the Author. In the Copy, the Property is uncertain: The Utility problematical. But the Opinion which the Advocate gives, or the Cause which he pleads is important, and very easy to be ascertained. Whatever Advantages the Client may derive from the Industry, the Learning, and Abilities, of his Advocate, he cannot be compelled to make him a suitable Recompence.

THE Property of an Inventor in his Machine, is in every respect similar to the exclusive Right claimed by the Author in his Copy. It is admitted, that at Common Law, the Inventor hath no Property in the Form of his Machine; can the Author claim any in his Copy.

To elude the Force of this Argument, many frivolous Distinctions have been taken between a Book and Machine. I shall confine myself to the refuting those which

have been advanced, by the Author of *A Letter to a Member of Parliament*.

THE Difference in these two Sorts of Property, says the Author, arises from the different Nature of the Works, and the different Views of the Operators. With regard to the Nature of the Work. The Author contends that a Book is a Work of the Mind, but an Utensil is a meer Work of the Hand.—A false and ridiculous Distinction! Unless, by the word Utensil, the Author means Chamber-Utensils, or Stone-Pitchers, instead of mathematical Machines, such as Orreries, Microcosms, Clocks, and Watches, which is highly probably from the next Distinction which is taken.

OBJECT. In the Utensil made, the principal Expence is in the Materials employed; which whosoever furnishes, reasonably acquires a Property in the Thing made, tho' by Imitation. On the contrary, in a Book composed, the principal Expence is in the Form given, which as the original Maker can only supply, it is but reasonable, how greatly soever the Copies of this Work may be multiplied, that they be multiplied to his own exclusive Profit.

ANSWER. The Expence of the Materials with which that curious Piece of Me-

chanism, *The Microcosm*, is constructed, bears a greater Proportion to the Cost of the Labour, and Ingenuity of the Inventor, than the Expence of the Materials which compose the scarcest Book, bears to the Value of its Composition. Hence it follows, that tho' in making a Chamber-Utenfil, the principal Expence is in the Materials employed, it is otherwise with respect to a valuable Machine. The Author says, That in a Book, the principal Expence is in the Form given. An unintelligible Phrase! If he means the Form of the Composition, it is equally applicable to a Machine.

Different Views of the Operators.

Obj. He who makes an Utenfil in Imitation of another he sees made, must necessarily Work with the same Ideas the original Proprietor had, and so fully acquires a Property in the Work of his own Hands. But the most learned Book in the World, may be Copied by one who hath no Ideas at all. What Pretence hath such a one to Property in the Work of the Mind, who hath employed in Copying it only, the Work of the Hand.

Ans. The Author manifestly contradicts himself. The first Difference laid down

between a Book and a Machine was, that the latter was a meer Work of the Hand, now it is contended that the Imitator works with the same Ideas the original Proprietor had. This variance can never be reconciled, unless we suppose that the Proprietor had no Ideas at all. This is nothing extraordinary, for we are told in the next Paragraph, that a Man may very well exist without them, and Copy learned Books too. The Author then demands, Whether such a one would have a Property in the Work of the Mind, who hath employed only the Labour of the Hand? To this I answer, that he would not be entitled to Property, because the subject Matter is not capable of it. But the Claim of an ignorant Imitator of a Machine is equally good.

OBJ. In an Utensil made, the Framers of it hath plainly no Regard to any one's Benefit than his own, and he must finish it, before it can be fitted for his Use. His End being obtained in that individual Piece of Work, it is but Reason that his Profit should there terminate. In a mental Work the Thing turns the other Way. For the Contriver may himself enjoy all the Fruits of his Dis-

coveries, without drawing them out Scholastically into Form.

ANSW. I should be glad to be informed, of what Use *The Orrery* was to the Inventor, or whether he had not a clear Conception of the planetary System before he so artificially represented it? If the Author of this Objection, will be pleased to Walk into the Shop of a Mathematical Instrument Maker, he will see many Instruments which are of no Benefit to the Constructor, besides the Profits accruing from their Sale. Where is the Justice that the Profit of the Inventor should terminate in the individual Machine, which possibly might Cost him some Years in inventing, and might be imitated by another in a few Days? The End of the Inventor is not fuller obtained in the first individual Machine, than the End of the Author in the first individual Book. If it be so, then is it unreasonable to grant him a Patent for a longer Time; which is contrary to the Author's Position in another Place.

It appears, that every Distinction taken by the Author, between an Utensil and a Book, with respect to a Capability of their being exclusively possessed, is idle and frivolous. As it is admitted, that at Common

Law the Inventor has no exclusive Right in his Machine, it must necessarily follow that the Author hath none in his Copy.

It is said in the Course of Argument*, That if a Man invent a new Art, and another should learn it, before the Inventor can obtain a Patent, if afterwards granted it is void. Much less can the Author at Common Law claim a perpetual exclusive Right after Publication. Since in such a Case, the King could not grant him a Patent for a limited Time.

AFTER having shewn that several Rights exactly similar to this, have never been protected by the Common Law; tho' that Establishment would have been highly beneficial to their Proprietors, I shall now endeavour to prove that other Rights pretended to be similar, are founded on far different Principles. Of these there are Three.

THE Good Will of an Inn, a Nostrum, and the Right of setting in a Theatre.

THE Good Will of an Inn, is an incorporeal Right, *derived* from and *dependant* on a corporeal Inheritance: *It is moreover founded on the Agreement of the Parties.*

THE Right of setting in a Theatre, is incorporeal, and *derived* from the Property of the House. *It arises from the Agree-*

* 3. Mod. Earl of Yarmouth, *vers.* Darrel.