

The proposition there laid down, “ that
 “ the king cannot grant a patent unless the
 “ invention be new,” doth not prove that the
 prerogative is barred with respect to antient
 copies. Though the king cannot grant an
 exclusive right in them, on the principle of
 their being new inventions, yet he may make
 such grant upon a different principle—which
 is, that of there being no individual, par-
 ticular, or certain author, who can make
 title to the copy, whereby the property vests
 in the king, who may grant it to another.

This prerogative with regard to antient
 copies hath been frequently exercised; Queen
 Elizabeth, amongst others, granted a patent
 for printing *Corderius*; and though book-
 sellers do often multiply new impressions
 without restraint, yet the inherent preroga-
 tive being in the king, whenever he exerts
 it, he excludeth all others, and their right is
 divested.

It remaineth now to enquire into the sense
 of the legislature concerning the right in
 question. The first statute on this subject is,
 the act of the 13th and 14th of Charles

the Second, for regulating of printing. Every one acquainted with the history of those times, knows the occasion and view of this act, which, notwithstanding its specious title, hath a direct tendency to impose the most heavy and servile shackles on literature. Happily it is expired; and we hope that an institution so repugnant to the principles of a free government, will never be revived.

Yet even this act, so injurious to literature, acknowledgeth and guardeth the exclusive right of authors to their copies. For it enacts,
 “ *That no person shall print any copy which*
 “ *another hath by virtue of letters patent, or*
 “ *which shall be otherwise granted or assigned*
 “ *to him, WITHOUT LEAVE OF THE*
 “ *OWNER.*”

The next act which comes under consideration, is the 8th of Anne, entitled, “ An
 “ act for the encouragement of learning, by
 “ vesting the copies of printed books in the
 “ authors or purchasers of such copies, dur-
 “ ing the times therein mentioned.”

The learned author of the *Letter to a
 Member of Parliament on the Subject of
 literary*

literary Property, has, with great acuteness, proved this to be not a *restrictive*, but an *accumulative* law; and consequently not the sole foundation, but an additional support of literary property. This he infers from the *preamble*, which sets forth the bad effects arising from the liberty taken of printing and reprinting books, without the consent of the authors or *proprietors*. "Now," saith he, "could the injured parties here mentioned be *proprietors* of that in which they had no property? Not only the *expression*, but the *sentiment*," he adds, "necessarily supposes the word *Proprietors* to be used in its strict and exact signification."

Did these arguments want a support, we might add, that if we could suppose the legislature to have used the word *proprietors* inaccurately, or, as denoting a possession without right; yet what follows would destroy such a supposition. For the first clause in the act provides, that "*the author of any*
 " *book, WHO HATH NOT TRANSFERRED*
 " *the copy to any other, or the bookseller who*
 " *hath PURCHASED OR ACQUIRED any copy,*
 " *shall have the sole right of printing for the*
 " *term of twenty-one years.*"

Here

Here it is manifest that the act does not *create* a right in the author or bookseller, but presumes a right already subsisting. It is observable, that the words above-cited, refer to transactions between the author and bookseller *prior to the act*.—Could an author *transfer* that in which he had not a legal exclusive property?—Could the bookseller *purchase* or *acquire* what the author had no right to *convey* or *transfer*.

Nothing can be more clear than the expression and sentiment of the legislature: having it in contemplation to grant an *additional* support for the encouragement of learning.—For this purpose it provides, that if the author hath *not* transferred his *right*, he shall be intitled to such additional support for a certain term; that is, he shall have the sole right (already subsisting) strengthened and secured by the penalties which follow. But if he *hath* transferred it, then the bookseller, who hath purchased it, shall be intitled for the like term to the same additional benefit. There is no right *created*, but a right acknowledged as existing either
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in the author, or transferred to the book-seller, *before the making of the act*, is confirmed by inflicting *certain* penalties on the invader*.

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* The writer of the Enquiry asks, "If this be a natural right, to what purpose was the act of parliament made by which the property of each copy was established for a term of years? All affirmatory acts," he concludes, "strengthen and extend the common law; whereas this establishes for a time a right, which, if natural, must have existed at all times."

But this interpretation of the act is clearly erroneous. It hath been shewn above, that the act establisheth no right, but takes up a right already established, which it guards by additional penalties. It is the *penalty*, not the *right*, which is established for a time: and there was good sense in this provision. For at common law, a jury must be under difficulty in estimating damages for the invasion of an author's property; which, from the nature of the wrong, are not easily ascertained. Therefore, in aid of this right at common law, the act provideth, that "every book exposed to sale without consent of the proprietor obtained in writing, shall be forfeited and made waste paper of: and farther, that the offenders shall forfeit one penny for every sheet in his custody, or exposed to sale." Every one knows, that it is a usual practice to strengthen a remedy at common law by the additional sanction of a statute; and the reason why this additional sanction is restrained to a number of years, is well accounted for
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This being the state of literary property, as it is founded both on the principles of natural reason and of law, let us, in the next place, view it in the point of convenience and inconvenience, and examine whether an exclusive right is likely to be favourable or prejudicial to the cause of literature.

In the discussion of this point, the writer of the Enquiry observeth, that “ in *England*,
 “ the revival of letters was coeval with the
 “ introduction of printing, and that authors
 by the author of the letter above-quoted. “ The
 “ great temptation,” he observes, “ to invade this pro-
 “ perty being while the demand for it is great and fre-
 “ quent, which is generally on the first publication of
 “ a book, and some few years afterwards.” They
 who applied for this act, had in view the author’s
 immediate benefit only, and did not extend their
 thoughts to futurity, from a presumption probably that,
 after a certain term, the returns of profit being very slow,
 there would be little temptation for piracy : therefore
 the common law was thought sufficient to guard a right
 so unlikely to be invaded. Grant the temptation to
 have continued however, yet we too often find, that pe-
 titioners to the legislature have not the generosity to
 carry their concern beyond themselves and their imme-
 diate connections, but are content to leave posterity to
 guard their own rights.

“ had

“ had but little encouragement, either by
 “ public or private liberality.”

In this, however, he seems to contradict the concurring evidence of history. It is certain, that at the revival of letters, authors met with extraordinary countenance and encouragement. Witness *Erasmus, Budæus*, and other learned men, who, in the renascent state of literature, met with the most noble and generous reception from the great, and were even courted by contending princes.

At this time, the writer continues, “ the custom first arose by which authors claimed the sole right of multiplying impressions of their books.” If we trace the progress of literature, however, we shall find that this claim arose much later, and that it derived its source from principles to which the writer has not adverted.

If I remember right, the art of printing was first introduced into this kingdom by the famous Caxton, towards the beginning

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of the reign of Henry the VIIth*. Printers, at this time, were themselves men of erudition, and maintained a liberal and friendly correspondence with the learned. Their art, however, at first was rude, and perhaps was not used so much with a view to expedite the circulation of copies, as to relieve from the fatigue and expence of transcribing, and to give a more permanent character to the works of genius. If we reflect on the early state of literature, this will appear more than conjecture.

In the reign of Henry the VIIth, it was in its infancy. The press, at that time, was more employed in printing old copies, than in giving birth to new productions. The king himself, though a man of parts, was not distinguished by his love of literature. It is mentioned, as one of his accomplishments, that he understood Latin, though he generally read French. In few words, his atten-

* He was invited in the latter-end of the reign of Henry VI. but, if recollection does not mislead me, he did not come till the time above-mentioned. However, strict chronological accuracy is not necessary on this occasion.

tion was divided between his anxiety to establish his throne, and his endeavour to amass treasure: as to his munificence, it was confined to spies and informers.

In the succeeding reign, indeed, learning made a rapid progress. The king himself was an author. The great men of that age, encouraged and rewarded those talents which they cultivated themselves. Wolsey was a patron of literature; so was the great Sir Thomas More. Even the fair sex at this time made a figure in the learned circle: and there are now extant some well-penned letters, in the Latin tongue, from Sir Thomas More's daughter to Erasmus.

The learning of this period, however, was confined to ecclesiasticks, with a few persons of rank, who applied themselves to letters with that eagerness and assiduity generally bestowed on the attainment of a new accomplishment, which is becoming fashionable. As to the bulk of the people, they were so illiterate, that to be capable of reading merely, was a proof of no common education.

In the reign of Elizabeth, literature reaped a bounteous harvest. The reign of this learned princess produced the great Bacon, Raleigh, &c. Nor must we forget the learned Johnson; nor him, above all, whose lofty genius soared such towering heights, as no one since has been capable of attaining. In this reign, the English tongue received its first polish. Literature, however, still diffused itself by very slow degrees among the bulk of the people, and made little progress in the succeeding reign.

The learning of this reign was, for the most part, mere pedantry, and exhausted itself chiefly in polemical contraversion and scholastic subtleties, which contribute rather to perplex than to improve the understanding.

It was the reign of the unfortunate Charles, which contributed more than all those preceding, to enlighten the bulk of the people. During the miserable contentions of that period, appeals were made to the public from both parties: and whoever reads the speeches and remonstrances of those days, will find them penned with a native strength, precision and dignity of diction, free from those gallicisms

gallicisms which have contributed to enervate our language. About this time too, many admirable treatises were published on the art of government; which opening the eyes of the multitude, made them acquainted with their importance in the state, and at the same time rendered them anxious to improve the means, by which they acquired a knowledge so essential to their interest and freedom.

This happy tendency of literature was so obvious, that after the restoration, ungenerous endeavours were used to depress it. With this view the act was framed which has been quoted above, and which was calculated to subject works of genius in every kind to the tyranny of a licenser. But this was not all. The manners of the times contributed to the debasement of literature, as much as the restrictions of the legislature. *Sævior luxuria incubuit.* In a gay and voluptuous court, every thing serious and manly was perverted into an object of ridicule; and the wit of those days was downright ribaldry.

Real learning, from hence, remained some time at a stand, till it shone forth in its
full

full lustre in the days of queen Anne. Then it was that the leading men in the administration were scholars and patronizers of learning. Then it was that a long catalogue of *Literati* reflected glory on the age they lived in. Then it was that the elegant Addison daily circulated his excellent essays, in the familiar channel of a news-paper.— A circumstance, which has contributed perhaps more than any other to diffuse a taste for literature among all orders of men.

The avidity of the public for the productions of the learned, and the encouragement afforded to authors, tempted every one who was illuminated with the faintest ray of genius, to turn his mind to literary pursuits. Hence the number of authors hath daily increased, in proportion as readers have multiplied.

The public, therefore, properly speaking, are now become the patrons of learning; authors are grown so numerous, that all cannot be taken under the especial patronage of the great.

From this deduction, we may clearly discover the reason why the author's exclusive
right

right was never worth claiming before, nor indeed for some time after, the invention of printing. It was not, as the writer insists, "because it could never be executed before." For the right was always inherent, and might always have been executed: but we find that learning was, in its infant state, confined within a very narrow sphere. The author could have no dependance on the *number*, but on the *quality* of his readers. Nevertheless, we must not infer from the paucity of purchasers, what the writer supposes, that "the gains of the author were therefore small." The contrary is manifest. Men of learning in those days not only received liberal gratuities from the bounty of their patrons, but few of them were without *annual stipends*: therefore they were under no necessity of being anxious about the circulation of their copies.

But since authors and readers are multiplied, the case is extremely different. The profits of a copy are now collected by slow returns from a number of purchasers; and if the author has not a right in all the copies which are multiplied from his original
 manu-

manuscript, he has, truly speaking, scarce any property at all.

We cannot too much applaud the noble indignation which this writer expresseth, against that base servitude in which he supposes authors to be dependant on booksellers, in consequence of the exclusive right contended for. But their servitude does not arise from this principle. Writers of real abilities need not be slaves to booksellers, unless the most profligate morals and habitual indiscretion conspire to make them drag such a galling chain. In this case they are not slaves as authors, but as men.

It is true, where a taste for reading is so universally diffused, there will be authors suitable to every class of readers. Many futile and obscene productions will be adapted to the prurience and depravity of the great and small vulgar. But writers of such low estimation are slaves by nature, and it is of no importance to the public who are their masters.

There is scarce a right which the law protecteth which is not liable to abuse. Its provisions

visions nevertheless must extend to generals, and cannot involve every specific object, which may furnish a ground for exception.

What a prejudice would the cause of literature sustain, were writers deprived of the exclusive right to their own productions, and of the privilege of transferring them? Should this determination ever take place, the public must never more expect works of great length and difficulty, the execution of which demand the united contribution of perhaps more than twenty opulent booksellers, who hazard a certain sum on the prospect of uncertain gain.

Where will patrons be found among the great, who will support an author in such expensive and hazardous undertakings? Grant that there are such. Yet how shall a writer, perhaps in the vale of obscurity, climb to the closet of the great? Were we even to suppose a writer himself to be in competent circumstances, a lot not common among the learned, yet few would choose to risk a large and certain expence, to be reimbursed by slow and uncertain returns of profit.

Whoever, therefore, attentively considers the present state of literature, will find that booksellers are necessary intermediate instruments between the author and the public. Learning now is not so rare a quality as immediately to distinguish the owner, and attract the notice of the great. Unless a writer is happy in particular connections, the bookseller must present him to the public. If, however, he gives proofs of real talents, he cannot be kept in dependance, for it will be the interest of the bookseller to respect that merit, which redounds to the profit of himself as well as of the author.

When a writer hath once made his merit known to the public, he will not long remain a stranger to the great. Of whom, in general, it must be acknowledged that they are not so backward to patronize literature, as some unsuccessful candidates for favour have conspired to represent them. In truth, complaints of this nature generally proceed from such as are unworthy of notice, or who, in the pride of parts, over-rate their merit.

But if an author cannot maintain an exclusive right to his copy, the powers of genius must languish, and few will have an opportunity of producing those excellent talents with which nature hath enriched them. Scarce any productions will issue from the press, but hasty fugitive pieces, calculated to serve the run of the day, and which will excite as little temptation, as they afford opportunity, for piracy.

It were to be wished indeed that authors could receive the whole profits, or sustain the whole loss, arising from the publication of their works; and that booksellers were, what the word importeth, mere venders of copies. But this, however natural and reasonable in speculation, cannot, for the reasons above assigned, be reduced to practice. Few authors, as hath been said, can advance money for a work of any expence, and wait their reimbursement by slow returns. Neither have they, as formerly, the means of procuring the patronage of the great, but must approach them through the channel of the public. Therefore if they have not an exclusive property in their works, and

consequently a power of transferring such right, learning will soon be lost among us, the gloom of Gothic ignorance will darken the age, and extinguish every beam of science.

Having endeavoured to shew that a literary copy is a subject susceptible of property, that it may be governed by the known and established rules of law, that the exclusive right contended for will produce no inconvenience, either with regard to the author or to the public, that on the contrary a communion of this right will be injurious to both, and in the end destructive of literature, it remains to hope that this right may be judicially established, and preserved inviolably to the latest posterity.

May the fruits of genius never be exposed to rapine and depredation! May they, who are too often destitute of the goods of fortune, be secured in the enjoyment of the goods of the mind, which they derive from the bounty of nature! May it never be said that the *Common Law* of England so renowned for the wisdom and impartiality of its institutions, affordeth no protection to the
product

product of learning, which is the parent of every social refinement, the friend of virtue, and the guardian of civil liberty. "Pleni," says Tully, "omnes sunt libri, plenæ sapientium voces, plena exemplorum vestustas: quæ jacerent in tenebris omnia, nisi literarum lumen accederet. Quam multis nobis imagines, non solum ad intue- dum, verum etiam ad imitandum, fortissimorum virorum, expressas, scriptores reliquerunt? Quas ego mihi semper in administranda republica proponens, animum, & mentem meam ipsa cogitatione hominum excellentium, conformabam."

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