defender, as *introducing* a literary property for a limited time, and under certain conditions. From thence it has been inferred, that no ſuch property did, or can ſubſiſt, without the terms of the ſtatute.

IV. The act of the 8th of Queen Anne does not limit literary property.

ON the other hand, the purſuers humbly contend, That the ſtatute, when duly conſidered, does no ways affect or prejudice an author's right at common-law, but even, of itſelf, proves the prior exiſtence of ſuch a right, and only fortifies it with additional ſecurities, providing the conditions of the act are complied with.

IN conſidering its import, the purſuer ſhall hold to the words of the ſtatute itſelf, as the only rule for aſcertaining it, without reſorting, as the defenders have done, to inferences and preſumptions from minutes or votes of either houſe of parliament, before the act was paſſed into a law. Theſe minutes do, in fair reaſoning, prove nothing againſt the purſuers conſtruction of the act, but they are by no means a competent or legal evidence of its import.

Title of the act.

THE title of the act is, " An act for the encouragement of " learning, by veſting the copies of printed books in the authors, " or *purchaſers* of ſuch copies, during the times therein mention- " ed." This title gives rather an inadequate view of the act, which cannot be affected by it. But the title would have been ſtill more improper, had the real intendment of the act been to deprive authors of any right or ſecurity already belonging to them. It could be no *encouragement of learning*, to diminiſh the known right of authors; but it was an encouragement of it, to ſecure, by penalties, that right, which was acknowledged as already capable of ſale, or *purchaſe*.

Preamble of the act.

THE preamble of the act ſets forth, " That whereas printers, " bookſellers,

" bookſellers, and other perſons, have, of late, frequently taken " the liberty of printing and publiſhing, or cauſing to be printed, " reprinted, and publiſhed, books and other writings, without the " conſent *of the authors or proprietors* of ſuch books and writings, " to their very great detriment, and too often to the ruin of them " and their families. For preventing, therefore," *&c.* No words could be uſed more clearly indicating the ſenſe of the legiſlature, that, antecedent thereto, a *property* ſubſiſted in authors, which had been unjuſtly invaded, and merited a ſtronger ſanction to preſerve it. Such a preamble was perfectly adapted to an act intended for *declaring* and aſcertaining the inherent natural right of authors in their own works, but could never have been uſed in an act introductory of a ſpecies of unknown property, or in one meant to *reſtrain* a right already known and acknowledged in law.

Other clauſes in the act.

In like manner, the very firſt enacting clauſe provides, " That " from and after the 10th of April 1710, the author of any book " or books *already printed*, who *hath* not transferred to any o- " ther, *the copy*, or *copies*, of ſuch book or books, ſhare or ſhares " thereof, or the bookſeller or bookſellers, printer or printers, or " other perſon or perſons, who hath, or have, *purchaſed or acqui-* " *red*, *the copy*, or copies, of any book or books, in order to print " or reprint the ſame, ſhall have the ſole right and liberty of print- " ing ſuch book, or books, for the term of 21 years, to commence " from the ſaid 10th of April, and no longer." And further, that the author of any book, not already printed, or his aſſignees, *&c.* ſhould have the ſole liberty of printing and reprinting ſuch books for 14 years, from the day of firſt publiſhing the ſame, and no longer; and that if any other perſon ſhould print or reprint the ſame, without the conſent of the proprietor, or proprietors, ſuch offender ſhall forfeit the books to the proprietor, *and alſo forfeit one penny for*

every

every ſheet found in his cuſtody, the one moiety thereof to the king, and the other to any perſon ſuing for the ſame.

THE whole of this clauſe ſpeaks of a legal right capable of transfer, and ſuch as had been even transferred prior to the act, giving the benefit to thoſe who had already purchaſed a copy-right, as well as to ſuch who might thereafter become entitled to it. It indeed limits the benefit to a certain term of years, but it is merely that ſecurity given by the act, which is ſo limited, namely, the forfeitures and *penalties* therein mentioned, which, independent of the act, could not be recovered. Even this ſanction of penalties is further extended by the laſt clauſe in the act, which provides, that after the expiration of the 14 years, " the ſole right of print-" ing, or diſpoſing of copies, ſhall return to the authors thereof, " if they are then living, for another fourteen years," without adding the words, *and no longer*.

THE limitation of actions brought upon the act, for offences committed againſt it, to the ſhort ſpace of *three months* after the offence, does likewiſe demonſtrate, that the legiſlature meant only to limit the endurance, or exerciſe of the additional ſecurities it had given, without depriving the proprietors of what they already had in common with the proprietors of every other ſubject. To ſuppoſe that an author's property, when invaded, could only be maintainable at law during three months, would be to ſuppoſe the higheſt abſurdity, and yet it is clear no action can be laid on the ſtatute beyond that ſpace; whence it follows, that after it, the proprietors relief muſt lie at common law, independent of the ſtatute.

VARIOUS other paſſages occur in the act, demonſtrating, that a property was held to ſubſiſt, independent of the ſtatute. Thus, as a condition of the proprietor's enjoying the benefit of the act, it is provided, that the title to the copy ſhall, before publication, be

entered in the regiſter-book of the company of ſtationers, *in ſuch manner as hath been uſual*, and that, otherwiſe, no perſon reprinting the book ſhall be ſubject to the forfeitures and penalties therein mentioned. Here the title to the copy is held to ſubſiſt prior to the party's taking the benefit of the act, and the entry in the regiſter, intended for notification, is ordered to be made in ſuch a way as had been uſed before the act was paſſed, and the neglect of that entry is only to have the effect of exeeming the offender from the penalties of the act, but nothing is therein ſaid, tending to declare, that, upon ſuch neglect, the book ſhould become common property, or that it might be pirated and reprinted with impunity.

Saving clauſe in the act.

LASTLY, the ſaving clauſe contained in the act makes this point ſtill clearer: It provides, "That nothing in this 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 reprinting any book or copy already printed, or hereafter to "be printed." This proviſo ſhews, that the legiſlature meant to leave all copy-right, or property in books, that was or could be claimed, independent of the ſtatute, to continue unaffected thereby. The univerſities, in particular, had, before that period, aſſerted a copy-right in ſeveral books, and that of *Oxford* had then newly purchaſed the right to Lord Clarendon's hiſtory, which was afterwards the ſubject of judicial conteſt. All ſuch rights as did or might thereafter exiſt, were therefore left to be determined on the principles of common law.

Concluſion as to the ſtatute.

FROM the obſervations that have been here made, the purſuers humbly conclude, that the ſtatute of the 8th of Queen Anne, though not very accurately drawn, does, upon the whole, ſtrengthen and ſupport the doctrine they endeavour to maintain, and cannot, with any reaſon, be founded on to impeach it. It cannot be held to have this laſt tendency, without ſuppoſing, that a ſtatute expreſsly made for the purpoſe of better ſecuring the right of authors

in

in their works, was intended to cut off that right they already had. It might as well be argued, that acts paſſed for inflicting penalties on perſons guilty of bribery and corruption, or for the better preventing the commiſſion of other offences, ſhould render thoſe acts perfectly innocent and unactionable, unleſs brought to trial under ſuch particular ſtatutes. Right and wrong will be always the ſame, whatever rules may be made for the better maintaining the one, or checking the other. It will appear too from the quotation annexed, that Judge *Blackſtone* holds the ſtatute in the ſame light the purſuer does, as *protecting*, not introducing the copy-right of authors.

THE copy-right of authors has alſo been recogniſed by the legiſlature in ſtill later ſtatutes. In particular, the act of the 10th of Queen Anne, cap. 19. § 112, relative to the ſtamp duties, provides, that if the duty of any pamphlet ſhall not be paid, and the title of it regiſtred at the ſtamp office, " the author, printer, and " publiſher thereof, and all other perſons concerned in or about " the printing or publiſhing ſuch pamphlet, *ſhall loſe all property* " *therein*, and every copy thereof, although the title thereto were " regiſtred in the book of the ſtationers in London," *&c.* And a like clauſe is contained in the act of the 5th of his preſent Majeſty, cap. 12. impoſing the ſtamp duties in the American colonies.

THE only inſtance that has occurred, of an action brought on this ſtatute of Queen Anne in the Court of Seſſion, is that of the booksellers of London againſt thoſe of Edinburgh and Glaſgow, which has been quoted by the defenders, as a deciſion in their favour. The caſe has been collected both by Lord Kaims and Mr Falconer, 7th June 1748; but from both theſe reports, and alſo from the printed papers in the cauſe itſelf, it is perfectly clear, that the judgment there given can afford no aid to the defenders plea.

Caſe of the booksellers of London, againſt the Scots booksellers, in 1748.

THE action was laid directly on the aforeſaid ſtatute of the 8th of Queen Anne, and alſo upon another ſtatute of the 12th of King George

George II. prohibiting the importation of foreign editions of books compoſed and firſt printed in this kingdom, under like forfeitures and penalties. The libel charged, that the defenders, the Scots bookſellers, had committed certain offences againſt thoſe ſtatutes, and therefore concluded, either for recovery of the ſtatutory penalties, or that the defenders ſhould pay damages for every ſurreptitious copy ſold, and forfeit the remaining copies. In the courſe of the proceſs, the London bookſellers chiefly inſiſted on this laſt concluſion, without expreſsly waving the other, and offered to prove the numbers ſold by the defenders books or oaths.

THE defence was, That the action was brought on the act of Q. *Anne*, which had inflicted a penalty for its ſanction, but contained no authority for a claim of damages: That no action of damages could be competent, ſo long as the party offending was liable to a popular action for penalties; that it could not be ſuppoſed that ſuch action could ariſe after the lapſe of the time limited for recovery of the penalties, if it was not competent before, and that no action whatſoever, under the ſtatute, could be competent to any who had not complied with the conditions of the ſtatute, ſuch as the purſuers, whoſe books had not been regularly entered in ſtationers hall. Your Lordſhips final judgment "found, that no "action lay on the ſtatute for offences, except when it was "brought within three months of the committing ſuch offence, "and found that no action lay on this ſtatute, except for ſuch "books as had been entered in Stationers Hall, in terms of the ſta-"tute; and alſo found, that no action of damages lay on the ſta-"tute."

THE cauſe was carried up by appeal, and the houſe of Lords were of opinion, That the action was improperly and inconſiſtently brought, by demanding both an account of the profits of the books, and a recovery of the penalties of the acts of Parliament; and therefore the judgment of this Court was reverſed, without

prejudice

prejudice to the determination of the points in diſpute, when properly brought to trial.

FROM the above circumſtances, it is manifeſt, that the judgment given in that cauſe, can have no influence on the preſent queſtion, which has not before been the ſubject of trial in this country. Our writers too have been ſilent upon it, owing, as already obſerved, to their not having had occaſion to employ their thoughts concerning it. Lord Bankton, indeed, Vol. I. p. 411, gives a ſummary of the act of Queen Anne, but he has not touched upon the abſtract queſtion.

V. The practice of Engliſh courts.

THE only other ſource, therefore, from which aſſiſtance can be drawn, is the practice of our neighbouring country, where this point has been often debated, and where the higheſt reſpect is due to the judgments given, not only from regard to the great abilities and diſtinguiſhed characters of the judges, but alſo from the greater degree of experience and practice, in this matter, occurring in that country than in this.

Proceedings in the Chancery of England.

THE Court before which queſtions of this nature have moſt frequently occurred, is the High Court of Chancery. Where a book is pirated, the author, or proprietor, commonly applies to Chancery for an order or *injunction* upon the defender to ſtay or delay the publication of the pirated edition. In order to obtain ſuch an injunction, affidavits are read, to ſhew the title or intereſt which the petitioner has in the book or copy; and unleſs he thereby ſatisfy the court of his having ſuch right, his motion or petition muſt be rejected. The defendant has an opportunity to be heard by counſel, if he thinks fit, and the injunctions may be refuſed or recalled, may be made temporary or perpetual, according to circumſtances. Such is the practice of that High Court, agreeable to the purſuers information; and therefore the granting an injunction, in

caſes

caſes where the copy-right was not ſecured in terms of the act of Queen Anne, is an opinion of that court, that a property in the work ſubſiſts at common law, or in equity, independent of the ſtatute.

Now, were the purſuers to enumerate every caſe of this kind, in which injunctions have been granted by the Court of Chancery, they would ſwell the liſt to a prodigious extent. Almoſt every year affords inſtances of them, and a few ſhall be only noticed.—In the year 1735, an injunction was granted for hindering the printing of *The whole Duty of Man*, the property whereof had been aſſigned in the laſt century. The ſame year, Lord Talbot granted an injunction againſt printing Pope and Swift's Miſcellanies, though ſeveral of thoſe pieces had been publiſhed ſo early as the 1701, long before the act of Queen Anne was made. A like injunction was granted by Lord Hardwicke againſt the printing of *Milton's Paradiſe Loſt*; and the ſame great man granted an injunction as to the printing *Pope*'s letters to *Swift*, in which caſe it was held, that the ſending a letter transferred to the receiver the paper on which it was wrote, and every uſe of the contents, except the publiſhing.

Opinion of the Solicitor-General (Ld. M.) in 1748.

But the practice in that court, and the foundation on which it has proceeded, have been much better explained than the purſuers can do it, in opinions, that, on former occaſions, have been given on this ſubject, by the moſt eminent counſel then at the Engliſh bar. In the caſe already mentioned, of the bookſellers of London in 1748, an opinion, the moſt reſpectable that the nation ever could afford, was produced to your Lordſhips; it is that of the then Solicitor-General, bearing, "That "authors and proprietors, waving the penalties in the act of "Queen Anne, always have recourſe to a court of equity, which "proceeds upon the foundation of the *property* declared by the

"act,

" act, and gives a ſpecific relief, by granting injunctions to re-
" ſtrain the printing, publiſhing, or ſelling of pirated editions,
" and decrees them to account to the *proprietors* for all the pro-
" fits made by the ſale of any copies of a pirated edition ; *and*,
" *in a court of equity, it is noways material whether the book ever*
" *was entered*, this being conſidered as a circumſtance only, to
" entitle the proprietor to ſue for *penalties*."

Opinion of Mr Yorke.

A COPY of the opinion of another great lawyer, was produced in the late proceſs at the inſtance of Ruddiman's truſtees againſt Robertſon. It had been given by the late Mr Yorke, when conſulted by Mrs Ruddiman, upon a piracy committed by Mr Rivington, a London bookſeller, during the ſubſiſtence of Mr Ruddiman's patent. His words are : " If Mrs Ruddiman is entitled
" to be the legal repreſentative of her late huſband, or, by virtue of
" an aſſignment to a truſtee for her benefit, is entitled to the par-
" ticular right of copy in the book in queſtion, I am of opinion,
" that her beſt method of proceeding is by bill in Chancery, for
" a diſcovery and account of the books printed, and for an in-
" junction to reſtrain the ſale, which may be moved on the
" uſual affidavits (of property, and the piratical publiſhing and
" vending) immediately after the bill filed. This is the known
" courſe in all theſe caſes ; and the injunction has been granted
" on the foundation of *property* in the author's aſſignees or repre-
" ſentatives, *long after the expiration of the term granted by any*
" *patent, or the two terms mentioned in the ſtatute 8th Anne*, and
" has always been ſucceſsful."

Judgment of the King's Bench, in the caſe of Millar contra Taylor, anno 1769.

As the interpoſition of the Court of Chancery, by injunction, has generally proved a ſufficient remedy to the party aggrieved, few inſtances have occurred of the trial of the queſtion in the Engliſh courts of law. One recent and noted caſe, however, has been already referred to, and which is preciſely ſimilar to the

the preſent. Mr Thomſon printed his poem, called *The Seaſons*, about the year 1727; and, although he entered it in Stationers-hall, the privilege of the ſtatute expired with his own life, in 1748. His right to the property was purchaſed by Mr Millar, bookſeller in the Strand; and one Taylor, a bookſeller at Berwick, having printed an edition of the book, without Mr Millar's conſent, he brought an action againſt Taylor in the court of King's Bench, for recovery of damages.

A SPECIAL verdict was found by the jury, aſcertaining the facts already mentioned; and alſo finding, that, *before* the reign of Queen Anne, it was uſual to purchaſe the works of authors, and ſell the ſame, and to make them the ſubject of family-ſettlements; and that the property of authors in their books, was ſecured by orders or by-laws of the Stationers Company, particularly one in 1694.

UPON this ſpecial verdict, it was argued by the counſel for Mr Millar, That an author had, by the common law, an inherent right to the property of his own works, independent of any ſtatute or patent. Mr Taylor, on the other hand, contended, That there was no other legal property in books, than that which was given by the act of Queen Anne, and that both the terms mentioned in that ſtatute having expired, the book in queſtion was become common property; and, conſequently, he had as good a right as the plaintiff to print and ſell it. Every authority and argument that learning and ingenuity could ſuggeſt, were urged on both ſides; and, in April 1769, the opinion of the court was delivered by the judges *ſeriatim*, and at great length. The opinion of *one* of them (now deceaſed) was in favour of the defender; but the *Lord Chief Juſtice*, and the other *two* judges, were of opinion, that the plaintiff's right to the property was founded in the common law; and, accordingly, judgment was pronounced

pronounced in favour of Mr Millar. It muſt be unneceſſary for the purſuer to ſuggeſt to your Lordſhips, what degree of regard is due to ſuch a judgment, ſolemnly given, upon the very preciſe point now in queſtion.

Chancery decree between the ſame parties, in anno 1770.

A SUIT between the ſame parties, and relative to the ſame book, was likewiſe brought in the Court of Chancery; and, in July 1770, the Lords Commiſſioners of the Great Seal were pleaſed to decree, that Mr Taylor ſhould account to Mr Millar's executors for all the copies he had ſold; and further, to decree a perpetual injunction againſt Mr Taylor. It is true, that Mr Taylor, upon the above-mentioned judgment paſſing againſt him in the Court of King's Bench, brought a writ of error in the Exchequer Chamber, to take the opinion of the twelve judges on the queſtion; and, the purſuers are informed, that he ſent his ſon down to Scotland, to ſolicit a ſubſcription among the booksellers here, for defraying the expences of it: but, it ſeems, he was adviſed, that he could have no proſpect of ſucceſs by a review; and, therefore, took no further ſtep to proſecute an appeal.

Caſe of Macklin contra Richardſon and Urquhart.

ANOTHER caſe may be noticed, which occurred ſtill more lately in the Court of Chancery. Mr Macklin of Covent Garden theatre compoſed a farce, called *Love A-la-mode*, which had been often exhibited on the ſtage, but never was printed or publiſhed. Meſſ. Richardſon and Urquhart, printers of a monthly pamphlet, called *The Court Miſcellany, or Lady's Magazine*, hired a perſon to take down in writing the firſt act of that farce, when performed, which they afterwards inſerted in their magazine. Mr Macklin thereupon filed a bill againſt them in Chancery, praying, That they ſhould account to him for the profits of the copies ſold, and be reſtrained from ſelling any more of theſe magazines. It appeared, upon evidence, that Mr Macklin had got large ſums

from the managers of the theatre, and others, for allowing this farce to he performed; and the court, as the purſuer is informed, granted him a *perpetual injunction* againſt Richardſon and Urquhart; and he afterwards recovered damages againſt them on a trial at common law. Theſe judgments could only proceed on the footing of an author's having an original right in his own compoſition; and that ſuch right was not loſt, or communicated, by even the moſt public recital on the ſtage.

AND the laſt caſe that ſhall be mentioned, is that of Meſſ. Becket, and others, of London, againſt this very defender, Mr Donaldſon, for printing the book already mentioned, *Thomſon*'s *Seaſons*. Upon a hearing before the preſent *Lord Chancellor*, ſo late as the middle of November laſt, his Lordſhip was pleaſed to decree a *perpetual* injunction againſt Mr Donaldſon, and likewiſe ordered an account to be made by him to the plaintiffs.

Authority of Judge Blackſtone's Commentary

THE purſuers ſhall only add to theſe moſt reſpectable authorities, the opinion of Judge Blackſtone, in his late ingenious and elegant Commentary on the law of England, vol. II. p. 405. the firſt edition of which was printed in the 1768. He there lays down the common law upon this point, agreeable to what has been here humbly maintained upon the part of the purſuer. He holds, *firſt*, That authors have an original excluſive right of property in their own compoſitions. And, *2dly*, That this right ſubſiſts independent of the act of Queen Anne, which was intended merely to protect that property, by impoſing additional penalties upon the invaſion of it. He illuſtrates this opinion, (formed before the judgment in the caſe of *Millar* contra *Taylor*) by arguments and authorities deduced from ancient and modern writers, from hiſtorical facts, and from different ſtatutes and caſes, which have been adjudged, both in the courts of law and equity. But, as the ſentiments of this learned and honourable author are de-

livered

delivered at ſome length, a copy of the paſſage referred to, entire, ſhall be hereto annexed.

SOME critical remarks have indeed been made for the defenders, on the authorities mentioned in the notes on that paſſage, intended to ſhow, that ſome of them do not entirely juſtify what is maintained in the text. It will not, however, be readily preſumed, or believed, that the learned judge is miſtaken in the true ſenſe or import of any of his authorities, eſpecially Engliſh ſtatutes, and caſes adjudged in England. So far as the purſuer is capable of underſtanding them, they are moſt appoſite and concluſive to the points upon which the references are made. But he ſhall wave the particular diſcuſſion of them here, both as being unneceſſary, and as it would be unbecoming in the author of this paper to ſuppoſe, that a work, ſtamped with ſuch a name, and which even reflects honour on the age that produced it, could, in any part of it, either need, or receive, the ſmalleſt aid from ſuch a hand as his.

UPON the whole: The purſuer humbly hopes, that your Lordſhips will be thoroughly ſatisfied, that his action is well founded in the principles of law and reaſon, and in the conſiderations of juſtice and expediency.

In reſpect whereof, &c.

DAV. RAE.

EXTRACTS

EXTRACTS from Judge BLACKSTONE's Commentaries, laſt edition, referred to in this Information.

BOOK II. CHAP. XXVI. §. 8.

THERE is ſtill another ſpecies of property, which, being grounded on labour and invention, is more properly reducible to the head of occupancy than any other; ſince the right of occupancy itſelf, is ſuppoſed by Mr Locke (*a*), and many others (*b*), to be founded on the perſonal labour of the occupant. And this is the right which an author may be ſuppoſed to have in his own original literary compoſitions; ſo that no other perſon, without his leave, may publiſh or make profit of the copies. When a man, by the exertion of his rational powers, has produced an original work, he has clearly a right to diſpoſe of that identical work, as he pleaſes; and any attempt to take it from him, or vary the diſpoſition he has made of it, is an invaſion of his right of property. Now, the identity of a literary compoſition conſiſts intirely in the ſentiment and the language; the ſame conceptions, clothed in the ſame words, muſt neceſſarily be the ſame compoſition; and, whatever method he takes of conveying that compoſition to the ear or eye of another, by recital, by writing, or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is ſo conveyed; and no other man can have a right to convey, or transfer it, without his conſent, either tacitly or expreſly given. This conſent may, perhaps, be tacitly given, when an author permits his work to be publiſhed, without any reſerve of right, and without ſtamping on it any marks of ownerſhip. It is then a preſent to the public, like the building of a church, or the laying out a new highway; but, in caſe of a bargain for

(*a*) On government, part 2d. ch. 5.
(*b*) See page 8.

a ſingle

a ſingle impreſſion, or a ſale or gift of the copy-right, the reverſion is plainly continued in the original proprietor, or the whole property transferred to another.

The Roman law adjudged, that if one man wrote any thing, though never ſo elegantly, on the paper, or parchment, of another, the writing ſhould belong to the original owner of the materials on which it was written (*c*): meaning certainly nothing more thereby, than the mere mechanical operation of writing, for which it directed the ſcribe to receive a ſatisfaction; eſpecially as in works of genius and invention, ſuch as a picture painted on another man's canvas, the ſame law (*d*) gave the canvas to the painter. We find no other mention in the civil law, of any property in the works of the underſtanding, though the ſale of literary copies, for the purpoſes of recital, or multiplication, is certainly as ancient as the times of Terence (*e*), Martial (*f*), and Statius (*g*). Neither with us, in England, hath there been any final (*hh*) determination upon the right of authors, at the common law. But much may be gathered from the frequent injunctions of the Court of Chancery, prohibiting the invaſion of this property; eſpecially where either the injunctions have been perpetual (*h*), or have related to unpubliſhed manuſcripts (*i*), or to ſuch

(*c*) Si in chartis membraniſve tuis carmen, vel hiſtoriam, vel orationem Titius ſcripſerit, hujus corporis non Titius, ſed tu dominus eſſe videris, Inſt. 2. 1. 33.

(*d*) Inſt. 2. 1. 34.

(*e*) Prol. in Eunucho, 20.

(*f*) Epig. i. 67, iv. 72, xiii. 3, xiv. 194.

(*g*) Juv. vii. 83.

(*hh*) In the caſe of Millar and Taylor, in B. R. Paſch. 9. Geo. III. It was determined (upon ſolemn argument, and great conſideration) by the opinion of three judges, againſt one, that an excluſive copy-right in authors ſubſiſts by the common law: But a writ of error hath been ſince brought in the Exchequer-Chamber, to take the ſenſe of the reſt of the Judges upon this nice and important queſtion.

(*h*) Knaplock v. Curl, 9th November 1722, Viner Abr. tit. Books, pl. 3.——Baller v. Watſon, 6th December 1737.

(*i*) Webb v. Roſe, 24th May 1732.——Pope v. Curl, 5th June 1741.——Forreſter v. Waller, 13th June 1741.——Duke of Queenſberry v. Shebbeare, 31ſt July 1758.

ancient books as were not within the provifions of the ſtatute of Queen Anne (*k*). Much may alſo be collected from the ſeveral legiſlative recognitions of copy-rights (*l*); and from thoſe adjudged caſes at common law, wherein the crown hath been conſidered as inveſted with certain prerogative copy-rights (*m*); for if the crown is capable of an excluſive right in any one book, the ſubject ſeems alſo capable of having the ſame right in another.

But, excluſive of ſuch copy-right as may ſubſiſt by the rules of the common law, the ſtatute 8. Anne, c. 19, hath protected, by *additional* penalties, the property of authors, and their aſſigns, for the term of fourteen years; and hath directed, that if, at the end of that term, the author himſelf be living, the right ſhall then return to him for another term of the ſame duration: And a ſimilar privilege is extended to the inventors of prints and engravings for the term of eight-and-twenty years, by the ſtatutes, 8. G. II. c. 13. and 7. G. III. c. 38. All which appear to have been ſuggeſted by the exception in the ſtatute of monopolies. 21 Jac. I. c. 3. which allows a royal patent of privilege to be granted for fourteen years, to any inventor of a new manufacture, for the ſole working, or making of the ſame; by virtue whereof, a temporary property becomes veſted in the patentee (*n*). And the ſtatute, 12 Geo. II. c. 36, hath alſo ſuperadded other penalties and forfeitures, in caſe any book, firſt compoſed, or written, and printed in Great Britain, ſhall be reprinted abroad, and imported for ſale into this kingdom.

(*k*) Knaplock v. Curl, before cited.——Eyre v. Walker, 9th June 1735.——Motte v. Faulkner, 28th November 1735.——Walthae v. Walker, 27th January 1736.——Tonſon v. Walker, 12th May 1739, and 30th April 1752.

(*l*) A. D. 1649. c. 60. Scobell 92. 13, and 14, Car. II. c. 33. 10 Ann. c. 19. § 112. 5 G. III. c. 12. § 26.

(*m*) Cart. 89. 1. Mod. 257. 4. Barr. 661.

(*n*) 1. Vern. 62.

BOOK II. CHAP. XXVII.

WITH regard to the prerogative *copy-rights* which were mentioned in the preceding chapter, they are held to be veſted in the crown, upon different reaſons. Thus, 1*ſt*, The king, as the executive magiſtrate, has the right of promulging to the people all acts of ſtate and government. This gives him the excluſive privilege of printing, at his own preſs, or that of his grantee, all *acts of parliament*, *proclamations*, and *orders of council*. 2*d*, As ſupreme head of the church, he hath a right to the publication of all *liturgies*, and books of *Divine ſervice*. 3*d*, He hath a right, by purchaſe, to the copies of ſuch *law-books*, *grammars*, and other compoſitions, as were compiled, or tranſlated, at the expence of the crown. And upon theſe two laſt principles, the excluſive right of printing the tranſlation of the *Bible* is founded. 4*th*, *Almanacks* have been ſaid to be prerogative copies, either as things *derelict*, or elſe, as being ſubſtantially nothing more than the calendar prefixed to our liturgy (*e*): And, indeed, the regulation of time has been often conſidered as a matter of ſtate. The Roman *faſti* were under the care of the Pontifical college ; and Romulus, Numa, and Julius Cæſar, ſucceſſively regulated the Roman calendar.

(*e*) 2. Mod. 257.