for *privilegia*, or exclusive patents, of printing and publishing for a term of years. This took its rise in the more absolute governments of Europe, where the printers having been at great expence in searching out ancient authors, collating the manuscripts, and printing them, and being justly entitled to encouragement for so doing, applied to particular Princes for such *privilegia*, within their dominions; and it was no uncommon thing to obtain them from several potentates at once, *e. g.* the Emperor, the King of France, the Pope, and other Italian States *. Such privileges were in a great measure necessary, in order to bring these excellent authors from rubbish and obscurity: And as the work was attended with great expence, it was but fair to allow those who performed it to be indemnified; and even, by the prospect of gain, to be encouraged. It deserves, however, to be remarked, that these *privilegia* never were perpetual, but always granted for a limited term of years; sometimes seven, sometimes ten, and seldom, if ever, exceeding twenty years.

In Scotland, the first books were printed without either licence or exclusive privilege, generally at the expence of some rich or learned man, who had no profit from the work, but the satisfaction of doing good. The first printed book which we have in Scotland, is a Breviary of the church of Aberdeen, *pro Hyemali Parte*, said to have been printed in 1509. The only remaining copy of it is in the Advocates Library; and as it wants the beginning and end, the manner in which it was printed does not appear: But the next is a continuation, or second volume, of the same Breviary, called, the 'Pars Æstivalis, cum diversorum sanctorum Legendis, &c. per reverendum in Christo 'patrem, Wilelmum, Abirdonen, episcopum studiosius, maximisque cum laboribus collectis, non solum ad ecclesiæ suæ Abirdonen, verum etiam ad totius ecclesiæ Scoticanæ usum per-'celebrem Oppido Edinburgensi impresso, jussu et impensis 'honorabilis viri Walteri Chapman, ejusdem oppidi mercatoris, 'quarto die mensis Julii, anno Domini 1510.' And there are some others, soon after, printed in the same way.

Afterwards follow some books printed and published *cum privilegio;* such as, a translation of Hector Boece, by Mr. John Bellenden, Archdean of Murray, printed by Thomas Davidson, the King's printer, *cum privilegio*, in 1541. The works of Sir

* See an example of this in Rymer's Fœdera, 18th April, 1551, tom. 15. p. 255.

David

David Lindſay of the Mount, printed by John Scott, at the expence of Henry Charteris, *cum privilegio regali*, in 1568, *&c.*

Whether theſe laſt were merely licences to print, or *excluſive* privileges, does not clearly appear; though it is certain, that, by degrees, *excluſive* privileges by patent from the Crown, and limited to certain periods, became in uſe in Scotland as in other countries; but always granted as a matter of favour, upon ſupplication of the author, or publiſher of the work, or of the printer employed by him.

In the reign of Charles II. a new and very dangerous check was given to the liberty of the preſs in Scotland by the King's printers, who, under pretence of their gifts from the Crown, aſſumed a power of controlling the preſs, and of licenſing other printers: Particularly it appears, that one Anderſon having, in 1671, obtained a gift of this office for forty-one years, he and his widow pretended to very high powers over the preſs, and which were attended with very bad conſequences. Watſon, in his *Hiſtory of Printing*, ſays, that 'by this gift the art of 'printing in this kingdom got a dead ſtroke; for by it no 'printer could print any thing, from a Bible to a ballad, with- 'out Mr. Anderſon's licence" He adds, that under his wi- 'dow, nothing came from the *Royal Preſs*, (as Mrs. Anderſon 'vainly termed it) but the moſt illegible and uncorrect Bibles 'and books that ever were printed in any one place in the 'world. She regarded not the honour of the nation, and 'never minded the duty lay upon her as the Sovereign's ſer- 'vant. Prentices, inſtead of the beſt workmen, were gener- 'ally employed in printing the ſacred word of GOD. And in 'fine, nothing was ſtudied but gaining of money by printing 'Bibles at any rate; which ſhe knew none other durſt do, and 'that nobody could want them. The whole nation being ſen- 'ſible how ill they were ſerved, and the oppreſſion of this mo- 'nopolizer being the common diſcourſe in moſt places of the 'kingdom, thoſe who formerly were her friends, and ſupport- 'ed this unaccountable gift, began to be aſhamed of her prac- 'tices, and turned their back upon her. At laſt, His Royal 'Highneſs the Duke of York (our late Sovereign) coming to 'Scotland, 1680, John Reid informs him, by petition, of the 'perſecution and oppreſſion he and others of his employment 'had undergone through the extenſiveneſs of Mr. Anderſon's 'gift.

Preface, p. 12.

—p. 13.

'gift. And the matter lying then before the Privy Council,
'and being moved, His Royal Highneſs there declared, That it
'could only be the King's meaning and pleaſure, by that gift,
'that his printer ſhould enjoy what privileges his Royal prede-
'ceſſors were in uſe to grant to their printers, ſuch as printing
'of Bibles, Acts of Parliament, *etc.* Therefore the Council al-
'lowed the printers to go on in their ordinary work.'

This matter being ſet to rights, printers and publiſhers went on as formerly; and when they thought it material to have an *excluſive privilege* for a term of years, they applied for, and obtained it. This was held by lawyers to be a part of the prerogative; though, as Sir George Mackenzie ſays, the legality of it was much doubted by ſome, who rather inclined to think, that monopolies, granted by the ſole authority of the Prince, were not quite conſiſtent with the nature of a free government. However, upon this footing ſtood the excluſive privileges of printing all over Europe. It was never once dreamed that they were granted *ex juſtitia*, in virtue of a perfect right. They were indulged from *favour*, and with a view to expediency, in the ſame way as patents granted to the contrivers of uſeful machines. It is remarkable too, that they were at firſt granted, not to authors, to prompt them to write, but to printers and publiſhers, to induce them to make correct and uſeful editions of books which lay in manuſcript; though by degrees they came alſo to be granted to authors, but ſtill for a limited time, and only meant for the equitable purpoſe of indemnification. If at any time a more ample privilege was obtained, this could be conſidered in no other light than as an abuſe, being unjuſt to others, and contrary to the original deſign of ſuch grants. Fritchius, an author, on this ſubject, ſays, 'Iniquum tamen non eſt, ſi quis 'ſuper impreſſione libri, in quem multos erogavit ſumptos, lu-
'crum & commodum aliquod laboris ſui præ aliis ſentiat, ne
'quod alias fieri poſſet, aliorum facto in paupertatem inopina-
'tam conjiciatur. Quod ſi tamen abuſus privilegii conceſſi in
'perniciem reip. verget, dubium non eſt illud, quocunque
'etiam modo impetratum ſit, juſtiſſime revocari, aut tolli poſſe.
'Eſt autem precipuus privilegii abuſus hic, quod typographi &
'bibliopolæ librorum pretia pro lubitu augere ſoleant; quæ ho-
'die, non ſine reip. literariæ decremento in tanqaum excrevere,

De abuſibus typogr. tollendis, § 2. par. 4.

'ut

‘ ut magiſtratus rei huic obicem ponendi juſtiſſimam cauſam ha-
‘ berent.’

All the writers and publiſhers on our law have clearly ſignified their opinion, that they could not preſerve an excluſive right to their works, without a ſpecial grant either from the Crown or Parliament. Sir Thomas Craig's book, *De Feudis*, was publiſhed under the authority of an act of parliament, obtained in 1633 by his ſon, Mr. Robert Craig advocate; granting to him the ſole privilege of printing the ſaid book for the ſpace of twenty-one years; and prohibiting all others from printing and ſelling the ſame during that time, under the penalty of confiſcation. Sir Thomas Craig.

Lord Durie's Deciſions were publiſhed by his grandſon, Sir Alexander Gibſon, a lawyer; who obtained an excluſive patent from the Privy Council for nineteen years, from the 12th of July 1688, to print, reprint, import and vend the ſaid book. Lord Durie.

Sir John Niſbet of Dirleton's Doubts and Deciſions were publiſhed by Mr. Robert Bennet, Dean of the Faculty of Advocates, who obtained for George Moſman ſtationer, burgeſs of Edinburgh, his heirs and aſſignees, a patent from the Privy Council in 1697, giving the ſole privilege of ſelling this book for nineteen years, and diſcharging all others under a penalty. Sir John Niſbet.

Preſident Gilmour and Preſident Falconer's Deciſions were publiſhed in the ſame manner, under a patent, in 1699. Gilmour and Falconer.

Sir George Mackenzie, advocate to Charles II. and James II. author of ſome of the moſt valuable books on the law of Scotland, publiſhed his Criminals in 1678, under the authority of an excluſive patent from the Privy Council for the ſpace of nineteen years, from 7th April 1677; and, upon the expiration of this term, it appears, that Andrew Simpſon, who had been Sir George's amanuenſis, applied for and obtained a new patent, for the ſole printing and publiſhing another edition of the ſame book, during the ſpace of nineteen years, from the 11th November 1697, and prohibiting all others to print, &c. under a penalty. And Sir George's other works, which were publiſhed by himſelf, appear to have been guarded by patents in the ſame manner, and for the ſame term of nineteen years. See the patents prefixed to the firſt edition of his Inſtitutions in 1684, and to the firſt edition of his Obſervations in 1687. This laſt patent he aſſigns to Thomas Brown ſtationer, his heirs and aſſig- Sir George Mackenzie.

nees,

nees,' ' to do and act in virtue thereof, in all points, as fully ' and freely as I might have done myself.'

Lord Stair. Lord Stair, one of the greateſt of our lawyers, thought it neceſſary to ſecure, by a patent to his printer, the ſole privilege of printing and publiſhing his valuable works for nineteen years. The patent from King Charles II. bearing date the 11th April, 1681, is inſerted after the epiſtle dedicatory of the firſt volume of his Deciſions. It is intituled, ' His Majeſty's gift and pri- ' vilege to Sir James Dalrymple of Stair, for printing his Inſti- ' tutions,' &c. It proceeds on a narrative of the uſefulneſs of theſe works, and his Majeſty ' being willing to give to the ſaid ' Sir James, all encouragement therein;' therefore ratifies an a- greement which he had made with his printer, and prohibits all others to print the ſaid books for the ſpace of nineteen years, without the ſpecial leave of the ſaid Sir James, his heirs and ſuc- ceſſors. This patent contains no penalty upon contravention; it is a ſimple grant of excluſive right for ninteen years, which ſurely there was no occaſion for, if the author had by common law an excluſive right for ever.

Sir James Stuart. Sir James Stuart, advocate to Queen Anne, took out a pa- tent of the ſame nature, when he publiſhed his abridgment of the acts of parliament, and aſſigned it to his printer; the term limited being nineteen years, from the 25th September 1701.

Forbes. Mr. Forbes, when he publiſhed his treatiſe on tithes in 1705, got a ſimilar patent from the Privy Council for nineteen years, proceeding on this narrative; ' That where the ſaid Lords are ' in uſe to *encourage the author* of any new book, *by granting to him* ' *the ſole privilege* of printing and vending the ſame.' The like patent is prefixed to the ſecond part of his Juſtice of Peace, in 1707. What uſe was there for this encouragement, if authors had a perpetual excluſive right at common law?

The opinions of theſe lawyers, expreſſed *rebus ipſis et factis*, in a matter concerning themſelves, muſt have great weight. They ſhow more clearly what was underſtood to be the law of Scot- land, than the moſt direct authorities from their books could have done. Their works are ſilent upon the ſubject, but the reaſon is plain, becauſe the notion of literary property was not then conceived in Scotland. All that any of our authors ever looked for, was an excluſive right by patent, or by act of par- liament, for a certain number of years; and it may be obſerved, that ſeveral of theſe books have been republiſhed ſince the expi-

ration

ration of the patents, not by the heirs of the authors, but by ſtrangers, without any challenge.

It was ſaid, that patents were the faſhion of the times; that Sir George Mackenzie was an advocate for prerogative, and Lord Stair was *not in condition to preſerve his property*, without uſing the means then in practice; that the patents did not *create* the right, but only tended to ſecure and preſerve it by a public prohibition; and that they were often without any penalties annexed, which ſhowed, that an action of damages lay at common law.

The defenders muſt be permitted to ſay, that theſe obſervations appear to them in a very extraordinary light. Sir George Mackenzie was at the head of the bar, Lord Stair Preſident of the Seſſion, and both were very able to preſerve their rights againſt any unlawful invaſion of them. Lord Stair's patent being merely probibitory, without any mention of a penalty, affords a ſtrong argument againſt the pretended common law-right, as already ſaid; for if he had an excluſive privilege at common law, what earthly advantage did he obtain by the patent? If, on the other hand, he had none ſuch by the common law, the patent was neceſſary to *create* a right in his favour, which might be the foundation of a claim for reſtitution and damages in caſe of violation. All theſe patents were underſtood to be *creative*, not corroborative of the author's right.

Neither did any alteration happen in conſequence of the Union: On the contrary, the neceſſity of patents was rather enforced, from this circumſtance, that, by the Union, the Engliſh laws relative to trade were communicated to Scotland, and among others, that moſt ſalutary Engliſh ſtatute, 21 Ja. I. *cap.* 3. prohibiting all grants of monopolies to any perſon, except the firſt inventor of a new manufacture, and to him only for the term of fourteen years, and from which ſtatute, 'any letters 'patent, or grants of privilege, heretofore made, or hereafter 'to be made, for or concerning *printing*,' are alſo excepted.

The firſt time that ever this queſtion appears to have been ſtirred in Scotland, was in the year 1743, when Daniel Midwinter, and other bookſellers in London, brought an action before the Court of Seſſion, againſt the bookſellers of Edinburgh and Glaſgow, complaining, that the defenders had tranſgreſſed the ſtatute of Queen Anne, by printing, reprinting, &c. the ſeveral books therein

therein ſpecified, without conſent of the purſuers, who had purchaſed theſe books from the authors; and therefore, concluding for the penalties and forfeitures of the ſtatute: At leaſt, that the defendants ought to pay *damages* for every ſurreptitious copy, on account of their having invaded the property of the purſuers. In this action, the alternative claim of damages, to which at laſt the purſuers reſtricted their action, gave occaſion to much argument upon the alledged common-law right, a topic then for the firſt time broached in Scotland. The caſe is very well abridged in a Collection of Deciſions lately publiſhed: But as it will fall to be more particularly noticed under the next head, concerning the act of Queen Anne, the defenders ſhall only at preſent obſerve, That neither the pleadings here, the judgment of the Court of Seſſion, nor what afterwards paſſed in the Houſe of Lords in that caſe, were in any degree favourable to the pretended common-law right.

Remark. Deciſ. June 7. 1748.

The author of the late Inſtitute, who wrote poſterior to the caſe of Midwinter, is the firſt Scots law writer who has taken notice of authors of books being entitled to any privilege; and as he gives them nothing but what they are entitled to by the act of Queen Anne, ſo it is plain, that he rejects any common-law right. He brings in their privilege, under the claſs of *monopolies*, and ſays, 'It is only granted to authors of books, 'or their aſſigns, that enter them in Stationers Hall in London, 'as the ſtatutes in that behalf direct; and in ſuch caſe, they are 'entitled to the ſole right of printing or ſelling the books for '*fourteen years* after the publication.' He then mentions the caſe of Midwinter, and miſtakes the deciſion, not knowing that the laſt interlocutor was in favour of the Scots bookſellers. But he ſays not one word of a common-law right; he founds the right of authors entirely upon the ſtatute: And indeed, when he publiſhed his own book, he thought it neceſſary to comply literally with the terms of the ſtatute, by entering it in Stationers-hall, in order that he might have the benefit of the act.

M'Dowal, b. 1. tit. 19. § 11. & 12.

In the late abridgement of the ſtatute-law of Scotland, the act of Queen Anne is placed under the word *monopoly*; which goes ſome length to ſhow that author's opinion.

In further evidence of the common law of Scotland, the underſtanding of the country may be appealed to. Many muſt have been the treſpaſſes, and many the violations of this property

by

by printers and bookſellers, if we can ſuppoſe it to have exiſted; but which never were in any one inſtance complained of, or brought before a court in this country, except in the caſe of Midwinter, when no encouragement was given to it. The defenders are ready to produce evidence of numberleſs publications carried on in Scotland openly and avowedly againſt the ſuppoſed perpetual right of authors, and they call upon the other party to ſhow a ſingle caſe in which this was ever found illegal.

If ſuch a property had exiſted in Scotland, it ought to have manifeſted itſelf in ſome *ouvert* manner, in the way of tranſmiſſion, ſale, diligence, forfeiture, or teſtament. It is either a real or a perſonal property: It ought either to have been the ſubject of ſervice or confirmation: It ought to have been attachable by creditors; conveyable by diſpoſition; an object of preſcription poſitive or negative; an eſtate or intereſt, falling under gifts of *ultimus hæres*, forfeiture, and eſcheat. Authors are often poor, and ſome inſtances ought to have appeared of their ſurrendering their ideas in a *ceſſio bonorum*. The defenders have in vain endeavoured to find this property in ſome one or other of theſe ſhapes. They can diſcover no veſtige of it, except now and then, that a royal patent, limited to a term of years, has been conveyed by aſſignation or teſtament. The caſe may be otherwiſe in England; but certain it is, that no ſuch exiſtence is to be found in any part of the law or practice of Scotland.

An opinion of the late Mr. York, obtained in the caſe of Mrs. Ruddiman againſt Rivington, concerning a violation of her right, under a patent obtained by her deceaſed huſband, has been founded on by the purſuer in this cauſe. When the opinion is looked into, it will be found to give no judgment upon the common-law right even in England, far leſs in Scotland, but only to point out the eaſieſt method of applying for redreſs againſt an Engliſh bookſeller, *viz.* by bill in Chancery for an injunction: And it ſets out with ſaying, that Mrs. Ruddiman's right *depends on the law of Scotland*, where Mr. Ruddiman lived and died. So far the opinion will be admitted to be applicable to this caſe. As not only the defenders live, but the action is brought in Scotland, the law of Scotland muſt undoubtedly be the rule here; and they cannot, with ſubmiſſion, conceive a propoſition more clear, than that the law

of Scotland rejects the idea of an exclusive right, after publication.

III. Act of Q. Anne.

III. The next question is, Whether the act of Queen Anne made any alteration upon our law favourable to the pursuer's claim? This act took its rise from a petition of the London booksellers; and, by way of introduction to the statute, it may be proper to enquire, what were the rights claimed or exercised by the Stationer's Company of London prior to that period, and, what may have been their views in applying for a new law.

The liberty of the press, or, as Milton calls it, *the liberty of unlicensed printing*, was invaded in England much about the same time that it was in Scotland, and from the same causes.

It has already been said, that the first printers carried on their business as a lawful employment, without any patent or licence. Caxton's title pages never bear *cum privilegio*, but only these humble words: 'Imprinted by me simple man William 'Caxton.'

In 1539 injunctions were issued, in the King's name, against importing books from abroad without examination of the King or his council (or some person appointed), particularly English books; or printing, publishing, and selling within the realm, English books of Scripture, without examination by the King's Highness, or one of his council, or one Bishop whose name was to be expressed.

In 1555, there was a proclamation by Philip and Mary against importing heretical and seditious books, specifying the books of all the great reformers of Europe, English and foreign. This was said to be founded on a statute of Henry IVth for repressing heresies.

In 1556, the first charter was granted to the stationers company, requiring all printers to be of that company, and giving power of search and seizure, in respect of all books printed or stamped contrary to the form of any statute or proclamation.

In 1559, additional injunctions were published against heretical and seditious books, requiring in the first instance, previous to the printing or publishing of any books, the licence of the Queen in writing, or of six privy counsellors, the Archbishops of Canterbury and York, the Bishop of London, the Chancellors of the two Universities, the Bishop, (being Ordinary,) and the Archdeacon, or any two of them, the Ordinary of the place being

one.

one. As to pamphlets, plays and ballads, (wherein regard was to be had, that nothing be ſeditious, heretical, or unſeemly for Chriſtian ears,) ſuch writings were turned over to be licenſed by the commiſſioners of eccleſiaſtical cauſes.

This was the firſt general regulation for licenſing in England, and as it flowed from the royal authority, ſo it appears that many unconſtitutional proceedings, with regard to printing, were enforced from time to time by ordinances of the Star Chamber; and that the ſtationer's company was encouraged and ſupported as a creature of the crown, and uſed as an engine for promoting thoſe arbitrary meaſures.

Nothing indeed could be more ridiculous than ſome of the patents that were given. Thus, Chriſtopher Saxton having repreſented to Queen Eliſabeth that he had travelled over divers parts of England, and made *pleaſant maps* thereof, and intended to travel ſtill more, a patent was obtained by him from her Majeſty, during ten years, to make as many pleaſant maps, as to him ſhould ſeem meet, and forbidding all her loving ſubjects to do the ſame. Another man got the liberty of printing 'all 'ſorts of things that are, may, or ſhall be printed on one ſide 'of a ſheet, provided the other ſide be white paper'

The Stationers Company pretended to various excluſive priviledges, and they had letters patent from the crown, giving them temporary rights to the ſole printing and publiſhing certain books. They had likewiſe regulations and agreements among themſelves, by which any member of the corporation who claimed a right of printing any particular book by patent or otherwiſe, was to enter the ſame in the regiſter of the company, and the other members were not to encroach upon the right or priviledge thus claimed. By degrees the entry in this regiſter-book of the company became a criterion or mark by which the individuals of the company regulated queſtions among themſelves, but which could be of no avail as to others.

Soon after the Reſtoration, a general licenſing act was paſſed, (1662, cap. 33.) entitled, 'An act for preventing abuſes in 'printing ſeditious, treaſonable, and unlicenſed books and 'pamphlets, and for regulating of printing and printing preſſes.' By this ſtatute it was enacted, 'That no private per-'ſon whatſoever ſhall at any time hereafter, print, or cauſe to 'be printed, any book or pamphlet whatſoever, unleſs the ſame

'book

'book or pamphlet, together with all and every the titles, e-
'piſtles, prefaces, poems, preambles, introductions, tables,
'dedications, and other matters and things thereunto annexed,
'be firſt entered *in the book of the regiſter of the Company of Stationers of*
'*London*,' (except acts of parliament, and ſome others); 'and un-
'leſs the ſame book and pamphlet, and alſo all and every the
'ſaid titles, &c. ſhall be firſt lawfully licenſed and authoriſed
'to be printed, by ſuch perſon or perſons only as ſhall be con-
'ſtituted and appointed to licenſe the ſame:' That is, that all books concerning the common laws of the realm, be printed by the ſpecial allowance of the Lord Chancellor, or Lord Keeper of the great ſeal of England, Lords Chief Juſtices, and Lord Chief Baron, or one or more of them, or by their appointments; all books of hiſtory, or other books concerning the ſtate, by the principal ſecretaries of ſtate; all books concerning heraldry by the Earl Marſhal, &c. 'And all other books to be imprinted or
'reprinted, whether of divinity, phyſic, philoſophy, or what-
'ſoever ſcience or art, ſhall be firſt licenſed and allowed by the
'Lord Archbiſhop of Canterbury, and Lord Biſhop of London
'for the time being, or one of them, or by their or one of their
'appointments, or by either of the Chancellors or Vice-chancel-
'lors, of either of the univerſities of the realm for the time be-
'ing: Provided always, that the ſaid Chancellors or Vice-chan-
'cellors of either of the ſaid univerſities, ſhall only licenſe ſuch
'books as are to be imprinted or reprinted within the limits of
'the ſaid univerſities reſpectively, but not in London or elſe-
'where, not meddling either with books of common laws, or mat-
'ters of ſtate or government, nor any book or books, *the right*
'*of printing whereof doth ſolely or properly belong* to any particular
'perſon or perſons, without his or their conſent firſt obtained
'in that behalf.'

Theſe laſt words are taken hold of as implying a copy-right in authors at common law. But that this was not meant, appears from an after clauſe of the act, in which the rights of individuals are more fully explained and ſaved, in theſe words:
'And be it further enacted, That no perſon or perſons ſhall,
'within this kingdom, or elſewhere, imprint, or cauſe to be
'imprinted, nor ſhall import or bring in, or cauſe to be im-
'ported into this kingdom, from or out of any other his Majeſ-
'ty's dominions, nor from any other parts beyond the ſeas,

'any

'any copy or copies, book or books, or part of any book or 'books, or forms of blank bills or indentures for any of his 'Majeſty's iſlands, printed beyond the ſeas, or elſewhere, which 'any perſon or perſons by force or virtue of any *letters patent* '*granted or aſſigned*, or which ſhall hereafter be granted or aſ-'ſigned to him or them, or (where the ſame are not granted by 'letters patent,) by force or virtue of any entry or entries 'thereof, duly made, or to be made *in the regiſter-book of the* '*ſaid Company of Stationers*, or in the regiſter-book of either of the '*univerſities* reſpectively, have or ſhall have the right, privilege, 'authority or allowance, ſolely to print without the conſent of 'the owner or owners of ſuch book or books, copy or copies, form 'or forms, of ſuch blank bills, nor ſhall bind, ſtitch, or put to 'ſale, any ſuch book, or books, or part of any book or books, 'form or forms, without the like conſent, upon pain of loſs 'and forfeiture of the ſame, and of being proceeded againſt as 'an offender againſt this preſent act,' &c.

It is plain that the rights here meant to be protected are thoſe conferred by ſpecial privilege, either to individuals or to univerſities, or thoſe rights which the ſtationers claimed in queſtions with one another by virtue of entries in their regiſter-book.

This appears to be the firſt ſtatute in which any notice is taken of the regiſter of Stationer's Hall, and it does not contain the leaſt inſinuation of a property in all authors at common law. On the contrary, one clauſe of the act ſays, that printing is 'an 'art and manufacture of the kingdom,' and the whole tenor of it ſuppoſes, that every perſon is entitled to print and publiſh, unleſs in ſo far as reſtrained by the ſtatute itſelf, or by ſpecial exclusive privileges belonging to individuals.

This act was only to continue in force for a limited time, which was renewed afterwards, but finally expired in 1694.

From the rules and ordinances of the Stationer's Company, it is clear, that they themſelves did not entertain the idea of a literary property in authors at common law.

Thus, at an aſſembly of the maſter and wardens, &c. of the ſaid Company, upon the 17th Auguſt 1681, it was, *inter alia*, reſolved: 'And whereas ſeveral members of this Company have 'great part of their eſtates in copies; and by ancient *uſage of* '*this Company*, when any book or copy is duly entered in the 'regiſter-book of this Company, to any member or members of

' this Company, ſuch perſon to whom ſuch entry is made, is,
' and always hath been *reputed and taken to be proprietor* of ſuch
' book or copy, and *ought* to have the ſole printing thereof, which
' privilege and intereſt is now of late *often violated* and abuſed.
' It is therefore ordained, That *where any entry or entries, is, or*
' *are, or hereafter ſhall be duly made* of any book or copy in the *ſaid*
' *regiſter-book* of this Company, by or for any member or mem-
' bers of this Company; that in ſuch caſe, if any *other member or*
' *members of this Company* ſhall thereafter, without the licenſe or
' conſent of ſuch member or members of this Company, for
' whom ſuch entry is duly made in the regiſter-book of this
' Company, or his or their aſſignee or aſſigns, print, or cauſe to
' be printed, import, &c. any ſuch copy or copies, book or
' books, &c. or ſhall ſell, bind, ſtitch, or expoſe the ſame, or
' any part or parts thereof, to ſale, that then *ſuch member* and
' members ſo offending, *ſhall forfeit* to the maſters, and keepers
' or wardens, and commonalty of the myſtery or art of Station-
' ers of the city of London, *the ſum of twelve pence* for every
' ſuch copy or copies,' &c.

By another article, ' Whereas his moſt Excellent Majeſty,
' King Charles II. that now is, by his *letters patents* under the
' great ſeal of England, bearing date the 11th day of October,
' in the 18th year of his reign, did grant unto the maſter, and
' keepers or wardens, and commonalty of the myſtery or art
' of Stationers of the city of London, and their ſucceſſors, li-
' cenſe, authority, and privilege only to print, utter, and ſell
' the ſeveral books therein to them particularly mentioned, for
' a term of years yet in being; It is therefore ordained, that
' if any *member or members of this Company* ſhall hereafter, *during*
' *the continuance of the term in the foreſaid letters patents granted,*
' without the licenſe or conſent of the ſaid maſters, and keepers
' or wardens, and commonalty of the myſtery or art of Stationers
' of the city of London, imprint, or cauſe to be imprinted, or
' import, &c. any ſuch book or books, or put to ſale, contrary
' hereto; then ſuch member ſhall forfeit to the keeper or war-
' dens, &c. for every ſuch book, twelve pence.'

And by another article, it is ordained, ' That where the ſole
' printing of any copy or copies, book or books, is already
' *granted to any member*, or members of this Company, by any *let-*
' *ters patents* of his now Majeſty, or any of his Royal predeceſ-

' ſors,

'sors, Kings, or Queens of this realm; or where the printing
'of any copy or copies, book or books, is by any *letters patents*
'granted to any perſon or perſons, not being a member or
'members of this Company, to his and their own uſe; or when
'the printing of any copy or copies hereafter ſhall be *granted by*
'*his now Majeſty, or any of his Royal ſucceſſors*, to any member or
'members of this Company, to his and their own uſe; or ſuch
'*letters patents* ſhall be duly and legally aſſigned to any member
'or members of this Company, to his and their own uſe: Then,
'if any other member or members of this Company ſhall, with-
'out the licenſe or conſent of ſuch owner or owners, or the ex-
'ecutor or adminiſtrator of ſuch owner or owners (*being a mem-*
'*ber or members of this Company*) of ſuch copy, or book, &c. print,
'or cauſe to be printed, or import, or put to ſale, any copy, &c.
'ſuch member ſhall forfeit twelve pence to the Company for
'every ſuch book.'

Theſe regulations ſeem to point out, what was the ſenſe of the Stationers Company, with reſpect to this matter. The firſt article above recited, does not pretend that there was any ſuch thing as a common-law property, but is founded on a ſuppoſed uſage *among themſelves*; by which, when any book is entered in the regiſter of the Company, as belonging to any particular member, the book is *reputed* to be his property, and the other *members* oblige themſelves not to interfere with him in it, though they often violate this obligation; and therefore, by *private concert* among themſelves, they agree that they ſhall not encroach on one anothers rights, eſtabliſhed in this manner, by the rules of the Company. The other two articles expreſsly acknowledge the Royal letters and patents, to be the ſole foundation of any excluſive privilege belonging either to the Company in general, or to individuals.

Thus matters ſtood when the act of Queen Anne was applied for; and it is material to attend to the proceedings on that occaſion.

Upon examining the Journals of the Houſe of Commons, it appears, that, on the 12th December, 1709, 'A petition of 'Henry Mortlock, *&c.* on behalf of themſelves, and other *book-* Vol. 16. p. 240.
'*ſellers and printers* in and about the city of London, and elſe-
'where, was preſented to the Houſe and read; ſetting forth,
'That it has been the conſtant uſage ſo the writers of books,

'to

'to ſell their copies to bookſellers or printers, to the end they 'might hold thoſe copies *as their property*, and enjoy the profit 'of making and vending impreſſions of them; yet divers per-'ſons have of late invaded the properties of others, by reprint-'ing ſeveral books without the conſent, and to the great inju-'ry of the proprietors, even to their utter ruin, and the diſ-'couragement of all writers in any uſeful part of learning: 'And praying, that leave may be given to bring in a bill, *for ſe-'curing to them the property* of books bought and obtained by 'them.'

Here it is to be obſerved, That the narrative or preamble of this petition (which is to be conſidered as the aſſertion of the bookſellers who preſented it) differs from the ſubſumption. The narrative does not alledge, that at common law authors or bookſellers had any right of property; but only that there had been an *uſage* among them of purchaſing books, to be held *as* their property: Which is a plain acknowledgment by the petitioners themſelves, that there was no real property, but only ſomething which they had been pleaſed to view *as* a ſort of property, or compare or *liken* to a property. But the ſubſumption immediately infers from this, that they actually had a property, entitled to the protection and aid of the law; which, however artful, is neither conſiſtent nor concluſive.

It would ſeem, That the view of the bookſellers in their petition was, to be ſecured in a *perpetual* property of their books, not a *temporary* excluſive right. They had been pleaſed to figure to themſelves, that an author, or the perſon to whom he ſold his work ought to be conſidered as the proprietor of it. Their own particular rules, and the boundaries ſettled with one another, had given birth to this idea, however adverſe to the true meaning of thoſe very rules. They were diffident however of the ſtrength of common law to ſupport them in it; and therefore they made this application to Parliament, hoping to have the queſtion decided in their favour: A queſtion highly important to the London bookſellers, who were in poſſeſſion of all the moſt valuable books, but of little conſequence to authors; and accordingly not one author joins in the application.

Leave having been given to bring in the bill, 11th January 1709, 'Mr. Wortley, according to order, preſented to the 'Houſe, A bill for the encouragement of learning, and *for ſe-*

Vol. 16. p. 240.

'*curing*

'*curing the property* of copies of books to the rightful owners
' thereof; and the ſame was received, and read the firſt time.'

The bill was then ordered to be read a ſecond time, and further conſideration of it lay over till the 2d February, when the booksellers, being afraid that it would be loſt or neglected, obtained a new petition to be given in, from 'the *poor diſtreſſed* Vol. 16. p. 291.
'*printers and bookbinders* in London and Weſtminſter; ſetting forth,
'That the petitioners having ſerved ſeven years apprenticeſhip,
'hoped to have gotten a comfortable livelihood by their trades,
'who are in number at leaſt 5000; but the liberty lately ta-
'ken of ſome few perſons *printing books*, to which they have no
'right to the copies, is ſuch a diſcouragement to the bookſelling
'trade, that no perſon can proceed to print any book without
'conſiderable loſs, and conſequently the petitioners cannot be
'employed; by which means the petitioners are reduced to ve-
'ry great poverty and want: And praying, that their deplor-
'able caſe may be effectually redreſſed, in ſuch manner as to
'the Houſe ſhall ſeem meet.'

Here the *poor* printers and bookbinders are introduced to revive and ſecond the petition of the *rich* bookſellers. It will not eſcape notice, that the fact upon which this petition reſts, does by no means infer the concluſion: For how ſhould the printing of books make printers or binders lack employment, and reduce them to poverty and want?

9th February 1709, The bill was read a ſecond time and or- —p. 300.
dered to be committed.

21ſt February 1709, 'Mr. Compton reported from the Com- —p. 332.
'mittee, that they had gone through the bill, and made ſeveral
'*amendments*, which they had directed him to report, when the
'Houſe were pleaſed to receive the ſame.'

25th February 1709, 'Mr. Compton reported, from the Com- —p. 339.
'mittee of the whole Houſe, the *amendments* they had made on
'the bill; and he read the ſame in his place, and afterwards de-
'livered them in at the clerk's table; where they were once
'read throughout, and then a ſecond time, one by one; and
'upon the queſtions ſeverally put thereupon, with amendments
'to ſome of them, agreed unto by the Houſe.'

'*Ordered*, That the bill with the amendments be ingroſſed.'

14th March 1709. 'An ingroſſed bill for the encourage- —p 369.
'ment of learning, by *veſting* the copies of printed books, *in the*

'*authors*

'*authors or purchaſers* of ſuch copies, *during the times therein men-*
'*tioned*,' was read the third time.

'*Reſolved*, That the bill do paſs, and that the title be, A bill
'for the encouragement of learning, by *veſting* the copies of
'printed books, *in the authors* or *purchaſers* of ſuch copies, *during*
'*the times therein mentioned*.'

Here it is material to advert, That the title given to the bill when engroſſed, and which the Houſe reſolved it ſhould bear when they paſſed it, is extremely different from the title the bill had when preſented by Mr. Wortley. The title originally given, was agreeable to the views of the bookſellers, and ſeemed to imply, that the authors or purchaſers of books, had, *ab ante*, a right of property in the copies: Whereas the title given to it, when engroſſed and paſſed, *viz.* 'A bill for the encourage-
'ment of learning, by *veſting*,' *&c.* as plainly implies, that the authors or purchaſers had no right of property, but what was given by this act, and would have none after the times mentioned therein ſhould expire. The intention of the bookſellers was to have a perpetual property aſcertained: The parliament would only veſt in them a temporary, conditional, and limited right. Neither was this title given *per incuriam*: On the contrary, it appears to have been an *amended title*, given upon mature conſideration, for the very purpoſe of ſhowing, that the legiſlature did not acknowledge an *ab ante* right.

Vol. 16. P. 394. 5th April 1710. 'The Houſe proceeded to take into conſi-
'deration the amendments made by the Lords to the bill, inti-
'tuled, *An act for the encouragement, etc.* and the ſame were read,
'and are as follow.'

The firſt four amendments being of no conſequence, it is needleſs to inſert them.

The next is, To leave out the fourth ſection, about regulating exorbitant prices: and the laſt amendment is, to add the following proviſo to the end of the bill: 'Provided always, that after
'the expiration of the ſaid term of fourteen years, *the ſole right*
'*of printing, or of diſpoſing* of copies, ſhall *return to the authors* there-
'of, if they are then living, *for another term of fourteen years*.'
This was a moſt extraordinary clauſe to be added, if by common law *the ſole right* was to *return* to them *for ever*.

All the amendments were agreed to, except that reſpecting the prices.

Ordered, 'That a Committee be appointed to draw up rea-
'ſons,

'ſons, to be offered to the Lords at a conference, for diſagree-
'ing to the ſaid amendment.' And it was referred to Mr. Se-
cretary Boyle, and ſeveral others, (of whom Mr. Addiſon was
one), who were ordered to withdraw immediately into the Speak-
er's chamber, and report to the Houſe.

Mr. Compton reported from the Committee, That they had drawn up reaſons, which he read in his place, and afterwards dēlivered in at the clerk's table, and are as follow: 'That Vol. 16. p. 395.
'the Commons diſagree to your Lordſhips amendments, in pr.
'3. l. 14. *Firſt*, Becauſe authors and bookſellers having the
'*ſole property* of printed books *veſted in them by this act*, the Com-
'mons think it reaſonable, that ſome proviſion ſhould be made,
'that they do not ſet an extravagant price on uſeful books. *2dly*,
'Becauſe the proviſion made for this purpoſe by the ſtatute, 25th
'Henry VIII. chap. 15. having been found to have been ineffec-
'tual, and not extending to that part of Great Britain called *Scot-*
'*land*, it is neceſſary to make ſuch a proviſion as may be effec-
'tual, and which may extend to the whole united kingdom.

The Lords did not inſiſt upon their amendment.

This conference about regulating the prices, affords a ſtrong additional evidence of what was underſtood. The meaning of the act was not to declare a pre-exiſting right in authors, which they might uſe at their diſcretion; but to confer a *new right* for a term of years, and which therefore it was reaſonable the parliament ſhould grant upon its own terms. This is the very argument uſed by the Commons, and at length acquieſced in by the Lords; the reſtriction of the price being thought neceſſary, in order to prevent the ill effects of the monopoly thus given by the ſtatute. It did not *then* occur, that the very ſame author, who, during the term of the ſtatute, was limited as to his price, was, at the expiry thereof, to become quite unlimited, and, at the ſame time, to retain the excluſive power of ſelling his works for ever.

The act was paſſed, *verbatim*, as hereto annexed. But it may be obſerved, That the *fourth* clauſe, reſpecting the regulation of prices, was afterwards repealed by an act in the 12th of *Geo.* II. *cap.* 36. becauſe, upon trial, it was found not eaſy to be executed; ſo that the prices are now left to the diſcretion of bookſellers, and the monopoly is thereby rendered ſo much the more dangerous.

Not only does the *title* of the act ſhow what was underſtood

by

by parliament, but the *enacting clauſes* do in the moſt explicit manner point out, that a common-law right was not meant to be confirmed; but a ſtatutory-right granted for a certain time, under certain conditions. The preamble indeed uſes the word *proprietors*, as ſynonimous with *authors*; but the enacting words are more correct. The preamble ſays, 'Whereas printers, book-'ſellers, and other perſons, have of late frequently taken the li-'berty of printing, reprinting, and publiſhing; or cauſing to 'be printed, reprinted, and publiſhed, books, and other wri-'tings, without the conſent of the authors or proprietors of ſuch 'books and writings, to their very great detriment, and too of-'ten to the ruin of them and their families.' The enacting words are; 'For preventing therefore ſuch practices for the fu-'ture, and for the encouragement of learned men to compoſe 'and write uſeful books; be it enacted, That from and after 'the 10th of April 1710, the *author* of any book or books already 'printed, who hath not transferred to any other, 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 per-'ſons, who hath or have purchaſed or acquired the copy or co-'pies of any book or books, in order to print or reprint the ſame, 'ſhall have the *ſole right and liberty* of printing ſuch book and books, '*for the term of one and twenty years*, to commence from the ſaid 10th 'day of April, *and no longer*; and that the *author* of any book or 'books already compoſed, and not printed and publiſhed, or that 'ſhall hereafter be compoſed, and *his aſſigney or aſſigns*, ſhall have 'the ſole liberty of printing and reprinting ſuch book and books, '*for the term of fourteen years*, to commence from the day of firſt 'publiſhing the ſame, *and no longer*.' Then follow the penalties on tranſgreſſors of the act, by forfeiture of the books, *etc.* and proviſoes for entering in Stationers Hall, preſenting copies to the Univerſities, and regulating the prices.

That the word *proprietors*, in the preamble of this act, does not mean to declare any antecedent property in authors or their aſſigns, but is uſed in a ſenſe not ſtrictly proper, appears not only from what follows in the act itſelf, but from other inſtances in the ſtatute-law, where the ſame word is uſed to expreſs a monopoly or excluſive right, ſpecially conferred, without any pretence of an actual *property*, in the ſtrict and true ſenſe of the word. For example; the act 8*vo Geo.* II. *cap.* 13. for encou-

ragement

ragement of the arts of deſigning, engraving, and etching prints, ſays, 'Whereas divers perſons have, by their own genius, in-' duſtry, pains, and expence, invented and engraved, or work-' ed in *mezzotinto*, or *chiaro oſcuro*, ſets of hiſtorical and other' prints, in hopes to have reaped the ſole benefit of their la-' bours: And whereas printſellers, and other perſons, have of' late, without the conſent of the inventors, deſigners, and *pro-*' *prietors* of ſuch prints, frequently taken the liberty of copying, ' engraving, and publiſhing, or cauſing to be copied, engraved, ' and publiſhed, baſe copies of ſuch works, deſigns, and prints, ' to the very great prejudice and detriment of the inventors, de-' ſigners, and *proprietors* thereof.—For remede thereof, and for ' preventing ſuch practices for the future, be it enacted, &c. ' That from and after the 24th day of June, which ſhall be in ' the year of our Lord 1735, every perſon who ſhall invent and ' deſign, engrave, etch, or work in *mezzotinto*, or *chiaro oſcuro*, or ' from his own works and invention, ſhall cauſe to be deſigned ' and engraved, etched, or worked in *mezzotinto*, or *chiaro oſcuro*, ' any hiſtorical or other print or prints, ſhall have the ſole right ' and liberty of printing and reprinting the ſame, for the term ' of *fourteen years*, to commence from the day of the firſt publiſh-' ing thereof, which ſhall be truly engraved with the *name of the* ' *proprietor* on each plate, and printed on every ſuch print or ' prints.' Then follow the like forfeitures and penalties, as in the act concerning books.

The one act ſeems in a great meaſure to be copied from the other. And indeed, upon looking into the Journals of the Houſe of Commons, it appears, that the petition of the engravers refers to the law in favour of authors, and deſires to be put on the ſame footing. No two ſubjects can be liker, and no two acts of parliament can more nearly reſemble one another; yet it never was thought, that the deſigner of a print had an inherent exclusive right to hinder others from copying that print, after having publiſhed it, or that he was in this ſenſe *proprietor* of his invention. It never was maintained, that he had a common-law property, or excluſive right of any kind, independent of ſtatute.

Vol. 22. p. 364.

By an act in the 7th of his preſent Majeſty, *cap.* 38. it was further provided in favour of engravers, "That all and every per-' ſon and perſons who ſhall engrave, etch, or work in *mezzotinto*,

‘ or *chiaro oſcuro*, or cauſe to be engraved, etched, or worked,
‘ any print taken from any picture, drawing, model, or ſculp-
‘ ture, either ancient or modern, ſhall have, and are hereby de-
‘ clared to have, the benefit and protection of the ſaid act, and
‘ this act for the term herein after mentioned, in like manner as
‘ if ſuch print had been graved or drawn from the original de-
‘ ſign of ſuch graver, etcher, or draftſman; and if any perſon
‘ ſhall engrave, print, and publiſh, or import for ſale, any copy
‘ of any ſuch print, contrary to the true intent and meaning of
‘ this and the ſaid former act, every ſuch perſon ſhall be liable
‘ to the penalties contained in the ſaid act, to be recovered as
‘ therein, and herein after is mentioned.’

By this act, the term of the excluſive privilege is prolonged as follows: ‘That the ſole right and liberty of printing and re-
‘ printing, intended to be ſecured and protected by the ſaid
‘ former act and this act, ſhall be extended, continued, and be
‘ *veſted* in the reſpective *proprietors*, for the ſpace of *twenty eight*
‘ *years*, to commence from the day of the firſt publiſhing of any
‘ of the works reſpectively herein before, and in the ſaid former
‘ act mentioned.’

On account of the extraordinary genius of Hogarth, his widow was, by another clauſe of the ſame act, indulged with a particular monopoly of his prints for *twenty years*, to commence from January 1767, over and above the fourteen years which Hogarth himſelf had had by the act, 8th of George II. But as in the interval between the expiry of the firſt privilege, and the commencement of the ſecond, ſeveral engravers had copied and publiſhed Hogarth’s works, the following clauſe is very properly added in the act 7th of his preſent Majeſty.

‘Provided nevertheleſs, That the *proprietor* or *proprietors* of ſuch
‘ of the copies of the ſaid William Hogarth’s works, which have
‘ been copied, and printed, and expoſed to ſale, after the expi-
‘ ration of the term of fourteen years from the time of their firſt
‘ publication by the ſaid William Hogarth, and before the ſaid
‘ firſt day of January, ſhall not be liable or ſubject to any of the
‘ penalties contained in this act, any thing herein before con-
‘ tained to the contrary thereof in any wiſe notwithſtanding.’

Here the legiſlature made a very juſt diſtinction. No perſon was to be puniſhed, or ſued in any action, for publiſhing Hogarth’s

garth's works, after the monopoly of fourteen years had elapſed; and nothing could reſtrain any perſon from continuing ſo to do, but this new law, giving a further monopoly for twenty years. It is to be obſerved too, that throughout the whole ſtatute, although *property* and *proprietor* are the terms uſed, nothing more was meant than a ſtatutory excluſive right; not an actual, but a *quaſi property*, the creature of that particular ſtatute; and the ſame obſervation does clearly apply to the ſtatute of Queen Anne concerning books.

It is remarkable, that even the *copiers* of Hogarth's prints are called *proprietors* in the above clauſe, in as large a ſenſe of the word as he is himſelf. The bookſellers had introduced theſe cant words *property* and *copy right*; and they were naturally made uſe of by others, as phraſes belonging to the trade; they were copied from the petition of the bookſellers into the act of Queen Anne, and from thence into the ſtatutes of his late and preſent Majeſty. It is juſtly obſerved by Mr. Blackſtone, That 'words Vol. I.
'are to be underſtood in their uſual and moſt known ſignifica- P. 59.
'tion, not ſo much regarding the propriety of grammar as their
'general *popular* uſe;' and in particular, 'terms of art, or tech-
'nical terms, muſt be taken according to the acceptation of the
'learned in each art, trade, and ſcience.'

That the above is a juſt conſtruction of the ſtatute of Queen Anne, may further be illuſtrated from the report in the caſe of Midwinter, where the argument upon the ſtatute is laid down with great preciſion. Treating of the right of an author after publication, the reporter ſays: 'All that remains with him is P. 157.
'an excluſive privilege, granted by the ſtatute, of reprinting
'this book, and of barring others from reprinting or vending it
'under certain penalties. It is neither more nor leſs than
'creating a monopoly, barring others from dealing in that par-
'ticular commodity; the direct conſequence of which is, that
'ſo far as reſtrained by ſtatute they muſt ſubmit; but that, in
'all other particulars, their natural liberty is preſerved entire.
'It is true, this monopoly or excluſive privilege is named *a pro-*
'*perty* in the ſtatute; and ſo it is in one ſenſe, becauſe it is pro-
'per or peculiar to thoſe to whom it is given by the ſtatute.
'But then it was not intended to be made *property* in the ſtrict
'ſenſe of the word; for we cannot ſuppoſe the legiſlature guilty

'of

'of ſuch a groſs abſurdity, as to eſtabliſh property without a 'ſubject or *corpus*: Theſe are relative terms which cannot be 'diſjoined; and property, in a ſtrict ſenſe, can no more be 'conceived without a *corpus*, than a parent can be conceived 'without a child. But if the words of the ſtatute ſhall be laid 'hold of, neglecting its ſpirit and meaning, all that can be con-'cluded is, that it is a property *ad certum effectum* only, granted 'in order to ſupport the ſeveral actions and penalties directed 'by the ſtatute. It is a ſtatutory property, and not a property 'in any juſt ſenſe to be attended with any of the effects of pro-'perty at common law.'

'In the *ſecond* place, Suppoſing ſo abſurd a thing as that a real 'property is eſtabliſhed by the ſtatute, it appears evident, that 'the purſuers can take no advantage of it, when they have not 'fulfilled the conditions upon which it is granted. The very 'firſt clauſe of the ſtatute, which talks of beſtowing the property 'upon the author, is what follows: 'And whereas many per-"ſons may, through ignorance, offend againſt this act, unleſs "ſome proviſion be made, whereby the property in every ſuch "book as is intended *by this act*, things to be ſecured to the pro-"prietor may be aſcertained,' &c. Here two things are plainly 'implied, or rather expreſſed: 1*ſt*, That the property is not in-'tended to be beſtowed in every caſe; for the words are, "Whereby the property in every ſuch book, as is intended by "this act to be ſecured to the proprietor, may be aſcertained.' 'And 2*dly*, The property is not beſtowed directly upon compo-'ſing, but is to be claimed or aſcertained in a certain form 'eſtabliſhed in the ſtatute, viz. by entering in Sationers Hall, 'the name of the book, and the author's conſent for printing 'the ſame. Upon theſe conditions the property is beſtowed, 'and not otherwiſe: Nor does this argument land in a criticiſm 'upon words; it is founded on the very nature of the thing; 'for, if it be true in fact, that many perſons of diſtinction amuſe 'themſelves with compoſing books, without intending to take 'any pecuniary benefit by the publication, muſt it not be com-'petent to every mortal to deal in ſuch books, as much as it was 'to deal in all books before excluſive privileges were invented? 'It follows therefore, that every author, who intends to make 'profit of his works, muſt ſignify the ſame to the public, or, in

'the

‘ the language of the ſtatute, muſt have the property aſcertained
‘ to him. And, as the method for claiming or aſcertaining this
‘ property is alſo laid down in the ſtatute, there muſt be eſta-
‘ bliſhed a *preſumptio juris et de jure*, that every new book, which
‘ is not thus entered in Stationers Hall, is abandoned to the pub-
‘ lic, and a lawful ſubject of commerce for every man to deal in.

‘ In the *third* place, Suppoſing all obſtructions removed which
‘ bar the purſuers from a property in this caſe, ſtrictly taken,
‘ and ſuppoſe their property to be ſuch as to afford the ſame
‘ actions that may be founded on real property; yet it does not
‘ appear, that they could take any benefit from theſe conceſſions:
‘ for how are damages to be aſcertained? The only footing to
‘ go upon is to ſhow how far the proprietor's ſale is leſſened by
‘ interlopers. But this can never be determined otherwiſe than
‘ by mere conjecture: The proprietor himſelf cannot be certain,
‘ that the perſons who dealt with the interlopers would have
‘ purchaſed from him, without which the aſcertaining damages
‘ is beyond the reach of law. And the purſuers tacitly yield
‘ this point, when they agree to confine their claim of damages
‘ to the ſuppoſed profits made by the defendants. Their claim,
‘ ſo qualified, does indeed relieve them of ſome part of the dif-
‘ ficulty of proof, by no means of the whole; becauſe an inter-
‘ loper, who has ſome part of a piratical edition in his poſſeſſion,
‘ cannot know what profits he makes till the whole be ſold off.
‘ But to let this paſs: Where is the foundation in law, equity,
‘ or common ſenſe, to deprive the defendants even of their pro-
‘ fits, unleſs the purſuers can ſpecify that they have ſuffered
‘ thereby? If their ſale be not leſſened, they have no juſt ground
‘ of complaint. Let us give an example, which ſhall be Millar's
‘ Dictionary, publiſhed in two folios, and ſold at a price beyond
‘ the reach of common gardeners. If a printer ſhall undertake
‘ an impreſſion of this book on a very ſmall type and very coarſe
‘ paper, which will be purchaſed only by common gardeners,
‘ Philip Millar and his aſſigns will not loſe a ſhilling by this edi-
‘ tion: yet by this low-priced book, knowledge in gardening is
‘ ſpread much to the benefit of the public. Would it be reaſon-
‘ able or juſt to deprive ſuch an undertaker of his profits, when
‘ the public gain by the undertaking, and Mr. Millar loſes no-
‘ thing? It is obvious then, that this claim for profits cannot be

'supported leſs or more as a claim of damages, when there is real-
'ly no damage to the party privileged, or, which is the ſame,
'where damages cannot be proved.'

Theſe, and other arguments uſed upon that occaſion, are a better commentary upon the act than any that the defenders can make. The Court of Seſſion found in that caſe, 'That no ac-
'tion lies upon the ſtatute, except for ſuch books as have been
'entered in Stationers Hall, in terms of the ſtatute. And found,
'That no action of damages lies upon the ſtatute.'

The cauſe was appealed by the London bookſellers to the Houſe of Peers; and having come to a hearing, it was the opinion of that moſt honourable Houſe, that the action ought to be diſmiſſed as irrelevant, without prejudice to the points pleaded therein, when they ſhould be properly brought in judgment; and accordingly an order was given to that purpoſe.

The London bookſellers were ſo little encouraged by this deciſion, and by what paſſed in the Houſe of Lords upon occaſion of it, that they never ventured to renew their action in Scotland, though it is well known how deſirous they were to extend their ſchemes of monopoly over the whole iſland, and to prevent all interference of their brethren here. This they have not yet been able to accompliſh, and it is hoped never will.

It is indeed, with ſubmiſſion, thought, that the act of Queen Anne leaves no room for the pretence of a common-law property independent of the ſtatute. Your Lordſhips, in the only queſtion of the kind which has come before you, ſeem to have conſidered it in that light. At the ſame time, it is a poſſible caſe, that the view of the legiſlature may have been to ſettle a contraverted point, by *aſcertaining* this claim of property *for a certain limited time*, and fixing the boundary there, ſo as to cut off all pretences *quoad ultra*. The word *veſting* ſeems rather to ſhow, that the antecedent right was in no ſhape acknowledged. But taking the act in either ſenſe, as conferring a new right which had never before exiſted, or as declaratory ſo far of a right *ab ante* claimed; it does not occur to be a doubt that this right, whether veſted or declared, is, by the expreſs tenor of the act, limited in its duration, and made entirely dependent on the ſtatute.

Other

Other inſtances might be given, of rights clearly founded in common law being limited by ſtatute. Bribery was a ground for reducing the elections of magiſtracy, long prior to the act 14th of George II. whereby it was, *inter alia*, 'made lawful for any conſtituent member of a meeting for election, 'who ſhall apprehend any wrong to have been done by the majority of ſuch meeting, to apply to the Court of Seſſion by 'ſummary complaint, for rectifying ſuch abuſe, or making void 'the election, ſo as ſuch complaint be preſented to the ſaid 'Court within two calendar months after the annual election of 'magiſtrates and counſellors.'

In a late caſe, Young and others of Anſtruther-Eaſter, having allowed the two calendar months to elapſe, were cut out of their remedy of ſummary complaint upon the ſtatute; but they brought an action at *common law* for voiding the election. Proofs were adduced of the bribery and corruption. The purſuers prevailed in this Court, and the election was voided.

An appeal, however, having been taken againſt this decree, the chief reaſon urged for a reverſal, and for the firſt time ſtated from the bar of the Houſe of Peers, not having been before attended to, was, That the Court had given judgment in an action which appeared incompetent, the ſtatute having limited the time, and pointed out the only mode for obtaining redreſs, which had been neglected.

The *anſwer* made was, That the ſtatute only authorized a new mode of action for redreſs of wrongs at annual elections, but that theſe wrongs were ſtill actionable at common law; and that the remedies *ab ante* competent, could not be meant to be taken away by the ſtatute: That where a ſtatute only allowed a particular and new mode of redreſs, in a caſe which was before remediable at common law, the common-law remedy ſtill remained entire.

Replied, That the intendment of the legiſlature was to take into conſideration all the election laws, and by that ſtatute, ſo full and particular, to cut off at once, and put an end to all queſtions and diſputes that might have ariſen upon theſe laws.

The Houſe of Lords reverſed the decree of the Court of Seſſion.

The

The reaſoning in that caſe appears extremely applicable to the preſent; and indeed, *a fortiori* applies, as the antecedent right here was at beſt diſputable and uncertain. The ſtatute of Queen Anne conſidered fully, and included, all the prior pretences of authors to copy-right, and ſettled this kind of property on a clear, equitable, and ſolid footing. It ſays, as clearly as words can expreſs, That they ſhall have a right for a certain term of years, *and no longer*.

Though authors, and thoſe in their right, ſhould be ſuppoſed to have had a perpetual property in their books; yet there was no iniquity in rendering it temporary by this act, by which their right is protected by forfeitures and penalties for a conſiderable tract of time, during which, if their books are good for any thing, they will draw much more than ſuffices to reimburſe and recompenſe them. Many natural rights are reſtrained by ſtatute; ſuch as, the exportation of wool, grain, &c. at certain times. If the proprietors of theſe goods were allowed to go to any market they pleaſed, their gains would often be much greater.

The laſt clauſe of the act declares, That if the author ſhall happen to be alive at the expiry of the term of fourteen years, the ſole right of printing and diſpoſing, &c. ſhall return to *him* for another term of fourteen years; not the *penalties*, but the *right*, or what is called the *property*; and not to the bookſeller, but to the *author* himſelf, if he be alive. What poſſible uſe was there for this clauſe, or what purpoſe could it ſerve, if, independent of the act, the excluſive right returned to the author, not for fourteen years only, but for ever? And how could the right return to the author, if he had already given it away for ever to an aſſignee? A more unmeaning, nay, more improper clauſe, cannot be figured, if the purſuers are well founded in their argument.

It is ſaid, That the purpoſe of the act of Queen Anne was to give an additional ſecurity to authors, by means of penalties upon tranſgreſſion; and that the reaſon of limiting this penal ſanction to a certain term of years, was, that the chief temptation to invade the property of authors was when the demand was great, which generally laſted only a few years.

But, with ſubmiſſion, this is by no means a natural or reaſonable conſtruction of the ſtatute. No ſimilar inſtance will be pointed

pointed out, of a property being guarded with penalties for a certain number of years only, and left unguarded after that period. If a common-law property is at all allowed to authors in their works, this property is as ſtrong and as entire the *fifteenth* year as it is the *fourteenth*, and the demand may be as great. It is impoſſible to conceive, that ſo trivial a circumſtance, as the difference of demand between the fifteenth and the fourteenth year after the publication of a book, would be thought ſufficient by the legiſlature to make ſo important a diſtinction between theſe two periods. Beſides, independent of penalties, which by this ſtatute are not given at all to the author, but to the informer and to the King, the author's right is made to continue fourteen years longer, in the caſe of publications after the act, if the author himſelf be alive; ſo that the penal conſequences in this caſe expire in fourteen years, and the prorogated right of the author, unattended with any penalties, in twenty-eight years, which ſurely muſt ſuppoſe, that he has not a right in him which laſts for ever.

Moſt articles of moveable property are more valuable when new than when old; yet it never was thought neceſſary to make a law for ſecuring more effectually the owner's right to new furniture, or new property of any kind, leaving the old to ſhift for itſelf. No act of parliament ever declared, That a man ſhould have the ſole excluſive right to diſpoſe of his goods for fourteen or twenty-eight years *and no longer*; and that whoever invaded this property during that time, ſhould be liable in penalties and puniſhment. So far from ſecuring the property, this would rather look like an invitation to invade it at the end of the term aſſigned. If by common law a man had a perpetual right or privilege to do a certain thing, it would ſurely appear very ſingular, were he to apply for, and obtain an act of parliament, declaring his right to do that thing for fourteen years *and no longer*. Any perſon who acted in this manner, would be conſidered as waving his right at common law.

It was ſaid, There are many inſtances of penalties ſuperadded, as in the caſes of treaſon, bribery in elections, &c. But will an inſtance be ſhown of any ſtatute which ſays, that treaſon ſhall be puniſhable for fourteen years, *and no longer*; or, that bribery ſhall be a crime for fourteen years only, and puniſhable during

that term; or, that elections ſhall be free and uncorrupt for fourteen years, *and no longer?*

In ſhort, this ſtatute cannot be explained upon the footing of a ſuperadded penalty. The clear and plain conſtruction of it is, That it is a ſtanding univerſal patent, giving authors an excluſive right in their works, or what is called a *ſtatutory property*, for a certain time. It was intended not to give an additional ſecurity, but a new benefit to authors, and to free them from the charge and trouble of procuring patents from the Crown.

The act therefore, (ſo far, at leaſt, as applicable to Scotland), appears to be neither accumulative nor reſtrictive of any former right, but rather creative of a full clear one, for a determinate time, and under certain conditions: And the reaſon of guarding it with penalties ſeems to have been, that this was the beſt manner of ſecuring the right introduced by the ſtatute, as the liquidation of damages muſt often be extremely difficult. An act of this kind was fully ſufficient for all the purpoſes of rewarding authors, and encouraging learning; whereas the eſtabliſhing an independent inextinguiſhable property in copies, would be pernicious and deſtructive.

The clauſe in the act, which provides, 'That it do not extend 'either to prejudice or confirm any right that the ſaid Univer'ſities, or any of them, or any perſon or perſons have, or claim 'to have, to the printing or reprinting any book, or copy al'ready printed, or hereafter to be printed,' has been appealed to by ſome, as containing a general ſalvo of all antecedent rights; and conſequently of the common-law right of authors. But the ſmalleſt conſideration will ſhow, that this clauſe could only have in view thoſe ſpecial rights, founded upon ſtatute, charter, or other privilege, which either the Univerſities or particular perſons may have a claim to; rights not merely natural, but founded on privilege. It is obvious, that if the words of this proviſo are interpreted to mean any more than a ſalvo of ſpecial rights, ſuch as the claims of King's printers, patentees, and Univerſities, they muſt operate a repeal of all the preceding clauſes.

By the words 'ſaid Univerſities,' are meant Oxford and Cambridge, who, before this act, had the privilege, by patent, of printing ſeveral books, ſuch as Bibles, Acts of Parliament, &c. Baſket, who was King's Printer, diſputed this right with them. The Stationers Company likewiſe had, or claimed, the ſole right

of

of printing different books, particularly Almanacks, Pſalms, Pſalters, &c. Partridge diſputed this, and inſiſted to print an Almanack of his own compiling. They likewiſe pretended a right to law books; but Atkins, a law-patentee, got an injunction againſt every member of the Company, for printing Roll's Abridgment. Roper, who purchaſed Croke's Reports, printed the book without the conſent of the law-patentees, upon which they in 1705 raiſed an action againſt him. In like manner theſe law patentees diſputed with Viner the right to print his abridgement though compiled by himſelf. Other inſtances might be given; and as ſeveral of theſe diſputes were ſubſiſting at the time the act of Queen Anne was in agitation, it was proper to throw in a proviſion to leave the queſtion as to theſe patent-rights entire, whether regarding works already printed, or hereafter to be printed; for even authors, who might afterwards write on particular ſubjects, might poſſibly be debarred from printing their own works, as happened in the caſe of Viner, Partridge, &c. which whether juſt or not was left undetermined. The ſame thing was done in the licenſing act 1662, and in the act of James II. againſt monopolies.

Before leaving the act of Queen Anne, it may be obſerved, That the London bookſellers, not ſatified with the advantages which they had thereby obtained, did, in 1734, make a new application to Parliament, for leave to bring in a bill for making more effectual the act of Queen Anne, and for preventing the ſurreptitious printing or importation of books from foreign parts. It is probable, the chief object in view was to prevent importation from Ireland, as it had long been, and indeed ſtill is a practice, to reprint every Engliſh book of any conſequence in Ireland, immediately after being publiſhed in England, and to underſell the Engliſh edition. Had any ſuch thing as a common-law property been underſtood to be in authors, or the bookſellers to whom their copies were aſſigned, this abuſe might ſurely have been redreſſed, by applying to the Courts of Ireland. But no ſuch attempt appears ever to have been made; which at leaſt ſhows, that there is no remedy at common law in Ireland; though, if the defenders are not miſtaken, the common law of Ireland is, in other reſpects, the ſame with that of England.

Swift, in ſome of his letters, complains, That even his manuſcripts were ſtole from him there, and publiſhed without his conſent,