ſent, and that he could have no redreſs. Thus he writes to Mr.
Mar. 8, 1734. Vol. 3. No 381. Pulteney, 'You will hear, perhaps, that one Faulkner hath 'printed four volumes, which are called my works. He hath 'only prefixed the firſt letters of my name. It was done utter-'ly againſt my will; for *there is no property in printers or book-ſel-'lers here*, and I was not able to hinder it. I did imagine, that, 'after my death, the ſeveral London bookſellers would *agree a-'mong themſelves* to print what each of them had, by common 'conſent; but the man here hath prevented it, much to my 'vexation; for I would as willingly have it done even in Scot-'land. All this has vexed me not a little, as done in ſo ob-'ſcure a place. I have never yet looked into them, nor I be-'lieve ever ſhall.' He ſeems here to have had in view the temporary property which in England was veſted in authors by the act of Queen Anne, but which did not extend to Ireland; and he had no notion of a property at common law. See alſo his
Vol. 3. No 382. letter to Mr. Pulteney, 12th May 1735, on the ſame ſubject; where he ſays, 'I never got a farthing by any thing I writ, ex-'cept one, about eight years ago; and that was by Mr. Pope's 'prudent management for me.' And he adds, '*Here the prin-'ters and bookſellers have no property in their copies.*'

The ſame obſervation holds as to the American colonies, where the works of Engliſh authors are every day republiſhed openly and avowedly, without any leave from the London bookſellers.

The application made in 1734, appears to have been attended with no effect: But, in 1735, and 1736, the London bookſellers made another effort; and particularly in 1736, upon a motion made in their behalf, a bill was allowed to be brought in, 'for
Journals, Vol. 22. P. 741. 'the better encouragement of learning, by the more effectual 'ſecuring the copies of printed books to the authors or purchaſ-'ers, during the times therein to be mentioned, and to *repeal* an 'act, paſſed in the eighth year of the reign of her late Majeſty, 'entitled,' &c.

This bill had probably been in agitation the year before, as a letter appears from Mr. Pulteney to Dr Swift, of date 29th
Swift's letters, vol. 3. No. 346. April 1735, in theſe words: 'I have ſent you the copy of a bill 'now depending in our Houſe, for the encouragement of 'learning, (as the title bears;) but I think, *it is rather of ad-'vantage to bookſellers than authors.* Whether it will paſs or not

'this

'this ſeſſion, I cannot ſay; but if it ſhould not, I ſhould be glad
'of your thoughts upon it, againſt another ſeſſion. It ſeems to
'me to be extremly imperfect at preſent. I hope you have
'many more writings to oblige the world with, than thoſe which
'have been ſo ſcandalouſly ſtolen from you; and when a bill of
'this nature paſſes in England, (as I hope it will next year),
'*you may then* ſecure the property to any friend, or any chari-
'table uſe you think fit.' This plainly ſhows Mr. Pulteney's opinion, That, unleſs upon the footing of ſtatute, there was no ſuch thing as a property in authors.

This bill was likewiſe thrown out, and the ſcheme of repealing the act of Queen Anne appears to have been dropt. But, in 1739, a new act was paſſed, not materially altering the act of Queen Anne, but eſtabliſhing two points in favour of the booksellers. It is intitled, 'An act for prohibiting the importation
'of books reprinted abroad, and firſt compoſed, or written, and
'printed in Great Britain; and for repealing ſo much of an
'act, made in the eighth year of the reign of her late Majeſty
'Queen Anne, as impowers the limiting the prices of books.'
The firſt part of this act ſubjects the importers to certain penalties, and muſt have been chiefly intended againſt the interference of Iriſh bookſellers, as already obſerved. At the ſame time, it contains this material proviſo, That the act 'ſhall not
'extend to any book that has not been printed or reprinted in
'this kingdom, within twenty years before the ſame ſhall be
'imported.' Which ſhows, that the legiſlature ſtill had in view, to debar all *perpetual* excluſive privileges, and to prevent the poſſibility of authors or bookſellers ſuppreſſing uſeful books.

IV. The defenders can pretend to no knowledge in the common law of England; but they may without offence ſtate what appears from books, and they have already had occaſion to obſerve in what manner printing was originally exerciſed in England as well as in Scotland. IV. Law of England.

After excluſive privileges came in uſe, we find much light thrown upon the ſubject, by thoſe very grants of excluſion, many of which are of ſuch a nature, and are expreſſed in ſuch terms, as ſhow an univerſal opinion, that there was no literary property at common-law in England.

A great number of patents to authors and printers are to be

found in Rymer's Fœdera, ſome few of which ſhall be here noticed.

By letters patent, dated 12th March 1563, Elizabeth, 'in 'conſideration, that Thomas Cooper of Oxford, hath diverſe 'and ſundry times heretofore travailed in the correcting and 'augmenting of the Engliſh Dictionary (commonly called Bibliotheca Eliota) and now of late as well to his further pains, &c. 'hath altered and brought the ſame into a more perfect form in 'the following notable work, called *Theſaurus Linguæ Latinæ*.' Therefore, 'grants privilege and licenſe to the ſaid Thomas 'Cooper and his aſſignies, to print and ſet forth to ſale the ſaid 'Engliſh Dictionary (before named Bibliotheca Eliota), and now 'in this laſt edition, intituled, Theſaurus Utriuſque Linguæ Latinæ et Britannicæ, and prohibits all others from printing and 'ſelling the ſame, *either by the copy heretofore imprinted*, or hereafter to be printed by the ſaid Thomas Cooper,' during the ſpace of 12 years. This prohibition ſeems to extend even to the author of the original work and his heirs, who are debarred from republiſhing it during the term of the privilege.

26th April 1626, a licenſe in favour of Joſeph Webb, ſets forth, 'That John Webb, by his petition, has repreſented that 'he has attained to a more exact, ſufficient, and uſeful way of 'teaching to write and ſpeak the tongues than has hitherto been 'communicated.'—Therefore grants to him, his deputes, ſubſtitutes and aſſignies for 14 years, 'to have the whole teaching of all ſuch as deſire the ſame in the tongues and languages 'by the way and means by him invented. And the *ſole privilege of printing and vending* all and every book and books whatſoever, which now are or hereafter ſhall be *invented* by him, or 'by him made ſerviceable to the purpoſe aforeſaid, for the term 'of 31 years.' And prohibits all others from attempting to teach by the method invented by the ſaid John Webb, or to tranſport out of the kingdom any of the foreſaid books, or to reprint the ſame within the kingdom;—yielding and paying to his Majeſty for the ſaid privilege, *one fifth of the clear benefit* accreſcing thereby, and that yearly, at the feaſt of the annunciation for the whole foreſaid term, (the firſt three years being free) with L. 10 penalty, if not paid within ſixty days thereafter.

9th

9th March 1626, Caleb Morely obtained a ſimilar privilege for 21 years, of printing and vending every book and books which now are, or hereafter ſhall be *invented by him*, or by him made ſerviceable to the purpoſe therein mentioned, (viz. a method invented by him for the firm and infallible help of memory, and grounding of ſcholars in ſeveral languages, but chiefly in the Latin and Engliſh tongues) as alſo, all ſuch tables, modules and works whatſoever, which may any way further his ſaid good intention.

4th July 1635, a patent is given to Francis Holyoak for the ſole printing a book compiled by him, called *Dictionarium Etymologicum Latinum*, for 14 years. The preamble bears, that his majeſty, 'being willing to encourage his ſubjects in all lawful 'and commendable ſtudies and endeavours, *by appropriating unto 'them for ſome term of years*, the benefit and fruits of their labours,' therefore grants, &c. A clauſe is thrown in at the end to this effect; That if at any time during the ſaid 14 years, it ſhould appear to his Majeſty or the Privy Council, 'that the grant is con-'trary to the laws, or in any ſort inconvenient to the ſtate of 'the realm,' then, upon ſignification thereof by his Majeſty, under the ſignet or privy ſeal, or by the Privy Council, or any ſix of them under their hands, that the ſame is illegal or inconvenient, theſe letters patent ſhall forthwith ceaſe.

18th Auguſt 1635, a ſimilar privilege is given to William Braithwaite for the ſole privilege of printing, according to the method deviſed by him, any book, poem, or leſſon, for the more eaſy teaching of muſic, and the furtherance of poetry, oratory, and pronunciation of the Greek and Latin tongues for 21 years. This grant has the ſame clauſe in the preamble, and contains the ſame proviſo, as the immediately preceding one.

From theſe it appears what was the inductive cauſe of granting ſuch privileges, viz. 'to encourage the ſubjects in all lawful and 'commendable ſtudies, by appropriating unto them, for ſome 'term of years, the benefits and fruits of their labours.' In ſome other inſtances, theſe ſpecial grants and ordinances are expreſsly mentioned, as being the only foundation of the rights of authors and publiſhers; for example, a proclamation againſt the diſorderly printing and diſpoſing of books, pamphlets, &c. 25th September, 1623, narrates a decree of the Star-Chamber, anno 1586, and 'that the true intent and meaning of the ſaid decree

'has

'has been cautiouſly eluded, by printing beyond ſea and elſe-
'where, as well ſundry ſeditious books, &c. as alſo ſuch allow-
'ed books, works, and writings, as have been imprinted with-
'in the realm by ſuch, to whom the ſole printing thereof *by let-*
'ters patent or lawful ordinance or authority doth appertain, accord-
'ing to the true intent of the ſaid decree, and by importing
'the ſame into this our realm.' And a proclamation 15th April 1636, concerning the book, intitled *Mare Clauſum*, is expreſſed in ſimilar terms.

The great numbers of thoſe patents, which are to be found from the reign of Queen Elizabeth downwards, are another ſtrong proof of the ſenſe of authors, that they had no excluſive power at common law over their works after publication.

It appears too from ſome of the patents already cited, that it was a matter of doubt, whether the granting ſuch privileges even for a limited time was not contrary to the rights of the ſubject, and miſchievous to the ſtate.

In ſome caſes, ſo little were literary compoſitions conſidered to be the property of the authors, that, thoſe who obtained excluſive grants, were burdened with the payment of an annual ſum to the King.

To theſe obſervations may be added, that the Univerſities of Cambridge and Oxford obtained grants, from time to time, for printing and vending all books whatſoever, without taking any notice of the rights of authors *.

We do not find that Shakeſpear or Ben Johnſon, though their works were valuable, ever dreamed of having any excluſive right in them. Various editions of their plays came forth in their own time, not publiſhed by them, but by the prompters of the different places of exhibition.

Ja. I. of England made a tranſlation of David's Pſalms. This work was publiſhed by order of his ſon Ch. I. who claimed no property in the book, but gave it the protection of a patent. His words are, 'whereof our late dear father was author;' and he ſays, he has ordered it to be peruſed, 'and, being found to be 'truely and exactly done, we do hereby authoriſe the ſame to be 'imprinted according to the patent granted thereupon.' The

* See patent in favour of the Univerſity of Cambridge, 20th July 1534, and patent in favour of the Univerſity of Oxford, 12th November 1632.

edition

edition was printed at Oxford 'by William Turner, printer to the 'famous Univerſity, 1631.'

Swift's Letters, above noticed, ſhow, That he never underſtood himſelf to be proprietor of the works publiſhed by him. Mr. *Pope*'s opinion too appears from the ſale of his Homer, in 1712. The conveyance granted by him, was 'of the copy-right 'for fourteen years certain, or as long after as he is enabled by 'the ſtatute of Queen Anne to do it.'

And that Lord *Bolingbroke* was of the ſame opinion, may be inferred from his will, which, after ſetting forth, That he was the author of certain books, or tracts, therein mentioned, ſome of them already publiſhed, others not, adds, 'But I have not 'aſſigned to any perſon or perſons whatſoever, the copy, or the 'liberty of printing or reprinting any of the ſaid books or tracts, 'or letters. Now I do hereby, *as far as by law I can*, give and 'aſſign to David Mallet of Putney, in the county of Surry, 'Eſquire, the copy and copies of all and each of the before-'mentioned books, or tracts, or letters; and the liberty of re-'printing the ſame.'

Swift's letters by Hawkeſworth, vol. 3. let. 379.

Rolt, in his Dictionary of trade and commerce, ſecond edition, London, 1761, under the word *Book*, defines it to be, 'a work 'of wit or genius, compoſed and printed for the public utility, 'or ſometimes only for curioſity and pleaſure.' And adds, 'The 'ſtatute of Queen Anne regulates the property of authors.' Under the word *Privilege*, he ſays, 'Privilege for the impreſſion 'of books is properly excluſive, being a permiſſion which an 'author or bookſeller obtains under a Prince's ſeal, to have alone 'the impreſſion of a book, with a prohibition of all others to 'print, ſell, or diſtribute the ſame, within a certain term of 'years, uſually *fourteen*, under clauſes and penalties expreſſed 'therein. Theſe privileges were unknown till the beginning 'of the ſixteenth century, when they were introduced in France. 'The oldeſt is ſaid to bear date in the 1507, and to have been 'occaſioned by ſome printers counterfeiting the works of au-'thors as ſoon as they appeared. But people were yet at liber-'ty to take them, or let them alone, at pleaſure, till the inte-'reſts of religion and the ſtate occaſioned the reſtraining of 'this liberty. In 1563, Charles IX. publiſhed a celebrated *or-'donnance*, forbidding any perſon, on pain of confiſcation of

‘ body and goods, to print any letter, ſpeech, &c. without ‘ permiſſion. The like has been ſince done in England; though ‘ at preſent, privileges are not only ſeldom required, but, by ‘ the late act for ſecuring the properties of books, ſeem need- ‘ leſs.’

Several other writers of note have declared againſt literary property, ſo far as claimed independent of the ſtatute. The author of a Letter to a member of Parliament, printed in 1747, ſeems to have been the firſt who entered the liſts on the other ſide. This letter has been aſcribed to an author of reputation, and of high rank in the Church, but probably by miſtake; as the perſon here meant had ſo little faith in the doctrine of common-law property, that when he publiſhed the works of Mr. Pope, with his own notes and commentaries, he applied for and obtained from his late Majeſty a patent for a term of years, prefixed to the edition 1764 of the ſaid work *.

From this patent, containing no penalties, but ſimply a grant of excluſive property for a term of years, and from a note againſt monopolies, Vol. iv. p 276. of the 8*vo* edition, 1760, it may be inferred what the learned editor's opinion was on the ſubject of literary property. Yet the anonymous letter imputed to him has been much founded on by the purſuer in this cauſe; and appears to have been adopted by *Poſtlethwhayt* in the laſt edition of his book, publiſhed in 1766, where he has been prevailed on by his bookſeller to inſert it *verbatim*, under the article *Book*; though his own remarks ſhow, that he does not think the property of authors is yet ſufficiently eſtabliſhed. For he ſays, ‘ Though what this learned gentleman has urged is ‘ more than ſufficient to ſhow the juſtice of *a law for the ſecurity* ‘ *of literary property*; yet we ſhall preſume to add a word more, ‘ by obſerving what effect this *would have* on particulars, and on ‘ the public.’—The reaſons offered by him for *making ſuch a law*,

* It bears, That “ being deſirous of reaping the fruits of his labour, *which he cannot enjoy without our royal licence and protection*, he hath therefore moſt humbly beſought Us to “ grant him our royal privilege and licenſe, for the ſole printing, publiſhing, and vending “ the ſaid works, *for the term of fourteen years:* We being graciouſly pleaſed to gratify him “ in his ſaid requeſt, do by theſe preſents, agreeable to the ſtatute in that behalf made and “ provided, for Us, our heirs and ſucceſſors, give and grant, &c.

which

which he ſays is ſtill wanted here, are ſomewhat extraordinary: In the *firſt* place, That it would tend to make books *cheaper*; and, *ſecondly*, That the licentiouſneſs of libelling the government, and inſulting the church, and goſpel itſelf, by impious books, would be *eaſier remedied*, than when property is inſecure. Under the word *Patent*, he ſays, 'Nothing is more inſecure in 'this nation than literary property.'

Savary, from whom this work is borrowed, ſays, '*Privilege* '*pour l'impreſſion des livres.* Ce privilege eſt proprement excluſif; 'c'eſt une permiſſion qu'un *auteur*, ou un libraire, *obtient au grand* '*ſceau*, pour avoir ſeul la permiſſion d'imprimier un livre, avec 'defenſes a touts autres de l'imprimier, vendre, & debiter, pen-'dant *un certain nombre d'annees*, avec les clauſes et ſous les peins 'qui y ſont exprimees.'

Mr. Blackſtone has been appealed to as an authority of weight in favour of literary property, But when the paſſage in his book is conſidered, it would rather ſeem that he is doubtful in his opinion. He admits, that a work may be tacitly given to the public, when the author permits it to be publiſhed without any reſerve of right, and without ſtamping on it any mark of ownerſhip. And he adds, '*Neither with us in England, hath there* '*been any direct 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 pro-'perty; eſpecially where either the injunctions have been per-'petual, or have related to unpubliſhed manuſcripts, or to ſuch 'ancient books as were not within the proviſions of the ſtatute 'of Queen Anne. Much may alſo be collected from the ſeve-'ral legiſlative recognitions of copy-rights; and from thoſe ad-'judged caſes at common law, wherein the Crown hath been 'conſidered as inveſted with certain prerogative copy-rights: '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.'

B. II. c. 26. § 8.

Here your Lordſhips ſee it expreſsly admitted, That when this very learned author wrote, which was within theſe few years, there never had been any direct determination in England upon the right of authors at common law; and indeed the fact

fact is certain, that till the cafe of Millar againſt Taylor was adjudged very lately in the Court of King's Bench, the point was entire as to any *judicial determination.* The circumſtances of that caſe will in the ſequel be explained. In the mean time, as Mr. Blackſtone ſays, that much may be gathered from the injunctions in Chancery, it may be proper to inquire into theſe.

Injunctions. With regard to injunctions, in the *firſt* place, it may in general be obſerved, That injunctions of the Court of Chancery are no evidence of a common-law right. They are every day granted in caſes where there is no remedy at common law. A variety of inſtances of this kind will be found in the Equity Caſes abridged. *2dly*, Theſe injunctions often paſs of courſe, upon a bill being filed, without any anſwers from the defendant. They are ſomething of the nature of a ſiſt upon a bill of ſuſpenſion in Scotland.

The defenders are informed, that the Court of Chancery has never yet avowedly proceeded in its injunctions touching literary compoſition, upon the principle of an inherent property, antecedent to the act of Parliament, and independent of ſpecial privilege.

The only injunctions which appear *prior* to the act, are; 15th November 1681, Stationers Company *v.* Lee, for printing almanacks; 17th November 1681, Stationers *v.* Wright, for the ſame; 9th and 22d February 1709, Stationers *v.* Partridge, for ſelling almanacks. Theſe were all upon patent-rights, and therefore have nothing to do with the preſent queſtion.

The injunctions *ſince* the act, may be ſubdivided into three claſſes. *1ſt.* Injunctions upon the right given by ſtatute. Of this kind are the two caſes, in which Mr. Blackſtone ſays, the injunctions were perpetual: *viz.* Knaplock *v.* Curl, 9th November 1722; and Baller *v.* Watſon, 6th December 1737. And of the ſame kind, the defenders are informed, were, 28th November 1735, Motte *v.* Faulkner; and 27th January 1736, Waltho, *v.* Walker. Injunctions given to inforce the ſtatute, do in no ſhape apply to the preſent caſe. *Viner*, under the title, *Books and Authors*, mentions Knaplock *v.* Curl, and ſays, that the plaintiff claimed the ſole right, *&c. per ſtat.* 8. *An.* He takes notice of ſeveral other injunctions, but all of them under the ſtatute.

2dly,

2*dly*, Injunctions to reſtrain the publication of papers obtained ſurreptitiouſly. Of this kind were; 24th May 1732, Webb *v.* Roſe; 5th June 1741, Pope *v.* Curl; 13th June 1741, Forreſter *v.* Walker; 31ſt July 1758, Duke of Queenſberry *v.* Shebbeare. In theſe caſes, where manuſcripts were clandeſtinely obtained and printed, the Court of Chancery had no occaſion to go on the ſuppoſed common-law right of authors, to the perpetual monopoly of their works; for, independent of this queſtion, it was certainly proper to reſtrain ſo fraudulent an act as that of publiſhing an author's manuſcript without his conſent. Beſides, the idea of the Court might be to ſecure to learned and induſtrious men, the right given by the ſtatute, and to hinder the piratical printer from robbing the author of a benefit, which, though not actually then veſted, might become veſted in him for fourteen years, with a contingent term of fourteen more, as ſoon as he choſe to publiſh.

3*dly*, Injunctions when the books were old, and the caſe not within the terms of the ſtatute. This is the only kind of injunction from which any aid can poſſibly be drawn in favour of literary property. At the ſame time, when the inſtances are examined, they will be found to be of no avail. The firſt is, Eyre *v.* Walker, for the Whole Duty of Man, 9th June 1735. In this there was only an injunction *till full anſwer, or further order*. Injunctions of this kind may eaſily be obtained, as the fact is taken upon the ſtating of the bill. Nothing further appears to have been done in this caſe. It never came to a final hearing, ſo that no concluſion can be drawn from it.

The next is, Tonſon *v.* Walker, for Dr. Newton's Milton, in 1752. From a written note of this caſe, it appears, that the counſel for the defendant was interrupted by the then Lord Chancellor, who deſired to know, whether the life, and preface, and notes, were not within the 8th Anne. On the firſt hearing, his Lordſhip ſent the book to the Maſter in Chancery, to ſee what notes there were of Mr. Merchant's, the piratical editor, and how many of Dr. Newton's. Afterwards his Lordſhip ſaid, he had been inclined to ſend a caſe to the Judges, in order to ſettle the general queſtion of law; but as Dr. Newton's notes came within the act of Queen Anne, without deciding on the point of

law, Merchant had no right to Dr. Newton's notes; and he continued the injunction.

The case of Millar *v.* Donaldson, came before the next Lord Chancellor. This was a motion at the first seal after Trinity term, 1765, to continue the injunctions which had been obtained upon a bill without answers, to stay publication of the following books; *Thomson's Seasons*, claimed by Millar; *Pope's Iliad*, by Osburne; *Swift's Miscellanies* with notes, and the life of the author, by Bathurst. A written note of the case says, it was observed, 'I have 'seen no case where the terms of the act being expired, the 'Court has continued the injunction, after answer put in.—If I 'see a question of law, I only delay the parties by an injunction, 'when I see that at the hearing I shall send them to law; for 'they may go directly to law without the delay of this Court.— 'But where I see it within the statute, then I should, according 'to the precedents which I must approve, stay the publication. '—In the case of the Stationers Company, the Court went on 'the right of the letters patent: The Crown was considered as '*Pater patriæ*; and it was proper to print the acts of State, and 'that the Crown should have the power of doing it.—In this 'case, it is a capital question in law, subtile in its nature, and 'extensive in its consequences.—It would be presumption in me, 'to determine a question worthy of the highest consideration of 'any Court in Westminster-hall; therefore, I shall say nothing 'as to the merits:—It might be flattery to ones self, on the one 'hand, to determine for authors, in order to get fame and pa- 'negyric from them; and on the other hand, it would be dan- 'gerous to vest the property; for that contains not only a right 'to publish, but also to suppress, by which means, those who 'have a right to the greatest authors, may suppress them, which 'would be a fatal consequence to the public.—These outlines 'are so extensive, that I do not care to draw them nearer in so 'great a question. But as at the hearing I shall send it to law, 'I think I ought to dissolve the injunction, *and leave the parties 'to proceed at law*, in regard to Thomson's Seasons and Pope's 'Homer's Iliad, which are both out of the act.—Swift's Miscel- 'lanies stand on the same footing with Newton's Milton; for 'the Life of Swift by Dr. Hawkesworth is new, and within the 'act.' Accordingly the injunctions were dissolved, *except as to Swift's Miscellanies;* and this was afterwards dissolved.

Soon

Soon after came Millar *v.* Taylor, before the ſame Lord Chancellor, on motion to diſſolve the injunction obtained by the plaintiff, againſt publiſhing Thomſon's Seaſons.—The injunction had been granted by Mr. Baron Smyth, who ſat on a former occaſion for the Lord Chancellor. But at the time of granting the injunction, Mr. Baron Smyth had made a caſe for the King's Bench. —On the preſent motion, the Court proceeded on the principles of the former caſe *v.* Donaldſon, and therefore diſſolved the injunction.

Another caſe, of Millar *v.* Taylor, for printing Young's Night-Thoughts, came before the maſter of the rolls, Michaelmas term 1765. The book was manifeſtly within the 8th Anne, and a perpetual injunction was prayed. A note of the caſe ſays, it was obſerved, That a perpetual injunction might be improper, as it ſeemed to imply perpetual right. 'I think the injunction ought 'to be continued, but it ought to be ſo framed, as not to im-'ply a right beyond the two terms of *fourteen years*.'

The next caſe in Chancery known to the defenders was, Macklin *v.* Richardſon, which came before the late Lord Chancellor, Trinity term 1768, relative to an injunction granted to ſtay the publication of *Love A-la-mode*, a farce written by Macklin.—The defendant had employed one Gurney, a ſhort-hand writer, to attend the performance at the play-houſe, and had the copy of him for one guinea. The firſt act was printed in a magazine, and the ſecond act was promiſed in a ſubſequent number. Macklin had never printed his farce, or transferred the copy-right. It appears, from a written note of the caſe, that after hearing counſel for the plaintiff, the Court deſired to know, Whether the queſtion of law was decided. 'Before he 'moved a ſtep, he deſired to know the ground.' The cauſe therefore was ordered to ſtand over till the general queſtion of property ſhould be determined. The defenders are informed, that Richardſon has ſince been condemned in one ſhilling damages.

It is ſaid, That the London bookſellers have all along been afraid of bringing the matter to a ſolemn trial at law, though much induſtry has been uſed in applying for injunctions in the Court of Chancery; and that more than once they have attempted to accompliſh their purpoſe, by a colluſive trial. Thus it is informed,

informed, that in 1758, a ſuit was commenced by them in the Court of Chancery, againſt one Collins of Saliſbury, for vending copies of the Spectator printed in Scotland. Collins had by this time become deeply concerned in copy-right, in conjunction with the London bookſellers, ſo that it was very much his intereſt to loſe the cauſe; becauſe the advantage that would accrue to him from perpetuating the excluſive right, would far overbalance any trifling damages to which he could be ſubjected for ſelling Scotch Spectators, ſuppoſing it had been underſtood or intended that he ſhould pay. Collins's defence, therefore, it will be readily believed, was not managed with the greateſt accuracy; but the Court, upon hearing the caſe, being ſenſible of its importance, and perhaps ſuſpecting what was at bottom, referred the matter to the twelve Judges, and it has lain over ever ſince.

Thus matters ſtood, when; in conſequence of the above proceedings in Chancery, in the caſes of Millar *v.* Donaldſon, and *v.* Taylor, the plaintiff Millar at laſt brought his trial before the Court of King's Bench. The particulars of the trial are ſaid to have been theſe.

The ſubject in diſpute was Thomſon's Seaſons, a book firſt publiſhed in 1727. The monopoly of twenty-eight years expired in 1755. After that period, many editions of it were printed openly, with the names of the publiſhers affixed to the title-page, without any challenge from Millar, (who had purchaſed the copy-right from the author,) till 1763, when an injunction was obtained in Chancery againſt Donaldſon, and another againſt Taylor, to ſtop the ſale of an edition printed by Donaldſon; which injunctions, however, were afterwards in 1765 diſſolved upon anſwers, as already ſaid. Millar proceeded no farther in his ſuit with Donaldſon, but went on with Taylor, whom he ſeems to have thought a fitter perſon to be dealt with, in caſe at any time a compromiſe ſhould be needful. It may be obſerved, that Taylor had not printed the Seaſons, but only ſold ſome of Donaldſon's impreſſion.

The injunction having been diſſolved in the Court of Chancery, and the parties left to try the matter at common law, this of itſelf is proof poſitive, that hitherto the point was undetermined; and it is likewiſe proof, that the Court of Chancery conſidered it as a common-law queſtion, which did not fall to be determined

termined upon ſuggeſtions of equity in the Court of Chancery, but neceſſarily required the deciſion of the courts of law.

The trial having proceeded in the Court of King's Bench, the jury returned a verdict, finding the fact of publication; and the Court afterwards gave judgment in favour of the plaintiff, but not without contrariety of opinion.

The defendant at firſt took out a writ of error againſt the determination. Afterwards, however, it is informed, he was prevailed on to compromiſe matters with the bookſellers, who, it is ſaid, paid all his expences. Accordingly, he withdrew his writ of error.

A judgment of the Court of King's Bench, eſtabliſhing a point of the common law of England, not formerly decided, is undoubtedly of the higheſt authority in that country; but it cannot be admitted as concluſive of the preſent queſtion, which muſt neceſſarily be tried by the law of Scotland*.

The legiſlative recognitions, mentioned by Mr. Blackſtone, when looked into, are foreign to the purpoſe. The licenſing act, 13th Charles II. *cap.* 33. has already been ſpoke to. The act, 10th Q. Anne, *cap.* 19. § 112. only acknowledges that ſort of property, which was veſted by the act 8th of Q. Anne; and the act 5th of his preſent Majeſty, *cap.* 12. § 26. relates to ſelling pamphlets and newſ-papers without the author or publiſher's name.

The only other thing, founded on, is the Crown's prerogative copy-right to certain books, ſuch as Bibles and Acts of Parliament, which has already been explained, and has no connection with the preſent queſtion.

Theſe obſervations on the law of England are ſubmitted with the greateſt diffidence; and the defenders ſhall only add upon this head, that, if the law of England ſtands in favour of literary property, it is different from the law of Scotland, or of other countries. In France, patents are given to authors and bookſellers from ten to twenty years. And it appears that the great Colbert was of opinion, that even theſe gave too much opportunity

Colbert's political Teſtament.

* It is informed, that another injunction was lately moved for in the Court of Chancery, againſt Mr. Donaldſon, for printing Thomſon's Seaſons; and that the ſame was granted without any hearing on the merits, as it was underſtood in the Court, that Mr. Donaldſon was to bring the queſtion by appeal before the Houſe of Lords, which he is accordingly preparing to do.

opportunity to the ſtationers of Paris to oppreſs the bookſellers in other parts of the kingdom, whereby books were kept at an exorbitant price. It is believed, in Holland and in Germany, daily inſtances occur of temporary excluſive privileges to authors. Many of them are to be ſeen prefixed to their books. But it will not be pretended, that there is any ſuch thing there, as that which is now termed in England *a literary property at common law.*

V. Circumſtances of the preſent caſe.

V. The defenders ſhall not beſtow many words on the ſpecial circumſtances of this caſe, which plainly ſhow, that the purſuer, and thoſe in whoſe right he pretends to have come, had originally no view to a claim of property at common law, or to any thing further than a temporary right by patent in the work now in queſtion. The reverend author ſeems at firſt to have meant, that this work ſhould be abandoned to the public, as it is believed, he did not ſo much as enter it in Stationers Hall; but afterwards, having been told by his bookſeller, that ſomething might be made of reprinting it under an excluſive patent for a certain number of years, he aſſigned his right with that view, and a patent was obtained.

This patent, unguarded by penalties, and merely giving an excluſive right for the term of fourteen years, was clearly of no uſe, if ſuch right was antecedently in him not for fourteen years only, but for ever. If he could convey his property at common law, and if this conveyance would have been a ſufficient ground of action to the aſſignee againſt every violator of it, what higher right, what greater benefit, did the patent confer upon him? what better action could he maintain upon the patent, than upon his common law-property?

When Mr. Auſtin publiſhed the work with his patent prefixed, did he not hold forth to the world, that he had an excluſive right of printing this book for fourteen years, and for that term only? and did he not in effect acknowledge and declare, that, the term of the patent being elapſed, every other perſon might print and publiſh the work at pleaſure? If his preſent plea be good, he laid a ſnare for the lieges by founding only on his patent, which ought to bar him from the preſent action.

Neither was his conduct juſtifiable, in allowing the intended new edition to be advertiſed for two years and a half in all the

newſ-

newſ-papers without any challenge, and then bringing the preſent action upon titles ſcarce connected even with the aſſignee of the author, in order that he might run away with the profits, without being at the expence or trouble of the publication.

It may be added, that as the purſuer is a foreigner with reſpect to Scotland, and as this book of which he claims the property is the work of a foreigner, the queſtion is to be conſidered entirely in the ſame light, as if the action were brought at the inſtance of a *French* bookſeller, complaining of the defenders for having republiſhed in Scotland a book, which had been originally printed in France; and how far ſuch an action ought to be ſuſtained, even though the general doctrine of literary property were eſtabliſhed, may admit of conſiderable doubt.

The London bookſellers themſelves, have never underſtood, that the property of foreign authors extended to England, or that Voltaire, and other French writers of the firſt note, whoſe works are daily reprinted in England without leave aſked or given, would have any right to ſue the Engliſh publiſher, upon the common law of England. It would not be convenient to carry the doctrine ſo far; and yet it does not occur what better right an Engliſh bookſeller can have to come to Scotland, and there to maintain, that his property is invaded by a perſon who has done nothing more than exerciſed his buſineſs of a printer within Scotland, and who neither has encroached upon the right of any of the leiges of this country, nor can be accuſed of any violation of the common law of England having never ſet his foot in that kingdom, nor ſubjected himſelf to its laws.

The preſent queſtion can never be tried upon the common law of England, for the defenders are not bound to know any thing of that law, or to regulate their conduct by it in any ſhape. The purſuer muſt be able to ſay that, he has a property in this work by the common law of *Scotland*, which property happening to be accidentally in this country, has been unjuſtly ſeized by theſe defenders, whom he ſues before your Lordſhips, as the proper juriſdiction in order to obtain reſtitution from them. But upon what footing is it that the common law of Scotland can regulate the property of foreign authors with regard to works compoſed and publiſhed in another country? This would be giving it an effect beyond what the common law of England is allowed to have; and the conſequences of extending

ing it ſo far would be highly inexpedient; as at this rate, we could not print a ſingle foreign book in Scotland, and we would be at the mercy of the bookſellers of other countries for every work not originally publiſhed in Scotland, ſo that the learning of this country would ſoon come within a very narrow compaſs.

It is ſubmitted, that theſe circumſtances ought to have weight in aid of the general argument; and upon the whole, the defenders, with humble confidence, expect to be abſolved from this action.

In reſpect whereof, &c.

ILAY CAMPBELL.

Anno Octavo Annæ Reginæ.

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 mentioned.

WHEREAS printers, bookſellers, and other perſons have of late frequently taken the liberty of printing, reprinting, 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 ſuch practices for the future, and for the encouragement of learned men to compoſe and write uſeful books; may it pleaſe your Majeſty, that it may be enacted, and be it enacted by the Queen's moſt Excellent Majeſty, by and with the advice and conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of April, One thouſand ſeven hundred and ten, 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 perſons, who hath or have purchaſed or acquired 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 printing ſuch book and books for the term of *one and twenty years*, to commence from the ſaid tenth 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 aſſignee 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 the firſt publiſhing the ſame, *and no longer*: And that if any other bookſeller, printer, or other perſon whatſoever, from and after the tenth day of April, One thouſand ſeven hundred and ten, within the times granted and limited by this act, as aforeſaid, ſhall print, reprint, or import, or cauſe to be printed, reprinted, or imported, any ſuch book or books, without the conſent of the proprietor or proprietors thereof firſt had and obtained in writing, ſigned in

the preſence of two or more credible witneſſes, or knowing the ſame to be ſo printed or reprinted, without the conſent of the proprietors, ſhall ſell, publiſh, or expoſe to ſale, or cauſe to be ſold, publiſhed, or expoſed to ſale, any ſuch book or books, without ſuch conſent firſt had and obtained, as aforeſaid, Then ſuch offender or offenders ſhall forfeit ſuch book or books, and all and every ſheet or ſheets, being part of ſuch book or books, to the proprietor or the proprietors of the copy thereof, who ſhall forthwith damaſk and make waſte paper of them: And further, That every ſuch offender or offenders ſhall forfeit one penny for every ſheet which ſhall be found in his, her, or their cuſtody, either printed or printing, publiſhed or expoſed to ſale, contrary to the true intent and meaning of this act, the one moiety thereof to the Queen's moſt excellent Majeſty, her heirs and ſucceſſors, and the other moiety thereof to any perſon or perſons that ſhall ſue for the ſame, to be recovered in any of her Majeſty's Courts of Record at Weſtminſter, by action of debt, bill, plaint, or information, in which no wager of law, eſſoign, privilege, or protection, or more than one imparlance ſhall be allowed.

And whereas many perſons may through ignorance offend againſt this act, unleſs ſome proviſion be made, whereby the property of every ſuch book, as is intended by this act to be ſecured to the proprietor or proprietors thereof, may be aſcertained, as likewiſe the conſent of ſuch proprietor or proprietors for the printing or reprinting of ſuch book or books may from time to time be known: Be it therefore further enacted by the authority aforeſaid, That nothing in this act contained ſhall be conſtrued to extend to ſubject any bookſeller, printer, or other perſon whatſoever, to the forfeitures or penalties therein mentioned, for or by reaſon of the printing or reprinting of any book or books without ſuch conſent as aforeſaid, unleſs the title to the copy, or ſuch book or books hereafter publiſhed, ſhall, before ſuch publication, be entered in the regiſter-book of the Company of Stationers, in ſuch manner as hath been uſual, which regiſter-book ſhall at all times be kept at the Hall of the ſaid Company; and unleſs ſuch conſent of the proprietor or proprietors be in like manner entered, as aforeſaid; for every of which ſeveral entries ſixpence ſhall be paid, and no more; which ſaid regiſter-book may, at all ſeaſonable and convenient times, be reſorted to, and inſpected by any bookſeller, printer, or other perſon, for the purpoſes before mentioned, without any fee or reward;

and

and the clerk of the ſaid Company of Stationers ſhall, when and as often as thereunto required, give a certificate under his hand of ſuch entry or entries, and for every ſuch certificate may take a fee not exceeding ſixpence.

Provided nevertheleſs, That if the clerk of the ſaid Company of Stationers for the time being, ſhall refuſe or neglect to regiſter or make ſuch entry or entries, or to give ſuch certificate, being thereunto required by the author or proprietor of ſuch copy or copies, in the preſence of two or more credible witneſſes, That then ſuch perſon and perſons ſo refuſing, notice being firſt duly given of ſuch refuſal, by an advertiſement in the Gazette, ſhall have the like benefit as if ſuch entry or entries, certificate or certificates, had been duly made and given; and that the clerks ſo refuſing, ſhall, for any ſuch offence, forfeit to the proprietor of ſuch copy or copies the ſum of twenty pounds, to be recovered in any of her Majeſty's Courts of Record at Weſtminſter, by action of debt, bill, plaint, or information, in which no wager of law, eſſoign, privilege, or protection, or more than one imparlance ſhall be allowed.

Provided nevertheleſs, and it is hereby further enacted by the authority aforeſaid, That if any bookſeller or bookſellers, printer or printers, ſhall, after the ſaid five and twentieth day of March, One thouſand ſeven hundred and ten, ſet a price upon, or ſell, or expoſe to ſale, any book or books at ſuch a price or rate as ſhall be conceived by any perſon or perſons to be high and unreaſonable; It ſhall and may be lawful for any perſon or perſons to make complaint thereof to the Lord Archbiſhop of Canterbury for the time being; the Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain for the time being; the Lord Biſhop of London for the time being; the Lord Chief Juſtice of the Court of Queen's Bench, the Lord Chief Juſtice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, for the time being; the Vice-Chancellors of the two Univerſities for the time being, in that part of Great Britain called England; the Lord Preſident of the Seſſions for the time being; the Lord Juſtice General for the time being; the Lord Chief Baron of the Exchequer for the time being; the Rector of the College of Edinburgh for the time being, in that part of Great Britain called Scotland; who, or any one of them, ſhall and have hereby full power and authority, from time to time, to ſend for, ſummon, or call before him

or

or them ſuch bookſeller or bookſellers, printer or printers, and to examine and enquire of the reaſon of the dearneſs and enhancement of the price or value of ſuch book or books by him or them ſo ſold or expoſed to ſale; and if upon ſuch enquiry and examination it ſhall be found, that the price of ſuch book or books is enhanced, or any wiſe too high or unreaſonable, then and in ſuch caſe the ſaid Archbiſhop of Canterbury, Lord Chancellor or Lord Keeper, Biſhop of London, two Chief Juſtices, Chief Baron, Vice-Chancellors of the Univerſities, in that part of Great Britain called England; and the ſaid Lord Preſident of the Seſſions, Lord Juſtice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one or more of them, ſo enquiring and examining, have hereby full power and authority to reform and redreſs the ſame, and to limit and ſettle the price of every ſuch printed book and books, from time to time, according to the beſt of their judgments, and as to them ſhall ſeem juſt and reaſonable; and in caſe of alteration of the rate or price from what was ſet or demanded by ſuch bookſeller or bookſellers, printer or printers, to award and order ſuch bookſeller and bookſellers, printer and printers, to pay all the coſts and charges that the perſon or perſons ſo complaining ſhall be put unto, by reaſon of ſuch complaint, and of the cauſing ſuch rate or price to be ſo limited and ſettled; all which ſhall be done by the ſaid Archbiſhop of Canterbury, Lord Chancellor or Lord Keeper, Biſhop of London, two Chief Juſtices, Chief Baron, Vice-Chancellors of the two Univerſities, in that part of Great Britain called England; and the ſaid Lord Preſident of the Seſſions, Lord Juſtice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one of them, by writing under their hands and ſeals, and thereof public notice ſhall be forthwith given by the ſaid bookſeller or bookſellers, printer or printers, by an advertiſement in the Gazette; and if any bookſeller or bookſellers, printer or printers, ſhall after ſuch ſettlement made of the ſaid rate and price, ſell, or expoſe to ſale, any book or books at a higher or greater price than what ſhall have been ſo limited and ſettled, as aforeſaid, Then and in every ſuch caſe, ſuch bookſeller and bookſellers, printer and printers, ſhall forfeit the ſum of five pounds for every ſuch book ſo by him, her, or them ſold or expoſed to ſale, one moiety thereof to the

Queen's

Queen's moſt Excellent Majeſty, her heirs and ſucceſſors, and the other moiety to any perſon or perſons that ſhall ſue for the ſame, to be recovered, with coſts of ſuit, in any of her Majeſty's Courts of Record at Weſtminſter, by action of debt, bill, plaint, or information, in which no wager of law, eſſoign, privilege, or protection, or more than one imparlance ſhall be allowed.

Provided always, and it is hereby enacted, That nine copies of each book or books, upon the beſt paper, that from and after the ſaid tenth day of April, One thouſand ſeven hundred and ten, ſhall be printed and publiſhed, as aforeſaid, or reprinted and publiſhed with additions, ſhall, by the printer and printers thereof, be delivered to the warehouſe-keeper of the ſaid Company of Stationers for the time being, at the Hall of the ſaid Company, before ſuch publication made, for the uſe of the Royal Library, the Libraries of the Univerſities of Oxford and Cambridge, the Libraries of the four Univerſities in Scotland, the Library of Sion College in London, and the Library commonly called the Library belonging to the Faculty of Advocates at Edinburgh, reſpectively; which ſaid warehouſe-keeper is hereby required, within ten days after demand by the keepers of the reſpective Libraries, or any perſon or perſons by them or any of them authorized to demand the ſaid copy, to deliver the ſame, for the uſe of the aforeſaid libraries; and if any proprietor, bookſeller, or printer, or the ſaid warehouſe-keeper of the ſaid Company of Stationers, ſhall not obſerve the

-his act therein, That then he and they, ſo making

delivering the ſaid printed copies, as aforeſaid,

the value of the ſaid printed copies, the ſum

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Fellows of Sion College, and the

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her enacted, That if any per-

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Provided,

Provided, That nothing in this act contained, do extend, or ſhall be conſtrued to extend, to prohibit the importation, vending or ſelling of any books in Greek, Latin, or any other foreign language, printed beyond the ſeas; any thing in this act conta ned to the contrary notwithſtanding.

And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced or brought againſt any perſon or perſons whatſoever, for doing or cauſing to be done any th ng in purſuance of this act, the defendants in ſuch action may plead the general iſſue, and give the ſpecial matter in evidence; and if upon ſuch action a verdict be given for the defendant, or the plaintiff become nonſuited, or diſcontinue his action, then the defendant ſhall have and recover his full coſts, for which he ſhall have the ſame remedy as a defendant in any caſe by law hath.

Provided, 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.

Provided nevertheleſs, That all actions, ſuits, bills, indictments, or informations for any offence that ſhall be committed againſt this act, ſhall be brought, ſued, and commenced within three months next after ſuch offence committed, or elſe the ſame ſhall be void and of none effect.

Provided always, That after the expiration of the ſaid term of fourteen years, the ſole *right* of printing or diſ
ſhall return to the authors thereof, if they ar
another term of *fourteen years*.