AN

ARGUMENT

IN DEFENCE OF

LITERARY PROPERTY.

By FRANCIS HARGRAVE, Esq.

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TO WHICH IS ADDED,

A POSTSCRIPT,

APOLOGIZING FOR THE TIME AND MODE OF FIRST PUBLISHING THE ARGUMENT.

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ADVERTISEMENT.

IT will be eaſy to gueſs, from the Introduction to the following ARGUMENT, for what place it was originally deſigned.—— The opportunity of uſing it in the *proper* and *regular* manner was loſt; and in conſequence of it, I found myſelf obliged to adopt this mode.

THE latter part of the ARGUMENT has been executed with ſo much *haſte*, that I feel myſelf very uneaſy about its reception.—Great pains were taken in laying the foundation; but I am conſcious, that the ſuperſtructure is imperfect.

Lincoln's Inn,
5th *Feb.* 1774.

F. H.

AN

ARGUMENT

IN DEFENCE OF

LITERARY PROPERTY.

THE great queſtion of *Literary Property*, after receiving the ſolemn judgment of a Court of *Common Law* in favour of Authors, has been revived in a Court of *Equity*; and by appeal from thence is now brought before the Supreme Judicature for a final deciſion.

SENSIBLE of the very great importance of the queſtion; foreſeeing what extenſive effects the adjudication of it *muſt immediately* have on the private fortunes of many hundred families; what influence

it may in future have on the progreſs of Science and Literature in this country; and conſcious of my own inequality to arduous undertakings; I cannot enter upon the Argument without very uneaſy ſenſations. Tho' I have devoted myſelf to the ſtudy of the ſubject with long and painful attention of mind; though the extraordinary learning, talents, and induſtry, of thoſe, who heretofore argued the Caſe, have ſupplied me with almoſt every poſſible aſſiſtance; and though the reſult of my own conſideration of the ſubject is the moſt intire conviction of the juſtice of the claim, which I am to ſupport, yet I diſtruſt my own ability to do juſtice to the Caſe; and I ſincerely wiſh, that I could with propriety and honour devolve my ſhare in the Argument on ſome perſon diſtinguiſhed by ſuperior qualifications. But it is now too late to relinquiſh the undertaking; and therefore I ſhall proceed to the execution of it, with a firm reliance on the indulgence of thoſe who compoſe the Noble Aſſembly, to which I have the honour of addreſſing myſelf; and with a full confidence, that they will exerciſe their candor in excuſing my errors and deficiencies, as well as exert their wiſdom in correcting and ſupplying them.

THE queſtion to be determined is ſimply this: *Whether by the Common Law of England an Author and his Aſſigns, after the firſt publication of his Work, have*

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the ſole right of printing and ſelling it? On the one hand, the claim is ſaid to be conſonant to reaſon founded on principles of natural juſtice, conſiſtent with the intereſts of ſociety, intitled to protection from the *Common Law* of England, and recognized by a ſeries of the moſt reſpectable judicial authorities. On the other hand, it is repreſented as unreaſonable, chimerical, impracticable, oppoſite to every idea of public utility, condemned by the principles of the *Common Law* as tending to a moſt odious monopoly, and only permitted for a ſhort term of years by the ſpecial indulgence of an *Act of Parliament*. I am to maintain the former of theſe diſcordant propoſitions; and for that purpoſe I ſhall examine the claim of an author to the ſole printing of his own Works; *firſt*, by the *general* principles of *reaſon* and property; and *ſecondly*, by the *particular* principles and authorities of the *Common Law* of England. This diſtribution of the Argument is adopted, not ſo much from neceſſity, as from convenience, and a perſuaſion, that the right claimed, in whatever light it is viewed, will when well underſtood appear unexceptionable, and capable of being ſuſtained. I might perhaps be juſtified in avoiding to refer the Caſe to *general* and abſtract principles; for I hope to prove, that the current of authorities and decided Caſes in favour of the claim is too ſtrong and powerful to be overcome by the force of

any ſpeculative reaſoning, however ingeniouſly imagined, however agreeably and ſpeciouſly expreſſed. Should I ſucceed in this expectation, I muſt not be underſtood to waive the advantage. On the contrary, I mean to inſiſt, that grave precedents of law, long acquieſced in and long acted upon, muſt prevail and be ſubmitted to, even though the juſtice of the claim, unſupported by the weight of authority, ſhould ſeem doubtful, or liable to objection. Reſerving to myſelf the full benefit of this obſervation, I will now purſue the Argument under the two general heads into which I have divided it.

I. From the manner in which I have ſtated the general queſtion, it appears, that nothing more is meant by the term of *Literary Property*, than ſuch an intereſt in a written compoſition, as entitles the Author, and thoſe claiming under him, to the ſole and excluſive right of multiplying printed copies for ſale. I agree, that ſo far as the Caſe is to be tried by general principles, and independently of the Law of England, there are two things eſſential to the exiſtence of Literary Property. One is, that the right of printing a book *may be* peculiar to certain perſons, in excluſion of all others. The other is, that the Author ſhould ſhew a *title* in himſelf to the enjoyment of ſuch an excluſive right. If the *former* propoſition is true, then the right of printing a book

may

may be property: if the latter can be proved, *the right of printing ought to be, and is*, the property of the Author. I ſhall conſider both in their proper order.

THERE are ſome truths ſo plain and obvious, that the mind yields its aſſent to them the moment they are mentioned, without waiting for the formality of a demonſtration. Of this kind I ſhould have deemed the propoſition, That the right of printing a book *may be* appropriated; but, in fact, even this has been denied; and to ſuch an extremity has the Argument been preſſed on the other ſide, that ſome of the objections principally relied upon, apply not to the *juſtice* of the claim, or to the *expediency* of giving effect to it, but merely to the *practicability* of enforcing it. This renders it abſolutely incumbent upon me in a formal manner to enquire, Whether the right of printing a book is ſuſceptible of appropriation?

I MIGHT indeed urge, that facts are conceded ſufficient to render ſuch a diſquiſition wholly unneceſſary; that it has been the practice to appropriate the right of printing books in all countries, ever ſince the invention of printing; that it ſubſiſts in ſome form in every part of Europe; that in foreign countries it is enjoyed under grants of *privileges* from the Sovereign; that in our own country it is admitted to be legally exerciſed in *perpetuity* by the Crown and its

Grantees

Grantees over particular books; and that even the Legiſlature has protected ſuch a right over books in general for a term of years, and has repeatedly called it *a property*, and thoſe in whom it is veſted, *proprietors*. Theſe facts, however inconſiſtent they may ſeem, and really are, with the Argument againſt the *practicability* of aſſerting the claim of *literary property*, cannot be denied; but this is not the proper place for urging them. I ſhall therefore for the preſent waive the authority of *examples*, and ſhall reaſon wholly from the nature of the ſubject in which the property is claimed.

I APPREHEND, that ſo far as regards *practicability*, nothing more can be requiſite, than to ſhew, that there is a *ſubject*, over which the excluſive right claimed may be exerciſed, with marks ſufficient to aſcertain and diſtinguiſh it; and that there are *means*, by which the poſſeſſion and enjoyment of ſuch an excluſive right may be effectually regulated and ſecured. Few words will ſerve to evince, that according to this rule the right of printing a book *may* be appropriated.

THE ſubject of the property is a *written compoſition*; and that one written compoſition may be diſtinguiſhed from another, is a truth too evident to be much argued upon. Every man has a mode of combining

bining and expreſſing his ideas peculiar to himſelf. The ſame doctrines, the ſame opinions, never come from two perſons, or even from the ſame perſon at different times, cloathed wholly in the ſame language. A ſtrong reſemblance of ſtile, of ſentiment, of plan and diſpoſition, will be frequently found; but there is ſuch an infinite variety in the modes of thinking and writing, as well in the extent and connection of ideas, as in the uſe and arrangement of words, that a literary work *really* original, like the human face, will always have ſome ſingularities, ſome lines, ſome features, to characterize it, and to fix and eſtabliſh its identity; and to aſſert the contrary with reſpect to either, would be juſtly deemed equally oppoſite to reaſon and univerſal experience. Beſides, though it ſhould be allowable to ſuppoſe, that there *may* be caſes, in which, on a compariſon of two literary productions, no ſuch diſtinction could be made between them, as in a competition for originality to decide whether both were really original, or which was the original and which the copy; ſtill the obſervation of the poſſibility of diſtinguiſhing would hold in *all other* inſtances, and the Argument in its application to them would ſtill have the ſame force.

So much for the *ſubject* of the Property, and for the manner and facility of tracing the difference be-

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tween one literary work and another. Nor will it be more difficult to ſatisfy an impartial mind, that the enjoyment of the excluſive right, claimed to be exerciſed over a literary compoſition, is as capable of being guarded and regulated, as any other right, or any other ſpecies of property. It is not neceſſary for this purpoſe to frame new laws, new remedies, or new modes of alienation and ſucceſſion. Admit the title of the author to the ſole printing of his own Works, and it will be eaſy to point out, how that title may have its due and full effect. The rules and principles, by which other property and other rights are governed, will furniſh the means of ſecuring the enjoyment of this peculiar kind of right or property. It is ſcarce poſſible to conceive any ſyſtem of laws in a country advanced in civilization ſo groſly deficient, as not to have general rules capable of being applied to every ſpecies of *right*, whatever may be the ſource of it, however novel, whether in the creation and conſtitution, or in the exerciſe and exertion. If a right of a *new* kind becomes the ſubject of litigation, a wiſe judge will compare it with ſuch rights as have been long known and acknowledged; and by analogy to ſome of them will be able to explore, how it ought to be claſſed, how enjoyed, how protected from invaſion, and how tranſmitted from one perſon to another. This in ſome meaſure is *general* aſſertion; and tho'

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from its apparent reaſonableneſs, it might be deemed very ſufficient to oppoſe to the unſupported objections, which have been ſo confidently urged againſt the practicability of allowing literary property, yet I do not intend to reſt the argument here. When I ſtate and anſwer thoſe objections, I ſhall be more particular in the illuſtration of what I advance; and I ſhould be more ſo here, if I was not ſtudious to avoid a diſagreeable repetition. Hereafter too I ſhall have occaſion to confirm the Argument by an inſtance from the law of England; and I do not doubt the being able to demonſtrate, that whatever may be the caſe of the laws of *other* countries, however narrow and incomprehenſive they may be in their frame and foundation, there are remedies, there are rules incident to the *common law of England*, by which the excluſive right of printing a book may be as well guarded in the enjoyment, as well directed in the mode of alienation and ſucceſſion, as any other ſpecies of right, or incorporeal property whatever.

But it is objected, that only *corporeal* things can be the objects of property; and that every ſpecies of *incorporeal* property has reſpect to, and muſt have, a corporeal ſubſtance for its ſupport. The doctrine contained in this objection has been relied upon as a principal argument againſt the

claim of Literary Property; as one too well founded in reaſon and the nature of things, too well fenced by the authority of the legal definitions of property, to be controverted with the leaſt degree of ſucceſs. But even this boaſted propoſition, tho' ſeemingly entrenched in the profoundeſt ſubtlety of legal metaphyſicks, has its naked and vulnerable parts. I ſhall attack the objection, firſt by denying that a corporeal ſubſtance is abſolutely univerſally and invariably eſſential to the exiſtence of property; and then by inſiſting, that even tho' the truth of that propoſition, in the moſt unlimited ſenſe of it, ſhould be admitted, ſtill it would not prove any thing againſt the claim of a right to the ſole printing of a written compoſition.

If the objection is advanced as having its foundation in reaſon, the plain anſwer is, That whatever is ſuſceptible of an excluſive enjoyment, *may* be property; and that rights may ariſe, which, tho' quite unconnected with any thing corporeal, may be confined in the exerciſe to certain perſons, and be as capable of a ſeparate enjoyment, and of modes of alienation and tranſmiſſion, as any ſpecies of corporeal ſubſtance. Even the right in queſtion, if it ſhould be admitted to be ſo deſtitute of any corporeal ſubſtance for its foundation as has been repreſented, will of itſelf be a ſufficient proof of

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the fallacy of making corporeal things, or rights in them, the ſole objects of property, and may be fairly propoſed as an inſtance to the contrary; at leaſt until the practicability of appropriating the printing of a book can be diſproved, which I conceive to be impoſſible. How the excluſive right of printing any particular book may originate; what may give a proper title to the ſole exerciſe of ſuch a right, whether authorſhip, or any other cauſe, is not here of the leaſt importance; becauſe if ſpringing from *any* ſource, the right *may* be well appropriated, the argument of impracticability will fall to the ground, and conſequently the objection derived from the ſuppoſed want of ſomething corporeal to uphold and ſuſtain the right. But in order to maintain the objection, ſome moſt reſpectable Writers on the Law of Nature and Nations, particularly Grotius *(a)* and Puffendorf *(b)*, have been cited as authorities; and the definitions of property in uſe amongſt Lawyers are reſorted to. I do not underſtand that there any particular paſſages from Grotius or Puffendorf ſo much relied upon, as the general tendency of their learned writings in reſpect to Property; and the circumſtance of their not being very applicable to the particular kind of

(a) De Jur. Bell. et Pac. Lib. 2. cap. 2.
(b) De Jur. Nat. et Gent. Lib. 4. cap. 5.

property now in queſtion. But it is to be conſidered, that the nature of their undertaking, ſo far as regards the ſubject of property, principally was to account for its origin and progreſs in land and other *corporeal* things, the more uſual ſubjects of property; and *that* is the true reaſon why they do not extend their ſpeculations to objects of a kind leſs groſs, when they inquire, what are fit objects of property; and what things ought ever to remain in their primitive ſtate, unappropriated and common for the uſe of all mankind. There are many ſubjects, ſuch as offices, titles, annuities, and other things of a ſimilar kind, which, though wholly detached from corporeal ſubſtances, were known and acknowledged objects of property long before the times in which Grotius and Puffendorf lived, and yet are never mentioned, or even hinted at, by either of them. But would it be reaſonable from thence to infer, that they did not deem ſuch things to be Property? As to the legal definitions of Property, they vary very much.—— Some (*c*) civilians reſtrain the idea of property to things corporeal, and intirely exclude all incorporeal things, even the ſervitudes and uſufructs of the Roman law, which are certainly rights only exer-

(*c*) Vid. Ulric. Huber. Diſputat. 305. Ejuſd. Auctor. Prælect. ed. 4ta, lib. 2. tit. 1. ſect. 12, 13.

ciſeable

ciſeable on objects of a corporeal kind. *Dominium*, as they deſcribe it, *eſt jus de re corporali perfectè diſponendi, eamque vindicandi, niſi lex aut conventio obſiſtat.* Others *(d)* again, of equal authority, extend the definition of property to all incorporeal things. But in fact it is not much to the preſent purpoſe, which opinion is the moſt accurate; the difference being more in *name* than *ſubſtance*. A very exact Writer *(e)*, who confines the ſtrict application of the word *dominium* to corporeal things, adds, *de rebus incorporalibus, non niſi impropriè, & per quandam ſimilitudinem dominium prædicatur, cùm nec illas poſſidere valeamus propriè, ſed tantummodò quaſi poſſidere.* From this paſſage, and many others which might be cited, it appears clearly, that the difference of opinion is merely upon the *ſtrict* import of the word *dominium*, particularly in the Roman Law, and is quite foreign to the inquiry, Whether there cannot be property without a corporeal ſubſtance for the ſubject, which intirely depends upon the *general* and *extenſive* ſenſe of the word. There are not any Commentators on the Roman Law, who pretend to exclude incorporeal things from the conſideration of Law; or to deny, that they are not as much objects of ſeparate enjoyment, of alienation, and of tranſmiſſion,

(*d*) Vid. Thomaſ. Schol. & Addit. Huber. Prælect. ubi ſupra.

(*e*) Hoppii Comment. ad Inſt. lib. 2. tit. 1.

as things corporeal. It is obſervable too, that all concur in enumerating amongſt things incorporeal, *obligations*, however contracted, and other objects, which have not the leaſt connection with, or reference to, corporeal ſubſtances; except, indeed, as the fruits and profits reſulting from the exerciſe of ſuch rights are generally of a corporeal kind. In that ſenſe, the right of printing books, and almoſt every other ſpecies of right, may be made referable to corporeal ſubjects *(f)*; and that being the caſe, the objection founded on the ſuppoſed want of ſomething corporeal, intirely fails in its application to the claim of Literary Property.

HITHERTO I have been controverting the ſuppoſed neceſſity of having a corporeal object for every ſubject of property; but I ſhall now endeavour to ſhew, that the propoſition, though it ſhould be true in its utmoſt latitude, cannot affect the claim of Literary Property; becauſe *that* is not merely corporeal in the *fruits* which it produces, but has an im-

(f) Res incorporales, as the text of the Roman Law deſcribes them, *ſunt quæ tangi non poſſunt; qualia ſunt ea, quæ in jure conſiſtunt, ſicut hæreditas, uſus-fructus, et* obligationes quoquo modo contractæ; *nec ad rem pertinet, quod in hæreditate res incorporales continentur, nam et fructus, qui ex fundo percipiuntur, corporales ſunt*; et id, quod ex aliquâ obligatione nobis debetur, plerumque corporale eſt; *veluti fundus, homo, pecunia.* Inſtit. lib. 2. tit. 2. . 3.

mediate and neceſſary reference to a corporeal ſubſtance in the *exerciſe*. A literary compoſition can ſubſiſt and have duration, only ſo long as the words, which eſtabliſh its identity, are repreſented by viſible and known characters expreſſed on paper, parchment, or ſome other *corporeal ſubſtance*; and by reference to *that* only, can the right of multiplying copies or printing be in any manner enjoyed. The original manuſcript, or a written or printed copy, being authenticated, will equally ſerve the purpoſe; but *one* muſt remain within the power of the perſon who claims the appropriated right of printing the work, or the exerciſe of the right *muſt* unavoidably ceaſe from the want of a *ſubject*.

UPON the whole, therefore, it ſeems very clear, that excluſive rights *may* ſubſiſt in law, and be tranſmiſſible as property, without the aid of any thing *corporeal* to uphold them; or that if a *corporeal* ſubſtance ſhould be neceſſary, it is in *ſuch* a manner, as not to furniſh any argument, againſt the appropriation of the right of printing a literary compoſition.

BUT it is aſked, how an author after publiſhing his work can confine it to himſelf, and exclude the world from participating of the ſentiments it contains? This objection depends on the ſuppoſi-

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tion, that the exclusive right claimed for an author is to the *ideas* and *knowledge* communicated in a literary composition. An attempt to appropriate, to the author and his assigns, the perpetual use of the ideas contained in a written composition, might well be deemed so absurd and impracticable, as to deserve to be treated in a Court of Justice with equal contempt and indignation; and it would be a disgrace to argue in favour of such a claim. But the claim of Literary Property is not of this ridiculous and unreasonable kind; and to represent it as such, however it may serve the purposes of declamation, or of wit and humour, is a fallacy too gross to be successfully disguised. What the author claims, is merely to have the sole right of printing his own works. As to the ideas conveyed, every author, when he publishes, necessarily gives the full use of them to the world at large. To communicate and sell knowledge to the Public, and at the same moment to stipulate that none but the author or his bookseller shall make use of it, is an idea, which Avarice herself has not yet suggested. But imputing this absurdity to the claim of Literary Property, is mere imagination; and so must be deemed, until it can be demonstrated that the *printing* a book cannot be appropriated, without at the same time appropriating the use of the *knowledge* contained in it; or in other words, that the

use

uſe of the ideas communicated by an author cannot be *common* to all, unleſs the *right* of *printing* his works is *common alſo*. If the impoſſibility of proving ſuch a propoſition is not ſelf-evident, I am ſure, that there is not any argument I am furniſhed with, wh h would avail to evince the contrary.

In a late publication on the ſubject of Literary Property, there is a very ſtriking paſſage which compreſſes the objections againſt the *practicability* of Literary Property into the compaſs of a very few lines. Though I have anticipated almoſt every kind of exception, which can well be taken, yet for the ſake of meeting the opinion I am controverting in its moſt formidable ſhape, and in order to ſhew how unequal the moſt captivating language is to the taſk of ſuſtaining a feeble argument, I will ſelect this paſſage, and obſerve upon all the *pointed* expreſſions, which are introduced to give it ſtrength and force. The words are theſe: "The "*property* here claimed is all *ideal*; a ſet of ideas "which have *no bounds* or *marks* whatever; no-"thing that is capable of a *viſible* poſſeſſion; no-"thing that can ſuſtain any one of the *qualities* or "*incidents* of property. Their whole exiſtence is in "the *mind* alone. *Incapable* of any *other modes* of "*acquiſition* or *enjoyment*, than by *mental poſſeſſion* "or *apprehenſion*; ſafe and *invulnerable* from their

" own *immateriality* ; no *treſpaſs* can *reach* them, no
" *tort affect* them ; no *fraud* or *violence diminiſh* or
" *damage* them. Yet theſe are the *phantoms* which
" the author would *graſp* and *confine* to *himſelf !*"
Highly finiſhed in ſtile and compoſition as I muſt acknowledge this paſſage to be, yet it has not *one* ſignificant word, but what is either founded on a miſconception of the claim controverted, or is liable to ſome other obſervation equally deſtructive of the opinion intended to be maintained. The *property* claimed for the author is an excluſive right to the *printing* of his work, and *not* to the *ideas* contained in it, or to the *uſe* of them ; therefore the property is not *ideal.*——*One* literary compoſition is diſtinguiſhable from *another* ; and therefore *each* has its *marks* and *bounds* to identify it, and to fix the *poſſeſſion* and ſeparate enjoyment of the right of printing. *That poſſeſſion* is *viſible* by the *exerciſe* of the right claimed, nor is the *poſſeſſion* of *other* incorporeal property viſible in any other manner ; for *incorporeal* things in general, however referable to corporeal ſubſtances, to uſe the words of a great civilian *(g)*, *non incurrunt in ſenſus niſi ab exercitio* ; and they are deſcribed by our own lawyers *(h)* in

(g) Hopp. Comment. ad Inſt. lib. 2. tit. 2.

(h) Jura ſiquidem, cum ſint incorporalia, videri non poterunt, nec tangi, & ideo traditionem non pertiuntur, ſicut res corporales. Bract. lib. 2. cap. 23. ſect. 1.

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the ſame terms.——It is *mere aſſertion* to ſay, that literary property has not the *incidents* and *qualities* of *other* incorporeal property; unleſs it can be ſhewn, that the right of printing any particular book cannot be effectually veſted in certain perſons in exclu[ſ]n of all others, and be as well poſſeſſed, enjoyed, alienated, tranſmitted, and protected from invaſion by the rules of law, as *any other* ſpecies of incorporeal property.—The *exiſtence* of literary property is not *more* in the *mind*, *more* the ſubject of *mental poſſeſſion* and *apprehenſion*, or *more* without *materiality*, than *other* incorporeal property; for *all* incorporeal things are neceſſarily incapable of being heard, ſeen, or handled, and are only to be conceived in the mind by reference to the objects with which they are connected in the exerciſe, or to the fruits and profits they produce.——Literary property is not *invulnerable* on account of its *immateriality*. If one has the excluſive right of printing a book, and others without his conſent multiply and ſell copies, *that* right is *wounded*, is *affected*; the profits, which would otherwiſe ariſe from the exerciſe of the right, are *diminiſhed*; and the intruding on this *particular* right is as much a *treſpaſs*, a *tort*, a *fraud*, a *violence*, a *damage*, as an invaſion of any *other* incorporeal property can be.

IN being ſo particular in my obſervation on the favourite argument, from which the paſſage juſt cited is extracted, I muſt not be underſtood to intend the leaſt diſreſpect to the memory of its author. His character for ſhining talents, for extenſive knowledge, and for exemplary virtues both public and private, is fixed on a baſis too firm to be ſhaken, or in the leaſt hurt by imputing to him *one* erroneous opinion.

I THINK, that I have now anſwered every objection of importance, which has been made againſt the *practicability* of literary property; and if in arguing this point I have been guilty of a frequent and diſguſting repetition, my apology muſt ariſe from the various manner, in which I have been forced to combat the ſame enemy. Every objection, *Hydra*-like, has aſſumed a variety of forms; and when it has been deſtroyed in *one* ſhape, the power of language has inſtantly raiſed it up again in *another*, equally formidable in appearance, but equally devoid of ſubſtance.

HAVING thus, as I hope, evinced the *practicability* of making the right of printing a book property; the next ſtep in the Argument is, to exhibit the reaſons, on which the author founds his *title* to

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ſuch a property in his own works. As this part of the ſubject will not permit the having recourſe to abſtracted and metaphyſical diſquiſition, it will be more eaſy to ſolve the difficulties which oppoſe me.

In order to conceive properly, what is the origin of an author's title to the ſole printing and ſelling of his own works, the firſt thing to be conſidered is his *labor* in compoſing them. *This* is not the *ſole* foundation of his title; for *other* reaſons may and ſhall be urged to ſuſtain it; but they are of a *ſecondary* kind, and therefore improper to be introduced, till the *primary* reaſon, on which they are *dependant*, is explained. No literary work, whether calculated for the inſtruction or amuſement of mankind, whether conſiſting of *new* thoughts and ideas, or of *old* thoughts and ideas *newly* combined and expreſſed, can be produced without an induſtrious and painful application of the mental faculties to the particular ſubject. It is not my intention to inſiſt *generally*, that *all* the benefits and advantages of a man's labour either *can*, or *ought to be* confined to himſelf. *That* would be building on too broad a foundation; for there certainly are many caſes, in which the truth of ſuch a propoſition would fail. If an author was to claim the ſole right of *uſing*

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the *knowledge* contained in his works, as well as the ſole right of *printing* them for ſale, it would be both unfit and impoſſible to comply with a demand ſo abſurd, ſo illiberally ſelfiſh; and other inſtances without number might be mentioned, in which ſuch an unlimited appropriation of the fruits of a man's induſtry would be equally unreaſonable and ridiculous. But the caſe in queſtion doth not require me to argue in ſuch *general* terms. The author's title to the benefit, which he claims from the labor employed in his literary compoſitions, depends on a propoſition of a more limited kind; and I ſhall only inſiſt, that *every man has a right to appropriate to himſelf the fruits of his own induſtry, ſo far as is practicable in the nature of things, and is at the ſame time conſiſtent with the rights of others, and the reſtraints impoſed by the laws and political inſtitutions of the country in which he lives.* By this principle, which I may venture to call incontrovertible, it is, that I mean to try the *title* of an author to the ſole printing and ſelling of his own works; and for that purpoſe, I ſhall ſhortly ſtate, what the nature and extent of the author's right over his literary compoſitions are, *before* he conſents to *publiſh* them; and then conſider, what *effect* the *publication* has, and ought to have, upon that right.

It is acknowledged by thoſe the moſt adverſe to the claim of literary property, that *before a voluntary publication*, the right of multiplying copies for ſale, belongs wholly, and without any limitation, to the author, or to thoſe who by purchaſe, gift, or *repreſentation*, ſucceed to all his rights, whatever they may be, in the manuſcript of his literary compoſitions. Nor is this right of the *imperfect* kind; for it is admitted to be under the protection of the law. Another thing allowed is, that *lending* a copy of the work, or even *giving* one, will not, without ſomething *further*, transfer the right of printing and ſelling; and therefore the juſtice and propriety of thoſe caſes, in which Courts of Juſtice have interpoſed to reſtrain perſons, poſſeſſed of copies by ſuch gift or lending, from multiplying copies for ſale, are not denied. Thus abſolute and unlimited is the author's ſole right of multiplying copies *before a voluntary publication*; and it is of importance to obſerve, that this right can only ſpring from the *labor* exerted by the author in compoſing his work, and the *conſequential powers* over his manuſcript.

I WILL now inquire, whether the right is *varied* by the act of *publication*.

If the author's ſole and excluſive right of multiplying copies ceaſes *after publication*, it *muſt* be, either becauſe it is *impracticable* to *retain* the right; or becauſe the right is *renounced* by the *publication*; or laſtly, becauſe *after publication* the law of the particular country, in which the caſe ariſes, will *not permit* the author to retain the right. The *practicability* of giving effect to the right without the aid of any new law to regulate it, I have already argued; and, as I flatter myſelf, clearly evinced. Therefore it only remains to ſhew, that the right is not *renounced* by the publication, and that it is not *unlawful* to *retain* the right *afterwards*.

In order to prove, that publiſhing a literary compoſition is a renunciation of the author's previous right of multiplying copies, his intention to renounce muſt be ſhewn; and as *mere* publication certainly is not an *expreſs* renunciation, that is, not one declared by words, it is incumbent upon thoſe, who infer a renunciation, to found themſelves on ſomething incident to a publication, from which it may be reaſonable to *imply* an intention to renounce. One object of a publication is to convey knowledge and amuſement to the world, or both, according to the nature of the work; but this purpoſe of the author may be as well accompliſhed by *continuing* his right of multiplying copies, as by renouncing

ing and making the right of printing *common*. But it is not reaſonable to ſuppoſe, that the inſtruction, or entertainment of the world is the only view of an author in publiſhing his works; for ſome attention to his *own* advantage is very *proper*, and moſt frequently quite *neceſſary*. There are few ſituations in life ſo advantageous, as to permit an author, the moſt diſintereſted, to give the benefit of his labors to the public, without ſecuring to himſelf the profits which may ariſe from the ſole right of multiplying printed copies. It is ſo far from being a diſgrace to appropriate *that* right, that to renounce it would in *general* be an injuſtice to the author's family as well as to himſelf, and have the appearance of vanity and profuſion more than a well-directed generoſity. Another circumſtance incident to a publication, is the great expence of printing the work; but *this*, ſo far from being a reaſon for implying a renunciation of the right of multiplying copies, furniſhes a ſtrong argument of an intention to retain the right. Without retaining it, how is the author to ſecure a return of the money expended in making the impreſſion, and a reaſonable profit in the nature of intereſt? There is ſtill another circumſtance very neceſſary to be mentioned; and *that* is, the *price* paid by the purchaſer of each printed copy; which in fact is the *only* thing in a publication, affording the leaſt *pretence* for inferring a

renunciation of the right of multiplying copies. But I will not condeſcend formally to conſider the unreaſonableneſs of ſuch an inference. A moment's reflection on the expence of printing and paper, and on the real and ſuppoſed value of the contents of the book, and on the *comparatively* ſmall price uſually paid for a copy, will I am perſuaded ſuffice to evince, that the right of multiplying copies is not the *ſubject* of the ſale, either in the mind of the buyer or ſeller; and I appeal to the *heart* of every purchaſer of a book, for a confirmation of the truth of what I aſſert.

SUCH are the only important circumſtances of a publication; and from them I argue, that the *publication*, inſtead of *deſtroying* or *diminiſhing* the *previous* right of the author to the ſole printing and ſelling of his works, tends to render *that* right *more firm*, and *actually* ſuperinduces *new and additional* pretenſions for aſſerting it. The uſual incidents to a publication, ſo far from being a foundation for *implying* a *renunciation* of the right of multiplying by the *author*, furniſh the ſtrongeſt argument for *implying* a *contract* not to *invade* it. Such an *implied* contract is allowed to ariſe, when an author *lends* or *gives* a copy of his works to a particular perſon; which in fact is neceſſarily a publication in the *ſtrict* and *legal* ſenſe of the word, though one of a limited kind, and not attended with the leaſt ex-

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pence or hazard to the author. Is not the *cauſe* of implication infinitely *ſtronger*, when an author riſques the great expence of a *general* publication? In this latter caſe the implication is indeed ſo *violent*, as to become almoſt *neceſſary*; which is the only reaſon to be given, why the title page of every new book has not an *expreſs* reſervation of the right of multiplying copies.

I HAVE next to conſider, whether there is any thing *unlawful*, in the author's retaining the right of multiplying copies *after* a voluntary publication. Here I muſt obſerve, that *mere inexpediency* will not ſuffice to repel the claim of the author. *Inexpediency* is a good reaſon for *making* a law, but of itſelf is a feeble argument to prove its *exiſtence*. Innumerable things, though exceedingly inconſiſtent with public utility, are permitted in all civil ſocieties, till laws are made to prohibit them, and to prevent the inconvenience. If the *inexpediency* of a thing ſhould ever be deemed a ſufficient reaſon for declaring it unlawful, *policy* and *law* would be confounded; and the reſult would be an *arbitrary* exerciſe of *judicial* power; for then thoſe, intruſted with the authority to adminiſter juſtice, would in effect be *legiſlators* as well as *judges*. Hence I infer, that an idea of the general and public inconvenience, however well founded, will