not diſprove the excluſive right of an author to the ſole printing of his own works; unleſs a *particular* law for *annulling* it, or an *acknowledged principle* of law wholly inconſiſtent with the right, can be adduced. This renders a reference to the *poſitive* law of the country in which the claim is made, abſolutely neceſſary; and without ſuch a reference, it is impoſſible to decide whether it is, or it is not lawful to retain the ſole right of printing *after* publication. When I come to the law of England, I ſhall endeavour to ſhew, that there is not any thing in our own laws, from which it can be fairly argued, that an author *may not* enjoy the ſole right of multiplying copies as well *after* publication, as *before*. In the mean time I think it proper to obſerve, that the general principle in favour of the freedom of trade, which in moſt countries is an ancient and known part of the law, and was firſt eſtabliſhed to prevent *monopolies*, doth not extend ſo far as to affect the claim of literary property. A *monopoly*, in the *general* ſenſe of the word, as uſed amongſt lawyers, is an *appropriation* of the right of carrying on ſome particular branch of trade or commerce; to which all men have *originally* a *common* and *equal* pretenſion. But the caſe of literary property is not comprehended within the *general* idea of a monopoly; becauſe it is admitted, that before publication *only* the author has the right of multiplying copies of his

works,

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works, and that none are intitled to print them without his *consent*; and according to what I have established in respect to a *publication*, his *previous* right of multiplying, instead of being renounced or weakened, is evidently intended to be retained; and there are *more* reasons for allowing it to *continue after* publication, than can be given for its *existence before*. The claim of the author is confessed to be unexceptionable *before* a general publication, and not to be within the principle of a monopoly. The same reasons which are the foundation of his right *before* publication, continue *after*, and are strengthened by *additional* reasons; and consequently ought to *better* his *claim*, and to make it still *less* liable to the objection of a monopoly.

But for a moment I will suppose the right of the author to depend on the expediency or inexpediency of giving effect to it; for I think, that even upon *that* principle the right is capable of being supported.

Here the question is, whether the trade of printing will be most useful to the public by allowing the author to *appropriate* the printing of his own works to himself and his assigns, or by making the right of printing books *common*. I know, that there is a great prejudice against confining the right

right of printing particular books to certain perſons, in excluſion of all others; and it is apprehended by many, that if there was not any ſuch thing as property in the printing of books, the art of printing would be *more beneficial* to the public in *general*, as well as to thoſe who practiſe the art or are, connected with it, in *particular*. But the truth is, that the opinion, however *popular* it may be, is without the leaſt foundation. How would making the right of printing every book *common* be advantageous to thoſe concerned in printing or manufacturing books, or in bookſelling? Every impreſſion of a work is attended with ſuch great expences, that nothing leſs than ſecuring the ſale of a large number of copies within a certain time, can bring back the money expended, with a reaſonable allowance for intereſt and profit. But is this to be effected, if immediately after the impreſſion of a book by *one* man, *all others* are to be left at liberty to make and vend impreſſions of the ſame work? A *ſecond*, by printing with an *inferior type*, on an *inferior paper*, is enabled to *underſell* the printer of the *firſt* impreſſion, and defeats him of the benefit of it, either by preventing the ſale of it within *due* time, or perhaps by *totally* ſtopping it. The *ſecond* printer is expoſed to the ſame kind of hoſtility; and a *third* perſon, by printing in a manner ſtill worſe, ſtill more inferior, ruins the *ſecond*; a *fourth* the *third*; and ſo

on

on it would be in *progreſſion*, till experience of the diſadvantages of a rivalſhip ſo general would convince all concerned mediately or immediately in the trade of printing, that it muſt be ruinous to carry it on, without an appropriation of copies to ſecure a reaſonable profit on the ſale of each impreſſion. Such would be the obvious conſequences of making the right of printing every book *common*; and experience of them, ſoon after the introduction of the art of printing, was *one principal* cauſe of the firſt granting privileges for the ſole printing of particular books, as well in England as in every other part of Europe. I ſay *one* principal cauſe; for the anxiety of ſovereigns to reſtrain that *palladium* of *liberty*, that *aſylum* for oppreſſed ſubjects, the *freedom of the preſs*, under the *pretence* of preventing and correcting its licentiouſneſs, was *another* cauſe. In the *early* times of printing, there were few *original* works; and for want of a *title* derived from *authorſhip*, printers were glad to reſort to their ſovereigns, for an appropriation of copies, by the exerciſe of a *real* or rather *aſſumed prerogative* over the art of printing. I hint at theſe facts with reſpect to the origin of *privileges* and grants of a like kind; in order to ſhew, that *early experience* evinced the *impoſſibility* of carrying on the trade of printing with ſufficient profit, without an appropriation of copies for the protection of each impreſſion. Having thus ex-

explained the disadvantages, which would accrue to those concerned in printing, if *copies* were *common*, I will now ask, how the making them *so* could produce the least benefit to the public in *general?* Would *lessening*, or rather *annihilating*, the profits of printing, tend to encourage persons to be adventurers in the trade of printing? Would it make books cheaper? *So long* indeed as the *least legal idea* of property in *copies remains, most* persons will probably hold it both *dishonourable* and *unsafe* to pirate editions; and *so long only* can the *few*, who now distinguish themselves by trafficking in that way, afford to undersell the *real* proprietors. *Such* persons at present enjoy *all* the fruits of a concurrent property without paying *any price* for it; and therefore it is not to be wondered at, that they should undersell those, who have paid a full and valuable consideration for the purchase of their *copies*. But if the right of printing books should once be declared *common* by a *judicial* opinion; the advantage, which enables particular persons to undersell those who claim the property, would cease; pirating would then become *general*; and perhaps those, who now practise it, would themselves be sacrifices to their own success in the cause they support. Whilst the question of literary property is in a *suspended* state, they have the *harvest* to themselves; but if they should gain their cause, like *other Samsons*, they would be crushed by the fall

of

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of the building they are pulling down. Another great evil, which would arise from annihilating the property in *copies*, would be its discouragement of literature of every kind; for *that* consequence must ensue, in proportion as the profits to be derived from the publication of an author's works are diminished by making the right of printing them *common*. But it has been suggested as a *certain* inconvenience, that in case the author's property in the publication of his works should be allowed, there would be a *consequential* right of *suppression*, and of with-holding some of the best writings from the public use. But this is an *imaginary* evil, for after *one general publication*, suppression becomes almost impossible; and if it should be attempted, a jury or court would be very well warranted in inferring a renunciation of the property from *such* a conduct. *Another* inconvenience suggested is, that if the claim of literary property should have effect, then on every failure of a representative to the author, and also on every forfeiture, the property would vest in the sovereign of the particular country; and consequently, in Great-Britain, might, in the course of time, give the King a compleat controul, and arm him with a dangerous prerogative over all books, except new publications. But this too is another imaginary inconvenience,

or at leaſt one ſo remote and improbable, as not to be formidable. It may be a queſtion of difficulty to decide, whether the author's right would in *either* caſe devolve upon the Crown; and *ſuch* a conſequence is at *leaſt* diſputable. *Some* rights there certainly are, which by our own law may ſubſiſt in a *ſubject*, and yet are not tranſmiſſible to the *ſovereign*, either for forfeiture, or as intitled to all things *derelict*. Probably the author's right of printing may be of the number; and then *his* right *ceaſing*, the printing of his works would become *common*.—Upon the whole, it ſeems evident, that on an impartial review of the advantages and diſadvantages, which may ariſe from appropriating the right of printing the ballance ſtrongly inclines in favour of the property. But ſhould it be otherwiſe, ſtill I inſiſt, that the *inexpediency* of the property claimed by an author is no *proof*, that ſuch a property doth not *exiſt*; though I confeſs, that it may be urged as a *reaſon* for *making* a law to annihilate the author's right.

I HOPE by this time to have eſtabliſhed the claim of literary property on principles of *practicability* and *ſtrict right*, as well as of expediency; but two or three objections ſtill remain to be conſidered.

ONE

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ONE is, that the claim of literary property is not founded on any principle, hitherto mentioned by the *general* writers on the ſubject of property, as an *original* mode of acquiring it.— It is ſaid, that *occupancy* is the only head, to which the origin of the author's property can in any manner be referred; and that *occupancy* of *thoughts* and *ideas* is quite of a new kind. But a ſhort anſwer will remove this objection. If the foundation, on which I have before reſted the title of the author, is a ſolid one, it is not of importance, whether the title falls under the uſual denominations of original modes of acquiring property; and if it ſhould not, it would be a proof, not of the defect of the author's title, but of the imperfection of thoſe writers, who do not mention any origin of property, under which the author's title can be claſſed. It is not, however, neceſſary to rely wholly on this anſwer; for in truth, *occupancy*, in the proper ſenſe of the word, includes the principal *ſource* of literary property. The title by *occupancy commences* by the taking *poſſeſſion* of a *vacant* ſubject; and the *labor* employed in the cultivation of it, *confirms* the title. Literary property falls preciſely within this idea of *occupancy*. By compoſing and writing a literary work, the author *neceſſarily* is the *firſt poſſeſſor* of it; and it being the produce of his own labor, and in fact a *creation* of his own, he has, if poſſible, a *ſtronger*

 title,

title, than the *usual* kind of *occupancy* gives; because in the *latter* the subject has its existence *antecedently* to, and *independently* of, the person from whom the *act* of *occupancy* proceeds. Another objection is, that the claim of the right of multiplying copies extends in *principle* to *transcribing*, as well as *printing*. I acknowledge as much; and if the *former* was *profitable* like the *latter*, and it was possible to multiply copies for sale so expeditiously as *materially* to interfere with the *latter*, I should not deem the claim extravagant. But *that* is not possible in the nature of *things*; no damage of consequence can arise to the author, from a *common* exercise of the right of transcribing; and therefore he doth not *pretend* to appropriate that right to himself.

I HAVE only one other objection to encounter, so far as the claim of literary property depends on general reasoning. It is an objection, founded on a *supposed* resemblance between the case of an *inventor* of a *machine*, and *that* of the *author* of a *book*. I claim the full benefit of all the ingenious reasons, which others have made use of to distinguish the *two* cases; but instead of repeating them, I will add *one* to their number. In my own opinion, the principal distinction is, that in *one* case the claim really is to an appropriation of the *use* of *ideas*; but in the *other*, the claim leaves the use of the

ideas

ideas *common* to the whole world. There are not any bounds to the extent of ſuch a claim. It would be *impracticable* to receive it; becauſe it could never be fairly decided, when an idea was *new* and *original*, when it was *old* and *borrowed*. The title of the *ſuppoſed* inventor of the machine to the ſole making of it, cannot be allowed, without excluding all others, not only from the *uſe* of their *borrowed* ideas; but *even* from the *uſe* of ideas, which may be as *original* in *them*, as in the perſon who *firſt* publiſhes the invention. The *ſame* ideas will ariſe in *different* minds, and it is impoſſible to eſtabliſh preciſely, in whom an idea is *really original*; and perhaps *moſt* ideas may in fact be *equally original* in the greater part of mankind; and *priority* in the *publication* of an idea is a moſt *inſufficient proof of its originality*. This ſhews, that the *perpetual* appropriation of the uſe of an idea to the real or ſuppoſed inventor of a machine, would be as inconſiſtent with the *rights of others*, as it would be *impracticable*. But theſe are not the only arguments againſt perpetually appropriating the *uſe* of *knowledge* and inventions. It is impoſſible to ſuſtain the claim conſiſtently with the laws of any country, in which the policy of diſallowing monopolies prevails. Every article of trade, every branch of manufacture and commerce, would be affected and clogged, if not totally ſtopped. Such a per

petual appropriation of the uſe of inventions and ideas would be the *moſt unlimited kind of monopoly* ever yet heard of—a *monopoly*, not of *one* trade or manufacture, but ſuch, that if it had *ever* been endured, it would have ended in a monopoly of almoſt *all* trades and manufactures *collectively*. I have already ſhewn, that the appropriation of the right of printing, to an author, is not liable to *any* of theſe objections; that the claim has its limits and bounds; that the *uſe* of *ideas* and *knowledge* is as *common* as it would be, if the *right* of printing was *not* appropriated; that the author's title to the ſole right of printing, is quite conſiſtent with the rights of others; and that his appropriation of his *copies*, is ſo far from falling within the true idea of a *monopoly*, that the appropriation of copies, independently of the author's right, is even *eſſential* to the carrying on the trade of printing in a manner beneficial to the public.

I HAVE now travelled through the *ſubject* of *literary property*, ſo far as *general principles* of reaſon and property affect the queſtion; and I hope to have ſucceeded in evincing, that according to *them*, the claim of literary property is free from every kind of objection, which has hitherto been ſuggeſted againſt it.

II. I

II. I HAVE at length reached the Law of England; but thoſe, who have gone before me in that part of the ſubject, have already been ſo *full* and *accurate* in the ſtating of the authorities, that I hope to be excuſed for being very *general* in that part of the Argument. The manner in which I mean to proceed is, *firſt*, by exhibiting the *principles*, on which literary property falls within the *notice* and *protection* of the *common law* of England; *then* by exhibiting a *general* view of the ſeveral kinds of *authorities*, by which the claim of literary property is corroborated; and, *laſtly*, by taking ſome notice of *ſuch objections*, againſt literary property, as are referable to the law of England.

THE manner, in which I have already explained the *title* of an author to the ſole printing of his own works, renders it unneceſſary *here* to do little more, than to refer to the principles attempted to be eſtabliſhed in the former part of the Argument. The *primary* cauſe of the author's claim is his *labor* in the compoſing of his works; and *this*, *combined* with his *conſequential* power over, and intereſt in, the manuſcript, is the foundation of the author's ſole and excluſive right; which is allowed to be intitled to the protection of the *common law* of England before a *voluntary* and *general* publication. Therefore the author's right *before* publication, is to be conſidered

dered as *inherent* to his ownerſhip of the *manuſcript* of his compoſition. *After* publication his *right* receives an *acceſſion* of ſtrength; and from the circumſtances of the publication, there ſprings a *new* and *ſubſidiary* right, founded on each purchaſer's *implied contract* not to invade the author's *pre-exiſting* right of multiplying copies. Viewed in *either* of theſe lights, the author's claim is equally within *acknowledged principles* of the *common law of England*. The right *inherent* before publication is conceded to be conformable to the principles of the *common law*, and in caſe of invaſion, to be intitled to aid from the Court of *Chancery*. The only doubt raiſed is in reſpect to the right *after* publication. I have already evinced, that the author's right is not *intentionally diminiſhed* by the publication. If it is not, the right is *at leaſt* intitled to as much protection as *before*. Beſides, the *implied contract* is of *itſelf* a foundation for the right *after* publication; and under the form of a contract the *common law* may protect this right, as well as other rights originating from contracts. Even upon that foundation alone, though I do not hereby mean to deſert the other ground, the right may be as effectually protected, as if it ſhould be deemed *property* according to the *rigid* ſenſe of the word. Such rights indeed are, in the eye of the *common law*, *mere choſes in action*; but the reſult is *ſubſtantially* the ſame; for in *equity*, ſuch rights are aſſignable in the

ſame

ſame manner as property. If it is aſked, how the *enjoyment* of the right is to be protected, the anſwer is, That action on the caſe, for the damages of an actual invaſion of the right, will protect it in the courts of *common law*; and the remedy by injunction to reſtrain *future* invaſions by printing, may be had in a court of equity. The *claſſing* of the right is as obvious. *Real* eſtate it cannot be, becauſe it has not the moſt diſtant connection with land; and beſides, *it* is a right ſpringing from ownerſhip of the author's *manuſcript*; and *that* being perſonalty, the right incident to it muſt be *ſo* alſo; and as ſuch therefore it is alienable, tranſmiſſible, and liable to the other conſiderations of perſonalty.

Before I explain the various ſources of authorities, from which a recognition of the right claimed may be inferred; I deſire to have it underſtood, that I conceive the *general* principles of reaſon and the *particular* principles of the *common law of England*, ſuch as I have already delineated, to be of themſelves ſufficient to ſuſtain the author's right; and I do moſt ſincerely think, that if the art of printing had been invented in *our own times*, the foundation on which I have argued the title of the author, would not require the leaſt aid from decided caſes, parliamentary recognitions, or any other authority

whatever. With this declaration, I ſhall proceed to ſtate the ſeveral kinds of authorities.

(1.) The firſt kind of authority I adduce, is the *continual* protection given to *property* in the printing of books *antecedent* to any act of the *legiſlature*. Soon after the introduction of printing into England, the Crown *aſſumed* the power of granting patents for the ſole printing of books. The next ſtep was exerciſing a compleatly arbitrary power over the preſs; and no book was permitted to be publiſhed without a licence (*i*). This is a ſource *too impure* to be uſed for any other purpoſe, than that of accounting for the not having recourſe to the ordinary courts of juſtice for the protection of property in the printing of books; nor do I aſk for any other benefit from *ſuch* authorities. In 1556 the Stationers Company was erected (*j*), and from 1558 there are *entries* of *copies* in their books for *particular perſons*. In 1559 there are entries of fines for invading *copy right*; and in 1573 other entries, mentioning the *ſale* of *copies* and the *price*. But in 1582 the entries are ſtill more important; for ſome are made with a *proviſo*, that *if it be found any*

(*i*) See the Decrees of the Star Chamber in 1556, and 1585, and 1637, as cited in Burrow. Que. of Lit. Prop. 21.

(*j*) See Burrow, Lit. Prop. 13.

other

*other has a right to any of the copies, then the licence for the copies ſo belonging to another ſhall be void.* This proviſo is of importance, becauſe it indicates an idea of *copy-right antecedently* to the *licence.* However, I do not preſs *thoſe entries* in any other manner, than the decrees of the Star Chamber.

(2.) The next kind of authority I ſhall introduce, is what appears to me a *legiſlative recognition of a property in the printing of books.*—On the 14th June 1643, both Houſes of Parliament made an ordinance, declaring.

"That no book, pamphlet, nor paper, nor part "of ſuch book, pamphlet, or paper, ſhould from "thenceforth be printed, bound, ſtitched, or put to "ſale by any perſon or perſons whatſoever, *unleſs* "*the ſame be entered in the regiſter-book of the Company* "*of Stationers, according to ancient cuſtom*; and that "no perſon or perſons ſhould thereafter print, or "cauſe to be printed, *any book or books*, or part of "book or books *entered in the regiſter of the ſaid Com-* "*pany for any particular member thereof, without the* "*licence and conſent of the owner or owners thereof*; *nor* "*yet import any ſuch book or books, or part of book or books* "*formerly printed here, from beyond the ſeas, upon pain* "*of forfeiting the ſame to the reſpective owner or owners* "*of the ſaid copies*, and ſuch further puniſhment as

 "ſhall

"ſhall be thought fit." The like ordinance was made 20 September 1649; 7th January 1652; and 28th Auguſt 1655 (k).

It is obſervable, that theſe ordinances recognize an *ownerſhip* in books *paramount* to the entry in the books of the Stationers Company; which, without any thing further, might be fairly conſtrued to refer to a *property founded on authorſhip*, as well as to property founded on a leſs exceptionable title. But what puts this out of doubt is the following declaration, which was ſigned near two years before the ordinance of 1643, by ſome of the moſt favourite Divines of the then prevailing party in Parliament.

"We whoſe names are ſubſcribed, at the requeſt "of certain ſtationers or printers, do hereby inform "thoſe whom it may concern, that to the know- "ledge of divers of us (and as all of us do believe) "*that the ſaid ſtationers or printers have paid very con-* "*ſiderable ſums of money to many authors for the copies of* "*ſuch uſeful books as have been imprinted. In regard* "*whereof we conceive it to be both juſt and very neceſſa-* "*ry that they ſhould enjoy a propriety for the ſole imprint-* "*ing of their copies. And we further declare, that unleſs* "*they do ſo enjoy a propriety, all ſcholars will utterly be* "*deprived of any recompence from the ſtationers or prin-*

(k) See Scobell's Acts, p. 92. & 236.

"*ters*

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"*ters for their studies and labors in writing or prepar-*
"*ing books for the press.* Besides, if the books that
" are printed in England be suffered to be imported
" from beyond the seas, or any other way reim-
" printed *to the prejudice of those who bear the charges of*
"*the impressions*, the authors and the buyers will be
" abused by vicious impressions, to the great discou-
" ragement of learned men, and extream damage to
" all kinds of good learning. The plaintures (and
" other good reasons which might be named) be-
" ing considered, we certify our opinions and de-
" sires that fitting and sufficient *caution* be provided
" in this behalf. Wherein we humbly submit to
" grave wisdoms of those to whom it doth ap-
" pertain."

| | |
|---|---|
| *Calebat Downing*, L. L. D. | *John Downine.* |
| *C. Offspring.* | *C. Burges.* |
| *Rich. Cole.* | *George Walker.* |
| *William Jenat.* | *Richard Barnard.* |
| *Hen. Townley.* | *Adoniran Byfield.* |
| *Jam. Norris.* | *Edm. Calamy.* |
| *John Payne.* | *La. Seaman.* |
| *Daniel Featley*, D. D. | *Sam. Rogers.* |
| *Will. Gouge*, S. T. P. | *N. Prime.* |

THIS paper is copied from a manuscript in the possession of the Stationers Company, and shews, that property in *copies* founded on *authorship* was so far

far from not being thought of at the time of the ordinance of 1643, that it was most probably one cause of giving an *additional* security. But I shall give a still further proof, that *authorship* was not then unknown as a *title* of property, by an extract from an Argument of the famous M. Prynn (*l*). The Argument was delivered in the 17th of Charles I. before a Committee of the Commons for printing; and was made against four patents for the sole printing of books; one of which patents was for printing *Bibles* and *Testaments*. After endeavouring to prove, that the king had not a right to grant the patent by *prerogative*; he proceeds in the following words: "*Objection* 4. The copies of the Bibles and New "Testaments are the Patentees *own copies*, who *paid* "for them; and the Bible newly translated was "the *King's copy*, *who had the same power as other au-* "*thors have to bestow it on whom he pleased*, and that "translation cost the Patentees four thousand "pounds, or more. *Therefore as all printers and sta-* "*tioners claim a peculiar interest in their own proper* "*copies, that no man may print them but themselves, or* "*by their order, so may the King's printers and the Pa-* "*tentees in these Bibles or other books, since that the* "*copies are their own; and that without any danger of*

(*l*) The original Argument is in the Temple Library; and there is a fair copy amongst the Harleian manuscripts at the British Museum.

"*a mono-*

" *a monopoly, ſince every printer or ſtationer may print*
" *his own copy ſtill, though* not another man's."——
" *Anſwer.* This being the *ſtrongeſt* and *moſt colourable*
" *objection*, I ſhall give a full anſwer unto it."

Mr. Prynn then endeavours to remove the Objection, by diſtinguiſhing between the *Bible* and *other* books, and attempting to ſhew, that the Bible was intended to be *common*. He alſo calls in queſtion the expence ſaid to have been laid out by the Patentees; but he very *faintly* and *ambiguouſly* controverts the claim of an *author*. I do not mention Mr. Prynn's Argument for any other purpoſe, than to ſhew, that the queſtion of literary property now depending, had occurred and been argued before the paſſing of the firſt licenſing ordinance; and that whatever *recognition* it may contain, it was not an *accidental* one. The next ſtatute I have to mention is the Licenſing Act of the 13th and 14th Cha. II. c. 33. ſ. 6. in which there is a clauſe reſpecting *property* in *copies*, ſimilar to *that* in the *firſt* licenſing ordinance. The Licenſing *Act*, after being renewed ſeveral times, expired ſoon after the Revolution. Several attempts were made to revive it; and in order to ſhew what was the idea of the times in reſpect to *property* in *copies*, and that the licenſing acts were underſtood only to *ſecure copy-right*, and not to *create* it, I give the following extract from

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ſome printed Reaſons for reviving the Licenſing Act.

"The ſecond deſign and intent of this Act is, "To encourage and preſerve *property* to *their au-* "*thors and their aſſigns*; and this, by enjoying entries "in a public regiſter (which is regularly and fairly "kept); by prohibiting the importation of any books "from beyond the ſeas which were printed here "before; and laſtly, aſcertaining the right of "copies to the proprietors thereof; which provi- "ſion, almoſt in the very ſame words, was eſta- "bliſhed, not only by decrees in Charles the "Firſt's time, and long before, but alſo by an Act "of Parliament, Sept. 20, 1649.

"This law is not only convenient for authors "of the preſent and future ages, but juſt even in "reſpect of *ancient copies, in which a legal intereſt hath* "*been acquired, and that at great charges*; and theſe "intereſt are become the livelihood and ſole eſtate "of ſeveral widows, fatherleſs children, and other "whole *families*."

There are many ſtrong expreſſions in this extract; and I have to add, that in the printed *Anſwer* to the Reaſons for reviving the Licenſing *Act*, the *property* of authors in their works is *not denied*. As a further explanation

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explanation of the Licenſing Act, I ſhall here introduce an extract from the Codicil *(m)* of Sir Matthew Hale. His words are theſe:

*Item*, "Whereas it may ſo fall out, that ſome "books of my own writing, as well touching the "common law as other ſubjects *(n)*, And for that "purpoſe one book *De Homine* is now in the preſs, "for the which the ſtationer from Shrewſbury hath "contracted to pay 20l. *and* 20*l. more for a ſecond* "*impreſſion*, whereof 5l. is paid; I do appoint "that the reſt of the money coming for that "book ſhall be equally divided between Thomas "Sherman, Thomas Shrewſbury, Charles Crew, and "Phineas Unicum.—And if any other books ſhall "happen to be printed, I would have William "Shrewſbury to have the *copy* and *impreſſion*, giving "in reaſon as another ſtationer will give for it. And "the money ariſing by ſuch contracts to be divided "into ten equal ſhares or parts; whereof two ſhares "go to Mr. Edward Stephens, for his care about "the impreſſion; one ſhare to Mr. Allen, my amanuenſis, for his care and aſſiſtance in examining "the copy and impreſſions; one ſhare among "my maid ſervants, equally to be divided; four "ſhares to be to Thomas Sherman, Thomas

*(m)* Dated 2d November, 1676.

*(n)* Here ſeems to be an omiſſion.

" Shrewsbury, Phineas Unicum, and Charles Crew;
" and the remaining two shares to be equally di-
" vided among all my houshold servants."

THE words of this Codicil, reciting the agreement to receive a sum for a *second impression*, seem to take for granted, that the right of multiplying copies was not renounced by the *first* impression.

(3.) THE remaining head of authorities consists of Adjudged Cases. These have been all stated very fully in a late publication *(o)*; and therefore I shall only mention generally what they prove. One order of Cases shews the right of the King to the sole printing of the Statutes, of the Bible, and some other publications peculiar to the Crown. These are important Cases; for they are the strongest precedents in favor of a *property* in *copies* at *common law*.

THE *origin* of the property or exclusive right of printing which is vested in the Crown, is *different* from the *origin* of the author's *title*. The King's right springs from *prerogative*; the author's from his *labor* in composing his work, and his interest in it. The *source* of their right is *different*; but the right itself is the same.——Another order of Cases is those, in which the *Court* of *Chancery* has restrained printing by injunction in favor of the author's

(*o*) Burr. Lit. Prop.

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property. In ſome of theſe Caſes, the Court has interpoſed to prevent the printing of *unpubliſhed manuſcripts* without the conſent of the author or his repreſentatives. In others, the Court has reſtrained the invaſion of *copy-right*, notwithſtanding the expiration of the term of years granted by the ſtatute of queen Ann.

THE only Caſe, in which the author's property, independantly of the ſtatute of queen Ann, has been regularly argued and determined upon in a Court of Common Law, is that of Millar and Taylor, in which the judgment of the Court of King's Bench was given for the Author by three Judges againſt one.

As to the objections referable to the law of England, the only two of conſequence are *that* of a monopoly, and *that* founded on the ſtatute of Queen Ann.—The former objection I have in fact already anſwered, in the general reaſoning on the nature of a monopoly; and I have nothing to add to the diſtinction there made.

As to the ſtatute of Queen Ann, it doth not contain any thing to take away that intereſt or property, to which authors were before intitled in the publication and ſale of their own works. The object of that ſtatute was to ſecure literary property by penalties from piracy and invaſion; and though the

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protection given is only *temporary*, yet, ſo far from being made ſo under an idea of the Legiſlature, that authors had no property in their works before, or with an intention to limit its duration, the ſtatute expreſly declares, that nothing contained in it ſhall *prejudice* any right which the Univerſities, *or any perſon or perſons*, might claim to the printing or reprinting of any book or copy *then* printed, or *afterwards* to be printed.

I HAVE now brought my Argument to a concluſion; and I hope, that the title of an author and his aſſigns to the ſole right of printing and ſelling his works is demonſtrated to be founded as well on the principles of the *common law* of *England*, as it is on the principles of *reaſon*, *natural juſtice*, and *public utility*.

FINIS.

# POSTSCRIPT

TO

# Mr. HARGRAVE's ARGUMENT

IN DEFENCE OF

# LITERARY PROPERTY.

IT muſt be obvious to every perſon, who reads the preceding Argument, that the laſt twenty pages of it are at beſt but a rude and faint ſketch of the reaſoning, which might be urged to ſuſtain the claim of Literary Property. The truth is, that in conſequence of a delay, *principally* proceeding from a conſciouſneſs of not being armed with the qualifications ſo eſſential to a great undertaking, the Argument actually *remained* to be *compoſed*, at the time it ought to have been *printed*. My mind, indeed, had been previouſly ſtored with almoſt every idea, which an extenſive inquiry or a frequent reflection could ſuggeſt; but the arrangement of my materials, and the cloathing of my conceptions, though in my opinion

opinion far the moſt arduous part of the taſk, were ſtill unattempted. Finding myſelf in a ſituation ſo critical, I began the undertaking with the moſt diſcouraging apprehenſions for the event; and theſe continually operated in obſtructing my progreſs. Diſtreſſed, however, as I was for time, I ſaw the neceſſity of laying a firm and ſolid foundation; and therefore I determined at all events not to be ſparing of my attention to the firſt part of the ſubject. So far as the Argument depended on the ſtating of authorities and hiſtorical facts, or inferences from them, it had been already occupied by others, and was indeed almoſt exhauſted. But it appeared to me, that the *ſource* of the property claimed, and the *practicability* of *deriving a title* to it, without the aid of any *poſitive law* to *create* the *right*, or to *regulate* its *enjoyment*, would not only bear, but even required, a further and more minute obſervation; and that for want of it, and a more *pointed* anſwer to ſome objections much relied upon, the moſt unprejudiced perſon might be indiſpoſed to ſubmit to the weight of *authorities*. Accordingly, I exerted my whole force of mind on this part of the ſubject; and if I ſhould be deemed ſucceſsful in the execution, it muſt be chiefly imputed to the ſtrong influence of a ſelf-conviction, that I was arguing with reaſon and truth on my ſide. But by the time I had reached that part of the ſubject, in which I mentioned the *ſup-*

*poſed*

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*posed* resemblance between the inventor of a machine and the author of a book, I found, that only one day remained for compleating the Argument. This will account for the crude manner, in which the remainder of the Argument is executed, particularly where I have expressed my idea of the true distinction between a claim to the sole making of a machine, and to the sole printing of a book; a distinction, which, if I have said sufficient to give the least conception of what I found myself upon, will, I dare to say, be clearly and demonstrably established by others, however defective I may have been in unfolding and applying the principles on which it depends.

Such were the circumstances, under which I wrote the preceding Argument; and I have thought it necessary to explain them, as well to exculpate myself from the charge of a wilful impropriety in the *mode* and *time* of using the Argument, as to prevent all inferences to the prejudice of the right in question, from my feeble and imperfect defence of it.

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*Lincoln's-Inn,*
*Feb.* 11, 1774.

F. H.