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suing out the writ in evidence at the trial, the action appeared by the general memorandum of the nisi prius record, which referred to the first day of the term, to have been commenced before the title of the lessor accrued, which was in the term.

Gibbs contrà, was stopped by the court.

Lord KENYON, Ch. J. The only question here is whether the lessor of the plaintiff has actually commenced the present suit in time. In what manner that is hereafter to be made out, it is unnecessary at present to inquire. The action was commenced against the casual ejector by original, and notice of the declaration was served on the tenants in possession, and the landlord was afterwards admitted to defend upon entering into the common rule. Perhaps there may be some difficulty as to the form in which the continuances shall be entered so as to bind the real parties now before the Court; though I conceive, if it were necessary, that the Chancellor would issue an original writ applicable to them. But it is sufficient in this case to say, that there is no instance in which the Court have refused the parties leave to amend according to the truth of their case, to prevent their being barred by the statute of limitations for a supposed laches of which they really have not been guilty. It is a matter of course to grant leave to amend in these cases, to enable the parties to arrive at the real justice of the case. And in this instance, I do not see that the defendant stands in a more meritorious situation than the lessor of the plaintiff.

Per Curiam, Rule absolute to amend.

Friday, May 11th.

BECKFORD *against* HOOD.

An author whose work is pirated before the expiration of twenty-eight years from the first publication of it may maintain an action on the case for damages against the offending party, although the work was not entered at *Stationer's Hall*, and although it was first published without the name of the author affixed. [16 East 317.]

THIS was an action upon the case; and the first count of the declaration stated that the plaintiff was the author of a certain book entitled "Thoughts upon Hunting;" and being such author within the space of twenty-eight years last, viz. on, &c. at, &c. first published the said book; that all the copies of the book so by him published, having been sold, the plaintiff before, and at the time of the grievance after mentioned, intended to publish a new edition, and had laid out 100*l.* in preparing the same, yet the defendant afterwards, and within the space of twenty-

eight

eight years from the day of the first publishing of the said book, viz. on, &c. at, &c. wrongfully and without the plaintiff's leave and against his will published and exposed to sale and sold divers, to wit, four hundred copies of the said book; by means whereof the right, title, and interest of the plaintiff in the said book, is much lessened in value. The second count stated that the plaintiff had the sole and exclusive liberty and right of printing a certain other book called "Thoughts upon Hunting," whereof the plaintiff was, and is the author, and which had been within twenty-eight years last, to wit, on, &c. first published by him as such author, yet the defendant knowing the premises and contriving to injure the plaintiff afterwards, viz. on, &c. at, &c. wrongfully and unjustly, and without the plaintiff's leave and against his will, printed, published, and exposed to sale, and sold divers, to wit, four hundred copies of such last mentioned book, whereof the plaintiff had the sole and exclusive liberty and right of printing as aforesaid; by means whereof the right, title, and interest of the plaintiff of, in and exclusive liberty and right of printing as aforesaid; by means whereof the right, title, and interest of the plaintiff of in and to such sole and exclusive liberty and right of printing is much hurt and lessened in value.

36 L.T. 705.

13 Q.B.D. 111.

The defendant pleaded the general issue; and on the trial at the sittings for *Westminster* after last *Hilary* term, before Lord *Kenyon*, the jury found a verdict for the plaintiff, subject to the opinion of this Court on the following case.

The plaintiff is the author of the book stated in the declaration, entitled "Thoughts upon Hunting;" and in *May* 1781, he published the first edition of it, without any name prefixed to the title page. In 1782, he published a second edition, and in 1784 a third edition with his name prefixed to the title page. Neither the original or subsequent editions were ever entered in the hall of the company of Stationers. In *August* 1796, the defendant published the same work under the title of "Thoughts upon Hare and Fox-hunting," with the plaintiff's name prefixed to the title page. The plaintiff is still living, and never disposed of his right or interest in the said work. The question for the opinion of the Court is, Whether the plaintiff is entitled to recover in this action?

Reader for the plaintiff. Three questions arise in this case; 1st, Whether an action on the case for damages will lie since the stat. 8 *Ann. c.* 19? 2d, Whether, if such action will lie since the statute, it can be maintained unless the work be entered at *Stationers' Hall* previous to the publication? 3d, Whether the plaintiff has

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has abandoned his right of property in the work by publishing it without affixing his name to it? 1st, Admitting that since the case of *Donaldson* v. *Becket*, in *Dom. Proc.* 1774 (*a*) an author cannot after publication of his work, set up a common law right to the exclusive printing and republishing of it, yet such a right is expresslyvested in him by the stat. 8 *Ann. c.* 19. for the term therein specified, which is not yet expired in the present case, The first section of that act, after reciting that printers and other. have taken the liberty of publishing books and other writings without the consent of the authors or proprietors, to the great detriment of them and their families, enacts that the author of any book already printed, who has not transferred to any other the copy of such book, &c. or the persons who have acquired, or purchased the same, *shall have the sole right and liberty* of printing such book, &c. for twenty-one years and no longer; and that the author of any book not published, and his assigns *shall have the sole liberty of printing and reprinting* such book for fourteen years, to commence from the day of first publishing the same and no longer. It then proceeds to affix the penalties for transgressing the law. By this act therefore the property in literary works is exclusively vested in the authors, for the period assigned, independently of the penalties which are afterwards inflicted on those who infringe that property: and the maxim of law attaches that the law confers no right without a remedy to secure it, which in this instance can only be by an action on the case for damages. It will be contended, however, that the author has no such general remedy in the present case, because the same statute that creates the right has pointed out a particular remedy for the protection of it, namely, by suing for the penalties given by the statutes in the same clause. And it must be admitted that in general where a statute creates a new offence, and gives a penalty against the offender, no other remedy can be resorted to; as in 1 *Rol. Abr.* 106. *pl.* 16. But that and all other cases of the like sort, are founded on statutes which vest no right in any party, but only prohibit the doing of a certain thing under a penalty. There is no case where it has been holden that if a statute vest a right generally in any person, and also give a penalty against those who infringe that right, the party grieved is confined to that particular remedy. On the contrary it was holden in *Chapman* v

(*a*) 4 *Burr.* 2408. and 7 *Bro. P. C.* 88.

Pick ersgill

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Pickersgill (*a*) that the common law remedy of an action on the case fordamages lies for maliciously suing out a commission of bankrupt, although the 5 *Geo.* 2. *c.* 30. *s.* 23. gives a particular remedy in that case, namely, by enabling the Chancellor, to whom a bond in the penalty of 200*l.* is given for securing the trader against that mischief, to order satisfaction to the party grieved. It might even be admitted that the rule may be carried further, and that wherever a new right is conferred by statute, and a particular remedy given to the partygrieved toenforce the observance of it,no other remedy can be resorted to. But here there is no remedy given *to the party grieved.* It is true that the pirated copies are to be forfeited to the proprietor of the copyright; but that is for the purpose of their being destroyed, and is in itself no compensation for the injury previously sustained. There is also a penalty of a penny for every sheet found in the possession of the offender, to which, without adverting to the inadequacy of it as a remedy, the same answer may be given as before, that it may entirely fail as a compensation for the injury before sustained by the sale of the spurious copies. But besides there is this decisive answer to it, that the remedy, inefficient as it is,and inapplicable in some cases, is not given to the party grieved but to a common informer. Neither is the supposed remedy commensurate with the duration of the right conferred; for the penalties only attach upon persons pirating copies "within the times granted and limited by this act *as* "*aforesaid*;" the only times before specified being the term of twenty-one years for books then before printed, and the term of fourteen years for books thereafter to be printed: whereas by a subsequent clause(the 11th) if the author belivingat the expiration of the first fourteen years the sole right of publishing reverts to him for a further term of fourteen years. Therefore if the party grieved has not this remedy, he has no remedywhatever to protect his right against invasion during the latter period. The opinion now contended for is supported by authority as well as reason. Mr. Justice *Yates*, who in the case of *Millar* v. *Taylor*(*b*) in this Court was alone of opinion that an author had not a right of property at common law in his works when published, was yet decidedly of opinion that by the first clause of the statute of *Anne*, an exclusive right was vested in the author

(*a*) 2 *Wils.* 145.

(*b*) 4 *Burr.* 2380.

during

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during the terms therein limited; and that notwithstanding the penalties and confiscation given by the same act the author had *all the common law remedies* for the enjoyment of that right; for which he cited *Ewer* v. *Jones*, *Salk.* 415. and 6 *Mod.* 26. So in the subsequent case of *Donaldson* v. *Becket* (*a*), *Eyre*, B., who gave his opinion in the House of Lords against the common law right of an author after publication, was yet of opinion that there might be a remedy in equity, upon the foundation of the statute independently of the terms and conditions thereby prescribed in respect of the penalties given. It is admitted that injunctions are granted of course in the Court of Chancery, to restrain printers from publishing the work of another person; which practice can only be sustained on the ground, that the penalties given by the statute are not the only remedy which can be resorted to. 2dly, It is not necessary to the author's right of action in this case that the work should be entered at *Stationer's Hall* previous to publication. It is true that the second section of the act requires such entry to be made in order to subject a defendant to the forfeitures or penalties of the act; but it is only necessary for that purpose. And there was no occasion to give notice to the defendant who the author was in order to sustain this action, because he must have known that the copyright did not belong to him (*b*); and he admits his knowledge of the author, by prefixing his name to the work published by himself. 3dly, There is no pretence for saying that the plaintiff by publishing the work originally without his name thereby abandoned his right of property to the public; for whether he did so or not is a matter of fact which should have been found by the jury, and cannot be inferred as a matter of law: and here the case states that the plaintiff never disposed of his right or interest in the work. *Yates* J. held (*c*) that the inserting of the author's name in the title page was not necessary, supposing that he had the right of property in him; and that in order make an abandonment, there must be an intention to relinquish as well as an actual relinquishment.

Marryat for the defendant. It is admitted that this action is not maintainable at common law, independently of the statute: if so, that statute having pointed out a particular remedy no other can be pursued. It is a settled rule that where a statute creates a

(*a*) 4 *Burr.* 2409. (*b*) Vid. Mr. Justice *Astons'* argument, *ib.* 2345.
(*c*) 4 *Burr.* 2366.

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new offence orgivesa new right,and in the same clause either prescribes aparticular mode of punishment or aparticular remedyfor the infringement of it,no other can be resorted to. But it is otherwise where a statute ismerelyconfirmatory of apre-existingright; in which case the new remedyis considered only as accumulative. It is said that this rule is confined to criminal proceedings or actions for penalties, and does not extend to cases of civil remedies for injuries sustainedby the party grieved. Yet it appears that the Legislature thought otherwise in respect to property of a similar kind, namely, that of engravings. The 8 *Geo.*2. *c.* 13. *s* 1. gives the exclusive right in their works for a similar term to engravers as the 8 *Ann* had before given to authors, and affixes the same penalties upon the breach of it. The 7 *Geo.* 3. *c.* 38. extends the right to other persons, and enlarges the term of the monopoly to twenty-eight years. Then the 17 *Geo.* 3. *c.* 57. reciting the two former acts,and their insufficiency for the protection of the artists, and the necessity there was for making further provision for securing their property, gives to the party injured, a special action upon the case to recover damages against the party pirating the work. It is evident therefore that the Legislature thought that no such remedy as this now attempted lay by virtue of the statutes vesting the exclusive right in the engravers. Next it is objected that the remedy given by the statute of *Anne* is inadequate, and that, such as it is, it is given to a common informer, and not to *the party grieved.* The inadequacy of it was a matter for the sole consideration of the Legislature. The party grieved may sue, if he please, for the penalties. But at any rate that part of the act which requires the forfeiture of the copies themselves that have been pirated is entirely for the benefit of the author.And as the penalties are given against every offender in whose custody any part of the work pirated shall be found, "*contrary to the true intent and meaning of the act,*" that must be taken to include thefurther term of fourteen years granted by the subsequent part of the act, as well as because in the former part of the same section all other persons than the author or proprietor are prohibited from publishing the work within the *times* granted and limited bythis act as aforesaid. [The Court said that the words "*as aforesaid*" confine the meaningto the two terms of 21 years and 14 years mentioned in thepreceding part of the clause and cannot extend to the second term of 14 years which is granted bya subsequent clause.]As to the case cited from 2 *Wils.* 145., that

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that went expressly on the ground that the action would have lain at common law supposing the statute had never been made, and therefore that the remedy given by the statute was accumulative. And indeed it could not be doubted but that a party was entitled to remedy in damages for any injury to his character or fortune, let it arise from what cause it might. The 2d objection is much stronger. The whole frame of the act shews that the Legislature intended to make it part of the condition of giving the exclusive right to authors to print their works for the times mentioned, that they should enter them in some public record, in order that all persons might be apprized what works they might or might not publish. This appears strongly from the third clause, which provides that if the clerk of the *Stationers' Company* shall not on demand, register the copy, the author upon notice thereof in the *Gazette* shall have the same benefit as if the entry had been made. This shews that the Legislature considered the penalties before given in the nature of a remedy to the author, and not merely for the benefit of a common informer; for that provision is exclusively in favour of the author. But this mode which is substituted in lieu of the other was still required for the purpose of notifying to the public the name of the author asserting his exclusive right, and as a warning to others not to offend against it. In *Donaldson* v. *Becket* in the House of Lords, the majority of the judges who delivered their opinions thought that since the statute of *Anne*, the author had no other legal remedy than that given to him by the statute upon the terms and conditions therein prescribed, one of which is that the work shall be entered. 3dly, The work being originally published without the author's name, and not being entered at that time, must be considered as evidence of his intention to abandon it to the public; and upon a special case, the Court are substituted for the jury as to the conclusions to be drawn from the facts stated. And though it is said that the defendant knew the author by publishing his name to the pirated work, yet he could not know whether he were living or where he was to be found.

Reader, in reply, observed that the opinion of the majority of the judges in *Donaldson* v. *Becket* did not proceed upon the specific remedy which the party had under the statute, but merely as to his right of property being confined to that given to him by the statute, as contradistinguished from the common law

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Lord KENYON, Ch. J. All arguments in support of the rights of learned men in their works, must ever be heard with great favour by men of liberal minds to whom they are addressed. It was probably on that account that when the great question of literaryproperty wasdiscussedsome judges of enlightenedunderstanding went the length of maintaining that the right of publication rested exclusively in the authors and those who claimed under them for all time: but the other opinion finally prevailed, which established that the right was confined to the times limited by the act of parliament. And that I have no doubt was the right decision. Then the question is, whether the right of property being vested in authors for certain periods, the common law remedy for a violation of it does not attach within the times limited by the act of parliament. Within those periods the act says thatthe author*shall have the sole right and liberty* ofprinting, &c. Then, the statute having vested that right in the author, the common law gives the remedy by action on the case for the violation of it. Of this there could have been no doubt made, if the statute had stopped there. But it has been argued that, as the statute in the same clause that creates the right, has prescribed a particular remedy,that and no other can be resortedto. And if such appeared to have been the intention of the Legislature, I should have subscribed to it however inadequate it might be thought. But their meaning in creating the penalties in the latter part of the clause in question certainly was to give an accumulative remedy: nothing could be more incomplete as a remedy than those penalties alone; for without dwelling upon the incompetency of the sum, the right of action is not given to the party grieved, but to any common informer. I cannot think that theLegislature wouldact so inconsistentlyas to confer a right,and leave the party whose property was invaded, without redress. But there was good reason for requiring an entry to be made at *Stationers' Hall*, which was to serve as notice and warning to the public,that they might not ignorantly incur the*forfeitures or penalties*beforeenactedagainst such aspirated theworksofothers: but calling on the party who has injured the civil property of another for a remedy in damages cannot properly fall under the description of *aforfeitureorpenalty*. Some stress was attempted to be laid on the acts passedfor preserving the property of engravers in their works,inwhich a special provision is made to meet

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such a case as the present, and to give the same right of action as is here contended for. But it is well known that provisions of that kind are frequently inserted in acts of parliament pro majori cautelâ; and no argument can be drawn from them to affect the construction of other acts of parliament. On the fair construction of thisact, therefore I think it vests the right of property in the authors of literary works, forthe times therein limited, and that consequently the common law remedy attaches, if no other be specifically given by the act; and I cannot consider the action given to a common informer for the penalties, which might be pre-occupied by another, as a remedy to the party grieved within the meaning of the act.

ASHHURST J. In the case alluded to of *Donaldson* v. *Becket* in the House of Lords, I was one of those who thought that the invention of literary works was a foundation for a right of property independently of the act of Queen *Ann*. But I shall not enter into the discussion of that point now, as the question in the present case is much narrowed. And upon the construction of that act I entirely concur with my Lord that, the act having vested the right of property in the author, there must be a remedy in order to preserve it. Now I can only consider the action for the penaltiesgiven to a common informer as an additionalprotection, but not intended by the legislature to oust the common law right to prosecute by action any person who infringes this species of property, which would otherwise necessarily attack upon the right of property so conferred. Where act of parliament vests property in a party, the other consequencefollows of course, unless theLegislature make a special provisionfor the purpose; and that does not appear to me to have been intended in this case. I am the more inclined to adopt this construction, because thesupposed remedy is wholly inadequate to the purpose. The penalties to be recovered may indeed operate as a punishment upon the offender, but they afford no redress to the injured party; the action is not given to him, but to any person who may get the start of him and sue first. It is no redress for the civil injury sustained by the author in the loss of his just profits.

GROSE, J. The principal question is whether within the periods during which the exclusive right of property is secured by the statute to the author, he may not sue the party who has invaded his right for damages up the extent of the injury sustained;

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tained; and of this I conceive there can be no doubt. In the great case of *Millar* v. *Taylor*, Mr. Justice *Yates* gave his opinion against the common law right contended for in authors; but he was decisively of opinion that an exclusive right of property was vested in them, by the statute for the time limited therein. No words can be more expressive to that effect than those used by him. But it is to be observed that the penalties given by the act attatch only during the first fourteen years of the copyright: and during that time only is the offender liable for such penalties if he invade the author's right: but he is liable during the whole period prescribed by the act, to make good in an action for damages, any civil injury to the author. If this construction were not to prevail, during the last fourteen years of the term, the author would be wholly without remedy for any invasion of his property. But there must be a remedy, otherwise it would be in vain to confer a right. I was at first struck with the consideration, that six to five of the judges who delivered their opinions in the House of Lords in the case of *Donaldson* v. *Becket*, were of opinion that the common law right of action was ataken way by the statute of *Anne*; but upon further view, it appears that the amount of their opinions went only to establish that the common law right of action, could not be exercised beyond the time limited by that statute.

LAWRENCE, J. I entirely concur with the opinions delivered by my Brethren, upon the principal point, and the case of *Tonson* v. *Collins*, 1 *Blac. Rep.* 330. is an additional authority in support of it; for there Lord *Mansfield* said that it had been always holden that the entry in *Stationers' Hall* was only necessary to enable the party to bring his actien for the penalty, but that the property was given absolutely to the author, at least during the term.

Postea to the plaintiff