A

VINDICATION

OF THE

EXCLUSIVE RIGHT

OF

AUTHORS

TO

THEIR OWN WORKS:

A SUBJECT NOW UNDER CONSIDERATION

BEFORE THE

TWELVE JUDGES of ENGLAND.

LONDON:
Printed for R. GRIFFITHS, in the Strand.
M DCC LXII.

A

VINDICATION

OF THE

EXCLUSIVE RIGHT

OF

AUTHORS

TO

THEIR OWN WORKS.

A

VINDICATION, &c.

IT will, perhaps, be matter of ſurprize to thoſe who are not accuſtomed to the uſe of artificial reaſon, that a queſtion ſhould be made—Whether, at common law, an author hath a perpetual and excluſive right to ſell his own works?

This queſtion nevertheleſs, ſimple as it ſeemeth, hath exerciſed the talents of ſome of our ableſt advocates; and hath been found of ſuch difficulty and importance, as to be referred to the conſideration of the twelve judges; before whom, after repeated arguments, the ſubject ſtill lieth open for farther diſcuſſion: A circumſtance which reflects honour on the judicature of this country, where matters of private property are not haſtily or capriciouſly determined, but thus undergo

the moſt patient, ſolemn and impartial examination.

Were wiſhes to prevail in an adjudication of this nature, one would incline to wiſh, that an author's right to the works of his own mind, the moſt noble operation of which human nature is capable, ſhould be under the protection of the ſtate, and rendered as ſecure and extenſive as any mode of property whatever. At the ſame time, it muſt be confeſſed, that there are many circumſtances which place the caſe of authors in an unfavourable light; when we conſider the ſhameful and licentious uſe of the preſs, which daily teems with rank obſcenity and virulent defamation; we are almoſt induced to deſire that a right thus groſsly abuſed, ſhould be confined within the cloſeſt reſtrictions.

A diſpaſſionate mind, however, will diſtinguiſh between the caſe of ſuch licentious writers and the cauſe of authors in general. Let us leave them who are guilty of ſuch flagrant abuſes, to the puniſhments which the law hath provided: but let not their example, influence our judgment to the

pre-

prejudice of thoſe, and we can boaſt of many among us, who do honour to their country and to their ſpecies.

Diveſting ourſelves therefore of favour on the one hand, and of prejudice on the other, let us examine on which ſide the merits of this queſtion ſeem to incline ; for it might juſtly be deemed vain and preſumptuous, to conclude poſitively with reſpect to a ſubject, on which perſonages of ſuch eminent abilities ſtill find reaſon to ſuſpend their judgment.

In order to attain a juſt idea of the right under conſideration, it may be neceſſary to examine the nature and extent of property in general on the grounds of natural reaſon, as alſo on the principles of law : and as the arguments in the following ſheets are addreſſed to men of literature in general, the writer will endeavour, as far as poſſible, to avoid all technical language and juridical ſubtleties.

It is admitted, that in the firſt rude ſtate of nature, all men had equal right to the uſe of vacant ſubjects which lay in common ; and ſuch communion, for ſome time, ſupplied the place of property. But this com-

mon right continuing no longer than while the occupant was in actual poſſeſſion, inconveniencies aroſe which made way for the eſtabliſhment of *property*: by which is underſtood, a perpetual excluſive right in the poſſeſſor, to retain certain ſubjects till he hath ſignified his intention to abandon them.

Such a right being ſettled, it became in its nature *tranſmiſſible*; for he who hath a perpetual excluſive dominion over any ſubject, may either alienate it in his life-time, or transfer it at his death *: and that either abſolutely, or under ſuch limitations as he ſhall think proper to impoſe.

The ſubjects over which property may be exerciſed, are, in their general diviſion, either the productions of nature, or the inventions of art; or they partake of both. If men may claim an abſolute and excluſive right over the things of nature, a *fortiori*, they may claim ſuch a right over ſubjects of their own creating or improving.

* This is admitted by all the writers on the law of nature: even they who doubt whether the power of making a will proceeds from the law of nature or from poſitive inſtitution, do nevertheleſs allow of donations *Mortis Cauſa*.

The writers on the law of nature, require three qualities to conſtitute an object of property; 1ſt, That the ſubject by itſelf, or by its connexion with other things, be capable of affording ſome benefit to mankind, either immediately or mediately. 2dly, That it be open to the acquiſition of mankind, and reducible under the cuſtody of man. 3dly, That the poſſeſſor have the power of excluding others .from ſharing the benefit with him.

Now a literary copy partaketh of all theſe qualities.—It is capable of being uſeful to mankind—It may be kept under ſafe cuſtody—And the owner may exclude others from participation.

But he who inventeth or improveth any ſubject, hath not only a property in the individual thing invented or improved, but he may multiply the ſubject by framing others after the ſame model, and his right of property is the ſame over all.

The faculties of human nature, however, being perhaps nearly equal, therefore he who brings any invention or improvement into

ſociety,

ſociety, cannot ſet bounds to the ingenuity of others, or preclude them from the power of imitation. They may, according to their degree of ſkill, model other materials, without his leave, into the like form; and thereby gain an excluſive right in that individual ſubject of imitation, which they likewiſe, in their turn, may multiply.

Having deduced this imperfect ſketch of the ſtate of property from the principles of natural reaſon, it remains to conſider how far the law hath thought proper to abridge or extend theſe natural rights.

It will be foreign to the preſent deſign, to enter into the various modifications of property which the law hath created over the things of nature. For the preſent purpoſe, it will be ſufficient to examine what regulations it hath eſtabliſhed with reſpect to ſubjects of invention or improvement, which alone apply to the queſtion under conſideration.

Theſe ſubjects are very various in their nature. Some argue great ſkill in the deſign, and are extremely facile in the execution.

cution. In others, there is little merit in the deſign, but great labour in the execution. Some wholly ſerve the end of public utility; others are chiefly matters of ornament and amuſement. In few words, in ſome the labour of the hand prevails, in others the work of the mind: for ſome idea is requiſite in the conſtruction of the moſt ſimple ſubject of invention.

Hence we may readily perceive a fertile ſource of inconvenience. One who by great ingenuity and application of mind had given exiſtence to a ſubject, was liable to be deprived of the fruits of his diſcovery by an imitator, whoſe chief merit perhaps was manual.

To remedy this hardſhip, and to ſecure the original inventor in the excluſive enjoyment of the profits ariſing from his own diſcovery, the interpoſition of the ſtate was neceſſary. But as the beſt inſtitutions are liable to abuſe, ſo the remedy which was appropriated to guard the right of inventors, was perverted to protect an unjuſt claim in thoſe who could not plead the merit of invention.

Many

Many ſuch, by falſe or partial repreſentations, or perhaps by corrupting the miniſters of government, obtained excluſive privileges, which gave birth to monopolies: A monopoly* being a grant for the ſole making or ſelling, &c. of any thing, whereby *others are reſtrained of a freedom they had before, or hindred in their lawful trade:* for of a new invention, there can be no monopoly.

Yet, even in regard to new inventions, where the powers of the mind and body conſpire to produce ſome mechanical ſubject, the excluſive right of the inventor ought to be limited to a certain time, in which he may be preſumed to have reaped the juſt fruits of his diſcovery, and to have made a proviſion for his family. The invention then ſhould be thrown open for the benefit of thoſe who have the art to imitate the thing invented: every machine being an object of trade, which, according to the policy of all ſtates, ſhould be as free from reſtrictions as poſſible.

Theſe leading obſervations being premiſed, let us next conſider the nature of a literary copy, and examine whether it may not be

* 3d Inſt. 181.

eſſentially diſtinguiſhed from a machine: for if we can eſtabliſh a real difference between them, we ſhall demoliſh the ſtrongeſt hold, wherein the opponents of literary property have entrenched themſelves.

A literary copy or book may be conſidered, 1. As an ideal or doctrinal compoſition. 2. As a manual or mechanical compoſition *.

With regard to the firſt, it is not neceſſary that the ideas be original. It is ſufficient, that by a new combination of known ideas, the author has produced a different compoſition, or eſtabliſhed a different doctrine. Nay, a mere compilation, in which there may not be a ſingle idea of the compiler's, is ſufficient to veſt an excluſive right in a copy; as in a report book, for example. Farther, being the authorof the language only, is a good ground for maintaining an excluſive right in a copy, though the ideas belong to another. Thus a tranſlator may claim ſuch a right, being, in reſpect to thoſe who are not ſkilled in the original, the parent of a new doctrine.

* Theſe two general diviſions are ſufficient for the purpoſe of the preſent argument: though each might be branched out into ſeveral ſubdiviſions.

With reſpect to the mechanical compoſition, it is not requiſite to perfect an author's right to his copy, that the writing ſhould be of his own hand; for he who employs an emanuenſis, has as compleat a right to the copy as if he had penned it himſelf: the emanuenſis having, or being ſuppoſed to have, a conſideration for his manual labour. The ſame may be ſaid of printing. The printer is *Quaſi*, and in lieu of, an emanuenſis, being paid by the author for his art and mechanical operation.

From hence, perhaps, we may be able to collect ſome eſſential diſtinctions between a book and a machine or utenſil. In the latter, the completion of the piece of *mechaniſm* is the *end* to which the ideas of the inventor are directed. In the former, there are two ſets of ideas, tending to different ends. One ſet is applied to the framing of the *doctrinal* compoſition, which is the end the author propoſes; the other is directed towards the executing of the *mechanical* compoſition, which is the end * the printer

* This diſtinction will be illuſtrated by the reaſoning in the caſe of the earl of Yarmouth againſt Darrel, which will be cited hereafter.

has

has in view. Therefore in a book, the *mechanical* part, that is, the writing or printing, is, with reſpect to the author, only the *mean* for promulging the doctrinal part, which is the *end*.

Farther, a machine, as has been intimated, if exhibited to view, may be copied or imitated without the leave of the inventor; therefore, as has been ſhewn, it wants a diſtinguiſhing characteriſtick of property. But an author may produce his copy, may uſe it in public, and ſuffer it to be inſpected, and yet no one without his conſent can make themſelves maſters of the contents. Therefore if they propoſe to reap any benefit from the compoſition, they muſt entitle themſelves to the expected advantage under ſuch conditions as he thinks proper to impoſe, where he is not reſtrained by poſitive inſtitution: and he hath certainly a perpetual excluſive dominion over that ſubject which he can uſe in public, and which nevertheleſs another cannot imitate againſt his will.

Again, a machine is in itſelf, as ſoon as it is compleated, an object of trade, and conſequently

ſequently the property, as has been obſerved, ought to be limited. On the contrary, a literary copy is only an object of trade, *quatenus* its *mechanical* compoſition; that is, the printing, *&c.* Therefore if the queſtion was, whether a printer ſhould have a perpetual excluſive right of printing, the argument which places a book on the ſame footing with a machine, might perhaps apply with ſome force.

But an author's right to a literary compoſition, depends on different principles. It is a compleat compoſition before it is printed, and before it comes to be an object of trade. The author may ſell his original manuſcript to one man abſolutely for a groſs ſum: but if he cannot obtain an adequate ſum at once, or if he rather chooſes to depend on an uncertain compenſation to be collected by gradual returns, he may then multiply his copies, and diſpoſe of them to ſeveral, each for a ſmall conſideration, ſtill reſerving to himſelf the abſolute propriety over the original manuſcript. In which caſe, natural reaſon and juſtice determine that every copy which is multiplied, ſhall be multiplied for his benefit: and it ſeems the ſtrangeſt doc-

trine

trine imaginable to contend that the art of printing, which has facilitated the circulation of literary copies, ſhould reſtrain or prejudice the author's right.

The law will always adapt its inſtitutions to the principles of natural reaſon, and guard the rights of an ingenious and induſtrious individual, unleſs the protection it affordeth ſhould tend to work ſome public wrong, in which caſe artificial reaſon will ſtep in and ſuggeſt ſome medium, to reconcile, as far as poſſible, ſuch diſcordant intereſts.

But in the preſent inſtance, no public injury can enſue from an author's perpetual excluſive right over his own works. It has no tendency to prejudice the intereſt of trade, for ſo far as the mechanical part of literature is concerned, no excluſive right is ſet up or pretended.

Neither hath it any tendency to confine the powers of genius; for he who obtaineth my copy may appropriate my ſtock of ideas, and, by oppoſing my ſentiments, may give birth to a new doctrine; or he may coincide with my notions, and, by employing different

different illuſtrations, may place my doctrine in another point of view: and in either caſe he acquireth an excluſive title to his copy, without invading my property: for though he may be ſaid to build on my foundation, yet he rears a different ſuperſtructure. An *inconſiderable* addition or improvement however, will not ſupport his claim: the ſupplying literal or verbal omiſſions, or the correcting of literal or verbal errors, for inſtance, will not be ſufficient to found a new right in him: and a jury endued with the ſlighteſt degree of common underſtanding may, be the ſubject what it will, diſtinguiſh, or be taught to diſtinguiſh, where the difference is eſſential, and where it is evaſive.

Nevertheleſs it has been urged by a late ſhrewd and ingenious writer *, that an author's property is not *real* but *chimerical*. "Property," ſays he, "is either corporeal "or incorporeal. It is admitted that this "property conſiſts principally in the ideas, "though it be likewiſe inherent in the form "and compoſition of the piece, by which it "is moſt eaſily diſtinguiſhed and aſcertained.

* See an ENQUIRY *into the Nature and* ORIGIN *of Literary Property.*

" Therefore it is incorporeal, yet it totally " differs from every other incorporeal right, " either original or derivative." He farther obſerves, " that admitting this property, it " ſhall be governed by the rules of other " property. As if," ſaith he, " the chil- " dren could inherit, or the wife be dow- " able of an author's lofty and ſublime con- " ceptions." He then proceeds to give other inſtances where the author's right to his copy cannot be governed by the rules of property which he exemplifies: and indeed his concluſions would be as juſt as they are ingenious, were the property under conſideration of the nature which he ſuppoſeth.

It will not be neceſſary, however, to refute the arguments of this writer *ſeriatim*, ſince the principles themſelves from whence they are deduced, appear to be altogether indefenſible.

This property, ſaith he, is not *real*. This is true, in the technical ſenſe of the word. But here lieth the error. He uſes the word *real* ambiguouſly, not only as oppoſed to *chimerical*, but as contradiſtinguiſhed from *perſonal* property. Thus when he ſaith, the

children

children cannot *inherit*, or the wife be *dowable* of a literary copy, his concluſions are juſt, in the technical ſenſe of thoſe words. For an *inheritance*, and even a *freehold* cannot ſpring but out of lands, tenements, or hereditaments: or, as the old lawyers would phraſe it, ſomething which founds in the realty. But though this property is not *inheritable*, it is *tranſmiſſible*; that is, it may be transferred by the proprietor in his life-time; it may be bequeathed by will; or it may be divided according to the directions of law, in caſe of inteſtacy.

Again, it is true, that a wife is not dowable of this property, becauſe *dower* muſt iſſue out of lands or tenements: but a wife will be intitled, under the ſtatute of diſtribution, to her ſhare or portion of the profits ariſing from the ſale of this property.

This leads us to conſider an author's right to his copy in another point of view, in which it will appear to have all the qualities of property, and to be eaſily governed by the known and eſtabliſhed rules of law.

Let us ſuppoſe then a literary copy to be a perſonal thing, and it will be found to have every

every quality, by which the common law of England hath defined and described this ſpecies of property. For it may be acquired, 1. By the king's *prerogative*. 2. By *gift*. 3. By *ſale*. 4. By *theft*. 5. By *teſtament*. 6. By *adminiſtration* *.

It may likewiſe be recovered in the ſame manner as any other perſonal property: for if any one wrongfully poſſeſſeth himſelf of an author's copy, he may ſue what the law calls a mixed action againſt him; that is, an action to recover as well the thing demanded

* The diviſion of property into corporeal and incorporeal makes no difficulty in this caſe. For though the ſentiment or doctrine, conſidered abſtractedly, is incorporeal and ideal, yet, being impreſſed in viſible characters on the paper, the manuſcript copy is a corporeal ſubject.

The argument drawn by the writer of the Enquiry from the propoſition that "ideas are not ſuſceptible "of property," may be granted without admitting his concluſions. For though ideas conſidered abſtractedly, are not ſuſceptible of property, yet when impreſſed in viſible permanent characters on paper, they then become as it were incorporated, and a literary copy is thereby made the property of the author. But, ſays the writer, when it is publiſhed, it becomes common. No—the author ſufficiently intimates his intention to appropriate it to his own uſe, by publiſhing it for gain, at a certain price.

children cannot *inherit*, or the wife be *dowable* of a literary copy, his concluſions are juſt, in the technical ſenſe of thoſe words. For an *inheritance*, and even a *freehold* cannot ſpring but out of lands, tenements, or hereditaments: or, as the old lawyers would phraſe it, ſomething which founds in the realty. But though this property is not *inheritable*, it is *tranſmiſſible*; that is, it may be transferred by the proprietor in his life-time; it may be bequeathed by will; or it may be divided according to the directions of law, in caſe of inteſtacy.

Again, it is true, that a wife is not dowable of this property, becauſe *dower* muſt iſſue out of lands or tenements: but a wife will be intitled, under the ſtatute of diſtribution, to her ſhare or portion of the profits ariſing from the ſale of this property.

This leads us to conſider an author's right to his copy in another point of view, in which it will appear to have all the qualities of property, and to be eaſily governed by the known and eſtabliſhed rules of law.

Let us ſuppoſe then a literary copy to be a perſonal thing, and it will be found to have every

every quality, by which the common law of England hath defined and described this ſpecies of property. For it may be acquired, 1. By the king's *prerogative*. 2. By *gift*. 3. By *ſale*. 4. By *theft*. 5. By *teſtament*. 6. By *adminiſtration* *.

It may likewiſe be recovered in the ſame manner as any other perſonal property: for if any one wrongfully poſſeſſeth himſelf of an author's copy, he may ſue what the law calls a mixed action againſt him; that is, an action to recover as well the thing demanded

* The diviſion of property into corporeal and incorporeal makes no difficulty in this caſe. For though the ſentiment or doctrine, conſidered abſtractedly, is incorporeal and ideal, yet, being impreſſed in viſible characters on the paper, the manuſcript copy is a corporeal ſubject.

The argument drawn by the writer of the Enquiry from the propoſition that "ideas are not ſuſceptible "of property," may be granted without admitting his concluſions. For though ideas conſidered abſtractedly, are not ſuſceptible of property, yet when impreſſed in viſible permanent characters on paper, they then become as it were incorporated, and a literary copy is thereby made the property of the author. But, ſays the writer, when it is publiſhed, it becomes common. No—the author ſufficiently intimates his intention to appropriate it to his own uſe, by publiſhing it for gain, at a certain price.

as damages againſt the wrong doer for the unjuſt detention: and we may challenge the oppoſers of literary property, to produce an inſtance where it cannot be governed by the eſtabliſhed rules of law.

Having conſidered this right on the general principles of law, let us now proceed to the examination of thoſe *particular caſes*, wherein literary property has come under conſideration; and we ſhall find that the arguments of the moſt eminent lawyers, and the ſenſe even of the legiſlature itſelf, are all in favour of the author's excluſive right.

It is true, that the preciſe queſtion now under ſolemn deliberation before the twelve judges is of the firſt impreſſion: therefore, where we cannot reſt our arguments on a poſitive adjudication in point, we muſt be content to reaſon by analogy and inference: and the firſt caſe which occurs for this purpoſe is that of the Company of Stationers againſt Seymour *.

The Company, as Patentees, brought an action of debt againſt *Seymour*, for printing

* 1 Mod. 256.

Gad-

Gadbury's Almanacks: and Pemberton, on behalf of the Company, obſerved that "there was once a queſtion how far a "grant for the ſole printing of any *particu-* "*lar* book, ſhould ſtand good againſt them "who claim a *property in the copy*, para- "mount to the King's grant? And opinions, "ſaith he, were divided upon the point. "But he urged, that the defendant in this "caſe made *no title to the copy*, but only "pretended a nullity in the patent. The "book, he concluded, which this defend- "ant has printed, has no *certain author:* "and then, according to the rule of "law, *the King has the property*; and by "conſequence may grant his property to "the Company."

Here we find that the arguments at the Bar clearly and expreſsly acknowledge the author's right of property to his copy, which, in ſome caſes, is paramount the King's grant: and we ſhall ſee that theſe arguments are farther corroborated by the opinion of the Court, who reſolved, "that "Almanacks may be accounted prerogative "copies: and added, that ſince printing

 "hath

" hath been invented, and is become a com-
" mon trade, *ſo much of it as hath been kept*
" *incloſed, never was made* COMMON: but
" that matters of *ſtate*, and things concern-
" ing the government, were never left to
" any man's liberty to print that would:
" that *though printing be a new invention,*
" *yet the uſe and benefit of it is only for men*
" *to publiſh their works with more eaſe than*
" *they could before*—That men had ſome
" other way to publiſh their thoughts before
" printing came in; and foraſmuch as print-
" ing has always been under the care of
" government, it may well be preſumed that
" the former way was too—That there is *no*
" *particular author* of an Almanack: and
" then, by rule of law, the *King has the*
" *property in the copy*—That the additions
" which are common in Almanacks, do
" not alter the caſe, no more than if *one*
" *ſhould claim a property in another man's*
" *copy*, by reaſon of ſome inconſiderable ad-
" ditions of his own."

From this opinion of the court, we may collect, that ſo much of printing, as *has been kept incloſed*, that is, the ſubject of thoſe copies

copies which the prerogative has appropriated, and which relate to matters of ſtate, &c. never was made common; or in other words, never was open to be diſcuſſed and printed by every author who choſe to publiſh his ideas on thoſe ſubjects. This propoſition we ſee is à negative pregnant: for the plain inference from hence is, that in ſuch copies which do not concern the government or public conſtitution, the author might claim a right, paramount the prerogative.

This inference is ſupported by what follows: For we find that *one principle* on which the court determined the merits of this caſe, was that an Almanack had no *particular author*, therefore the King had a property in the copy. Conſequently where there is a particular author, the prerogative cannot take place, much leſs can a right accrue to a ſubject.

Again, it was reſolved by the court, that from an inconſiderable addition, no one ſhould claim a property in *another man's copy*; which is a farther *expreſs* acknowledgement of the author's *excluſive* right.

Moreover

Moreover it is material to obſerve, that the court on this occaſion declared the uſe and benefit of printing to be that " men " might publiſh their works with more eaſe " than before." But ſhould the opinion prevail that an author has no excluſive right in his copy, then printing, which was intended for his benefit, and contrived to circulate his works with *more eaſe*, will impoſe new hardſhips on him, and prove of the utmoſt prejudice to his intereſt.

But the next caſe which comes under conſideration, applieth perhaps yet ſtronger to ſupport the principles and diſtinctions above advanced in favour of the author's right.

It is the caſe of the Earl of Yarmouth, as Patentee, againſt Darrel * ; in which it was contended, on the principles of the foregoing caſe, that " where no individual " perſon can claim a property in a thing, " there the King hath a right veſted in " him by law: And that where there is *an* " *inherent prerogative in the King, when-*

* 3 Mod. 75.

" *ever*

" *ever he exerts it, all other perſons are bound*
" *who were at liberty before.*"—On this oc-
caſion likewiſe it was argued, that " the King
" had as great a prerogative in writing any
" thing of a public nature, as he hath in
" printing of it: and that printing was as
" an art *excluſive of the thing printed.*"

The court likewiſe, in this caſe, raiſed a diſtinction between " things of a *public* " uſe, and thoſe things which are public in " *their nature.*"

From hence it may be collected, that if the thing printed be of a *public nature*, it becomes a prerogative copy: or if no individual perſon can claim a property, then likewiſe the prerogative takes place.

Where the thing printed is not of a *public nature*, that is, not relative to matters of ſtate, though it be of *public uſe*, yet the author has an excluſive right to his copy.

But, ſays the writer above-mentioned, " The " knowledge, ſentiment, and doctrine con-
" tained in a book, are compoſed of ſimple
" ideas, and ariſe from our perception of

" their

" their agreement or disagreement. Per-
" ception is a power or quality of the
" mind: to possess this quality exclusively
" is to restrain all men from exercising their
" faculties on their own ideas."

The ingenious writer is here combating with shadows presented by his own imagination. The exclusive right contended for, is so far from having a tendency to restrain others from the exercise of their faculties, that it contributes to enlarge them; as it affords encouragement for authors to compose works on which others may employ their intellectual talents, and thereby multiply their perceptions.

But justice forbids that they should *directly* convert that very subject to their own pecuniary advantage, which has given them an opportunity of exercising and extending their ideas. He who buyeth a book, payeth only for the individual book so bought, but doth not purchase a priviledge of multiplying the copies. He pays but a small consideration for it, in proportion to the value of the original manuscript; for this reason, because there is an implied condition, annexed

to

to the ſale of each book, that every impreſſion ſhall be for the benefit of the author, who is to gather his profits by ſlow returns.

The purchaſer may indeed *indirectly* raiſe a pecuniary benefit from his purchaſe: ſince the agreement or diſagreement he diſcovereth in the ideas which compoſe the book, may be the foundation of a new compoſition, in which he may either contravert, or farther illuſtrate the principles of the book ſo purchaſed.

This brings us to examine into the title to copies of *antient authors*. Theſe, ſays the writer, are no more ſuſceptible of property than the elements of air and water, which are for the common benefit of mankind: and, he adds, *all copies are of the ſame nature*. So that upon this principle, an author hath no property even in his individual manuſcript; any one, conſequently, might, without any injury to this writer, have ſeized his copy in its paſſage from the eſcrutoire to the preſs. Moreover, if it is no more ſuſceptible of property than the elements of air and water, then it could not become the ſubject of prerogative, which our author

will not contend. Such are the extravagances which result when ingenuity attempts to writhe and torture arguments, in order to make them quadrate with erroneous principles!

To prove, however, that antient copies are not susceptible of property, he supposeth a manuscript of Menander to be rescued from the dust. "*The editor of this copy* "*could not*, saith he, *derive to himself an* "*exclusive right by occupacy or improvement:* "*nor can the king grant to him the sole right* "*of printing it for a term of years, because* "*he is not the inventor, nor is it of a public* "*nature and importance, relating to the good* "*and benefit of the subject.*"

In support of this doctrine, he citeth the case of the *Earl of Yarmouth against Darrel*, above-mentioned. But if he had maturely considered that case, he would have found that the reasoning it contains, was by no means favourable to his general principles, or applicable to the particular purpose for which he hath cited it.