

Works which he left carelessly behind him in Town, when he retired from it, were surely given to the Public if ever Author's were; but two Prompters or Players behind the Scenes laid hold of them, and the present Proprietors pretend to derive that Copy from them, for which the Author himself never received a Farthing.

I pass over the flimsy Supposition of an implied Contract between the Book-seller who sells, and the Public which buys the printed Copy; it is a Notion as unmeaning in itself as it is void of a legal Foundation. This Perpetuity now contended for is as odious and as selfish as any other; it deserves as much Reprobation, and become as intolerable. Knowledge and Science are not Things to be bound in such Cobweb Chains; when once the Bird is out of the Cage—*volat irrevocabile—Ireland, Scotland, America* will afford her Shelter, and what then becomes of your Action? If the Legislature had intended to make the Right in Question perpetual, they would have taken Care that the Remedy should be so too.

I declare, I made the Decree entirely as of Course, in Pursuance of the Decision upon the Right in the Court of *King's Bench*, and as what I decreed, as a <sup>Lord Chancellor</sup> ~~Chancellor~~, <sup>Appoy.</sup> was merely a Step in the Gradation to a final and determinate Issue in the House of Peers, I am totally unbiassed upon the Question, and therefore can speak to it as fairly from my own Sense of it, as any one of the Judges, or any of the Lords present.

The several Citations and Precedents that have been relied upon at the Bar, are foreign to any Constructions which can support the Respondents in their Argument; the Authorities derived from the Stationers Company are absurd; to quote, among the several extraordinary Entries to be met with in their Books; are the following ones, that one *Sibthorpe* had entered a Book there, "the Title of which," says the Entry, "is to be sent hereafter; and another Member entered the Name of a Book "about to be translated by him;" by which all the rest of the World were to be restrained, in the mean time, perhaps for ever, from translating the same. I have in my Hand several Original Letters from *Swift* to *Faulkner* and others, relative to the Statute of *Queen Anne*, all tending to shew the Sense of the Legislature, at the time of passing it, to be against the Right; and both Houses rejected the other Bills afterwards, drawn up chiefly by the Advice of *Dan Stewart* and the Countenance of *Mr. Adlyon*, which were presented in the same Spirit, and upon the same Grounds; I am therefore clearly of Opinion with the Appellants.

I own I have no great Acquaintance with the Quirks and Quibbles of the <sup>Lord Lyttelton</sup> Law. I speak to the Matter merely as a Question of Equity; I cannot enter into a delusive, refined, metaphysical Argument about Tangibility, the Materiality, or the Corporeal Substance of Literary Property; it is sufficient for me, that it is allowed such a Property exists. Authors, I presume, will not be denied a free Participation of the common Rights of Mankind, and their Property is surely as sacred, and as deserving of Protection, as that of any other Subjects. It is of infinite Importance to every Country, that the Arts and Sciences should be cultivated and encouraged; where Men of Letters are best protected, the  
People

People in general will be most enlightened, and where the Minds of Men are enlarged, where their Understandings are equally matured in Perception and in Judgment, there the Arts and Sciences will take their Residence. The Arts and Sciences had their Origin in *Italy*; from thence they fled to a remote Corner of *Asia*; at length they returned Companions of the all-conquering Arms of the *Roman Republic*; and at last they were happily seated in this free Country. I am of Opinion, that there are, at present, but two Monarchs in *Europe*, who are the Encouragers of the Arts and Sciences, and are themselves Men of Letters, the King of *Prussia*, and the King of *England*. It hath been urged, that Authors write for Fame only; that Glory is their best Reward, and that Immortality of Renown is an ample Recompence for their Labours; they therefore do not stoop to claim a further Right than that of a first Communication of their Ideas to the Public. This is, in a confined Sense, a proper and a noble Observation, but it will not hold generally. I beg your Lordships to remember, that Genius is peculiar to no Climate, it belongs to no Country, it is more frequently found in the Cottage than the Palace; it rather crawls on the Face of the Earth than soars aloft; when it does mount, its Flight should not be impeded. To damp the Wing of Genius is, in my Mind, highly impolitic, highly reprehensible, nay, somewhat criminal. If Authors are allowed a Perpetuity, it is a lasting Encouragement; making the Right of multiplying Copies a Matter common to all, is like extending the Course of a River so greatly, as finally to dry up its Sources. I am of Opinion, that the Decree should be affirmed.

Bishop of C.  
Ips.

As the Proceedings, my Lords, in this important Cause have been carried to so great a Length, I should not have presumed to trouble your Lordships with any Thoughts of mine upon the Subject, did I not entertain Hopes of shortening your Lordships farther trouble, by endeavouring to draw your Attention from the many foreign Topics that have been mixed with the present Question: such for Instance as the following: In which of the various Classes of Right or Property, is this contested one to be ranked? Whether it is a Property properly so called, or only a right to some Property? Whether such Property be a corporeal one, or incorporeal? What is the Subject in which it inheres? Whether it lies in the Letters of a Book, or the Ideas, or in both? Whether it be a perfect, an imperfect, or only a *quasi* Right? Whether it is real, or personal, original or derived? Whence it might derive its Origin, and what is its Extent and Duration? How far it is deducible from ancient Practice, or grounded on the Authority of precedents? How it has stood in different Countries, or in our own at different periods, before or after the Art of Printing? and the like.

Speculations of this Kind, however useful on some Occasions, and always entertaining, yet I cannot help esteeming them in a great Measure foreign to the main Point, and am therefore desirous of having all such waved, and your Lordships Deliberation reduced to the present State of that Right under the Direction of our Legislature, which has made, or at least attempted to make, certain express Regulations in it; more particularly that Act in the 8th of Queen *Anne* which has been so much tortured and perplexed in Arguments offered at your Lordships Bar;

Bar ; but a fair Stating and unforc'd Construction of it, I apprehend to be sufficient for deciding the whole Controversy. The Title of the Act runs, "*for the Encouragement of Learning,*" and some Clauses in it evidently tend that way, while others have been understood in such a Manner, as must rather occasion its Discouragement, and made to signify either nothing at all, (which is surely one of the greatest Absurdities in the Interpretation of any Law) or to imply something repugnant to its avowed Intent, by putting Affairs into a worse Condition than they were in before the Commencement of this favourable Act ; nay worse than others are those who decline the Acceptance of its Benefits, while attended with all those Clogs and Limitations, which are too well known to need a particular Detail. The Method there adopted for this Encouragement of Learning, was, we find, very maturely digested in several Conferences between the two Houses, and at last declared to be (not by securing any original Copy Right, as was proposed by those Booksellers who promoted the Bill ; but) by vesting Copies of printed Books in the Authors or Purchasers of such Copies, during the Time therein mentioned, and no longer.—How far this deliberate Alteration of the Phrase may be deemed a material one, and whether insisting on the two distinct Significations of these Terms, *Vesting* and *Securing* as here circumstanced, though they may be elsewhere used promiscuously ; Whether the taking notice of that remarkable Attention in our Law makers to the wording of this Act may not amount to something more than a trifling verbal Criticism ? whether this vesting of a Right in Authors is merely additional and accumulative, or does not imply a creative Influence *de novo*, an actual Constitution of such a plenary Right, as had only an ideal Pre-existence without it ?—these Points must be submitted to your Lordships.

I shall here only take the Liberty to repeat what has been observed on a subsequent Statute of the 10th of Queen (1) *Anne*, concerning Stamp Duties laid on Pamphlets, which by expressly referring to this before us, and explaining the Nature both of that Copy Right which springs from it, and of those others that may be drawn from different Sources, seems to put the Intention of both these Acts out of Question. The Penalty of a Default here is extended to the Annihilation of all Copy-Rights whatsoever, in these words : " Then the Author, Printer, and Publisher, of such Pamphlet shall loose all Property therein, and in every Copy thereof, although the Title thereto were registered in the Book of the Stationers in London, according to the late Act of Parliament in that behalf, so as any Person may freely print and publish the same, without being liable to any Action or Prosecution for so doing ; *any thing in the said Act of Parliament for vesting Copies of printed Books in the Authors ; or in any Bye Laws contained ; or an custom, or other thing to the contrary notwithstanding.*" I must leave it to your Lordships Consideration whether that Common Law Right, if it arises either from *Custom* or *any other thing*, be not here manifestly included.

" To return to the former Statute. After the Creation then, or Establishment of such an exclusive Right as is conferred upon Authors in the Body of this Act, there comes a *Proviso*, that *nothing in the said Act shall be construed to extend, either*

(1) 10 *An.* Chap. 19. Sect. 112.

## T H E S P E E C H E S

to prejudice or confirm any Right that the Universities or any Persons have or claim to have—*i. e.* (according to the most natural Construction of these Words) any persons holding *in or under* the said Universities, or claiming any Privilege of the same Kind, and on the same Ground with that of the Universities, *A. e.* some positive one given or granted by special Licence or Letters Patent, by Statute or Charter, as their's evidently is; and all others under the Consideration of these Law makers are understood to be:—whereas if *this Proviso* were taken in so lax and indeterminate a Sense as to include ANY other Persons, setting up any Claim on *other* Grounds, it will admit *every Body*; and consequently its restrictive Clauses are reduced to a mere Nullity.

“Neither is the Observation drawn from the *Preamble* of this Act to be wholly admitted, nay that the apparently soft Terms applied to those several Persons who had of late taken the Liberty to print Books without the Consent of their respective Authors—that these gentle Terms (so unusual in penal Statutes) would scarcely have been used on this Occasion if such a Practice as was then and there laid under certain Restraints, as designed to be branded was antecedently, or absolutely criminal. But if so great Advantage is taken from a general Mention in the Proviso, of *Persons and Rights*, not there sufficiently described, as to afford Room for maintaining the forementioned Absurdity; if the said Act proves to be so inaccurate and defective, (as in Truth it is extremely defective, with regard to the Penalties annexed; the Time of suing for them, the Method of securing their Copies to the Universities, and other Particulars too notorious to need enlarging upon in this Place) I beg Leave to suggest an Enquiry to your Lordships, (though the Matter does not immediately fall under your present Consideration) whether it be not high Time to have this faulty Act amended:—let it be revised as soon as possible rather than suffered to be under so many Imperfections as can serve only to ensnare Numbers who are acting on the most obvious Sense, and supposed Validity of it, to their Ruin; and either mislead others in the Interpretation of some essential Parts of it; or make the whole useless, and a dead Letter.—

However, so long as this same Act does keep its Ground, it must be considered as standing on Principles directly opposite to the Notion of any abstract independent perpetual Copy-right; which Right, whatever it were supposed to be originally, is now plainly circumscribed and subjected to certain Restrictions; provided always that the said Act be really capable of affecting it in any Respect, which some Persons seem to doubt of, and others, (if I mistake not) have gone so far as to deny:—and if it once comes to be an established Maxim, that Acts of Parliament can have no Effect on Claims subsisting at Common Law; in vain surely does the Legislature employ itself in framing any concerning them.—But as this is not yet clearly admitted to be the Case, even with the Act before us, which is allowed to be in Force, whatever that Force may be—so long as ever it exists, it must exclude all that Right paramount and inextinguishable, which is exhibited along with it; which being dressed up at Pleasure, has made its Appearance under so many questionable Shapes, and been so warmly espoused under every of them; but yet after all the Pains taken with it, is still, I humbly conceive, of too delutory and unsubstantial a Nature to be laid hold of by common  
Appre.

reprehensions—too vague and intricate to be perfectly and unanimously ascertained even by the most learned Sages of the Law; and too feeble to be safely relied on, either for promoting the general service of the Public, or for supporting any true, valuable Interests of Literature in particular.”

I speak, my Lords, to the Question merely as likely to affect the Liberty of the Press. I think the confining the Right of multiplying Copies to the Author and his Assigns, may prove dangerous to the constitutional Rights of the People, and I justify this Idea by declaring that the Press is the sole Controller of the Actions of Princes and Ministers; that if a despotic Measure is adopted by either, the Freedom of the Press will be properly and efficaciously exerted in informing the People and rousing a Spirit of Resistance. I would suppose on this Ground of my Argument that upon the Occurrence of some very unconstitutional and despotic Measure, a Pamphlet properly describing the Matter was published, and that the (1) Minister bought up the Impression and Copy Right, thereby choking the Channel of public Information, and securing in his Closet the Secret which might prevent the Loss of Freedom to the Subject. I am satisfied in myself, that the Liberty of the Press is of such infinite Consequence in this Country, that if the Constitution was over-turned, and the People enslaved, grant me but a free Press and I will undertake to restore the one and redeem the other. I am therefore for reversing the Decree; and,

*The DECREE of the Court of CHANCERY, was accordingly reversed.*

(1) Mrs Macaulay, says, it would be a difficult Task, even in this Country, for a Minister to divert out of the necessary Channel of Corruption, a Sum sufficient to bribe an Individual, who would always have it in his Power to repeat his extortionate Demands, but supposing a Minister should stand in awe of the Doctrine and Reflections of any particular Author, as to expend large Sums and Expensments to suppress them, and that he had the Money at Command, he would find it all thro' wa in an impossible Attempt; for the Public might have Recourse to the *Irish*, and the *Foreigners*, who would furnish them with as many Editions of the Author, as they pleased. See *Macaulay's* v. 36. 17.





# A P P E N D I X.

As the Statute of 8 ANNE, Chap. XIX. Entituled,  
 “ *An Act for the Encouragement of Learning, by*  
 “ *vesting the Copies of printed Books, in the Authors*  
 “ *or Purchasers of such Copies, during the Times*  
 “ *therein mentioned;*” hath been so often referred to  
 by the Council, Judges, and Lords, in the above  
 Arguments, Opinions and Speeches, it was thought  
 proper to subjoin an Abstract of it.

**WHEREAS** Printers, Booksellers, and other Persons have of late frequently Preamble.  
 taken the Liberty of printing, reprinting and publishing, or causing to  
 be printed, reprinted and published, Books and other Writings, without  
 the Consent of the Authors or Proprietors of such Books and Writings, to their  
 very great Detriment, and too often to the Ruin of them, and their Families :  
 for preventing therefore such Practices for the future, and for the Encourage-  
 ment of learned Men to compose and write useful Books ; it is enacted, That  
 after the tenth Day of April, One Thousand Seven Hundred and Ten, the Author of any Book  
 already printed, who hath not transferred to any other the Copies or Shares thereof ; After the tenth Day of April, 1710, the Authors of Books already printed, who have not transferred their Rights, and the Bookellers, &c. who have purchased Copies, shall have the sole Right of printing them, for the Term of 21 Years: And the Authors of Books not printed, shall have the sole Right of printing for fourteen Years.  
 or the Bookfeller, Printer and other Person, who hath purchased or acquired the  
 Copies of any Book, in order to print or reprint the same, shall have the sole  
 Right and Liberty of printing such Book, for twenty-one Years, to commence from  
 the said tenth Day of April, and no longer ; And the Author of any Book already  
 composed, and not printed and published, or that shall hereafter be composed,  
 and his Assignee or Assigns, shall have the like Right and Liberty for fourteen  
 Years, to commence from the Day of the first publishing the same, and no  
 longer ; And if any other Bookfeller, Printer, or other Person from and after  
 said tenth Day of April, within the Times hereby limited as aforesaid, shall  
 print, reprint, or import, or cause to be printed, &c. any such Book without  
 the Consent of the Proprietor first had and obtained in Writing, signed in the  
 Presence of two Witnesses, or knowing the same to be so printed, or reprinted,  
 without such Consent shall sell, publish, or expose to Sale, or cause to be sold,  
 or any such Book, without such Consent first had and obtained, as aforesaid,  
 then such Offender shall forfeit such Book, and every Sheet thereof to the Proprietor,  
 who shall forthwith damask (1), and make waste Paper of them : And every such

(1) See Mr. Baron *Perrault's* Opinion. Fol. 42.

Offender

# A P P E N D I X.

**Punishment of Offender shall also forfeit one Penny for every Sheet, in his Custody, either printed or printing, published, or exposed to Sale, contrary hereto; one Moiety thereof to the Queen, the other Moiety to any Person suing for the same, to be recovered in any Court of Record, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Effoin, Privilege, or Protection, or more than one Imparlance shall be allowed.**

**“ SECT. II. Nothing herein contained shall be construed to extend to subject any Bookieller, &c. to Forfeitures or Penalties, for printing or reprinting of any Book without such Consent, as aforesaid, unless the Title to the Copy thereof hereafter published shall, before such Publication, be entered, in the Register Book of the Company of Stationers, as hath been usual; which Book shall be kept at the Hall of the said Company, and unless such Consent be entered as aforesaid, for which Entry, Sixpence only shall be paid; which Book may be inspected by any Bookfeller, &c. without Fee; and the Clerk of the said Company, shall, when required, give a Certificate under his Hand of such Entry, for which he may take Sixpence.”**

**“ SECT. III. If the Clerk shall refuse or neglect to make such Entry, or to give such Certificate, being required by the Author or Proprietor, in the Presence of two Witnesses, then such Person so (1) refusing, Notice being given thereof, in the Gazette, shall have the like Benefit, as if such Entry and Certificate had been duly made and given, and the Clerks so refusing, shall forfeit to the Proprietor of such Copy twenty Pounds, to be recovered [as mentioned in Sect. I.]”**

**“ SECT. V. Nine Copies upon the best Paper, shall, by the Printer, be delivered to the Warehouse-keeper of the said Company, at their Hall, before Publication, for the Use of the Royal Library, the Libraries of the Universities of Oxford and Cambridge, of the four Universities in Scotland, of *Sion College, London*; and the Library belonging to the Faculty of Advocates at *Edinburgh*, respectively; by the said Warehouse-keeper, within ten Days after Demand by any Person authorized, to deliver the same; and if any Proprietor, Bookfeller, or Printer, or the said Warehouse-keeper, shall not observe these Directions, he shall forfeit, besides the Value of the said printed Copies, five Pounds for every Copy not so delivered, as also the Value of the said printed Copy not so delivered, the same to be recovered by the Queen, the Chancellor, Masters, and Scholars of any of the said Universities, and by the President and Fellows of *Sion College*, and the said Faculty of Advocates at *Edinburgh*, with their full Costs respectively.”**

**“ SECT. VI. If any Person incurs the Penalties in Scotland, they shall be recoverable by Action before the Court of Session.”**

**“ SECT. VII. Not to prohibit the Importation, vending, or selling of any Books in Greek, Latin or any other foreign Language printed beyond the Seas.”**

**“ SECT. VIII. If any Action or Suit shall be commenced against any Person, for doing or causing to be done any Thing in Pursuance of this Act, the Defendants may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict be given for the Defendant, or the Plaintiff become nonsuited, or discontinue his Action, Defendant shall have his full Costs, with same Remedy as a Defendant by Law hath.”**

(1) This Part of the Act seems very erroneous, for *refusing* ought to be *refused*, to make the Sense and Meaning, as intended by the Legislature.

**Copies of Books to be entered before Publication in the Register Book of the Company of Stationers. Which may be inspected at any Time without Fee. Clerk of the Company to give a Certificate of such Entry.**

**Penalty of the Clerk refusing to do.**

**After 10 April, nine Copies of each Book shall be delivered to the Warehouse-keeper of the Company of Stationers, for the Use of the University Libraries, &c.**

**Warehouse-keeper to deliver the Books 10 Days after Demand. Penalty of Proprietor, &c. not observing the Directions of this Act.**

**Penalties in Scotland how recoverable.**

**This Act not to hinder the Importation, &c. of Books in Greek, &c. printed beyond Sea.**

**General I.I.c.**



## A P P E N D I X.

“SECT. IX. Not to prejudice or confirm any Right said Universities, or any of them, or any Person have, or claim to have, to the printing or reprinting any Book or Copy already printed, or hereafter to be printed.”

This Act shall not prejudice the Right of the Universities.

“SECT. X. All Actions, Suits, Bills, Indictments, or Informations for any Offence that shall be committed against this Act, shall be brought sued, and commenced within three Months next after such Offence committed.”

Actions for Offences against this Act, to be brought in three Months.

“SECT. XI. After the Expiration of said fourteen Years, the sole Right of printing or disposing of Copies shall return to the Authors thereof, if they are then living, for another Term of fourteen Years.”

After the 14 Years, the Right of printing, &c. to return to the Author for other 14 Years.

### Lord KAMES's Opinion of the Act.

Lord *Kames* “knows no Monopoly, that in sound Politics can be justified, except that given to Authors of Books for 14 Years, by an Act of Queen *Anne*, judiciously contrived, not only for the Benefit of Authors, but for that of Learning in general; for it encourages Men of Genius to write, and multiplies Books both of Instruction and Amusement; which, by Concurrence of many Editors, after the Monopoly is at an end, are sold at the cheapest Rate; many well disposed Persons complain, that the exclusive Privilege bestowed by the Statute upon Authors, is too short, and that it ought to be perpetual; nay it is asserted, that Authors have a perpetual Privilege by Common Law; and it was determined (1) lately in the Court of *King's* (2) *Bench*, that by the Common Law of *England*, the Privilege is perpetual. Nothing more frequently happens, than by grasping at the Shadow to lose the Substance; for Lord *Kames* has no difficulty to maintain, that a perpetual Monopoly of Books would prove more de-

Perpetual Monopoly of Books destructive to Learning and Authors.

And would put an End to the Bookselling Trade.

(1) See *Bur. Lit. Prop.*, 4<sup>to</sup>. 1773.

(2) In the Cause of *Millar v. Taylor*.