The compoſers of muſic, the engravers of copper plates, the inventors of machines, are all excluded from the privilege now contended for; but why, if an equitable and moral right is to be the ſole foundation of it? their genius, their ſtudy, their labour, their originality is as great as an author's, their inventions are as much prejudiced by copyiſts, and their claim in my opinion ſtands exactly on the ſame footing; a nice and ſubtle inveſtigation may perhaps find out ſome little logical or mechanical differences, but no ſolid diſtinction in the rule of property that applies to them can be found.—*If ſuch a perpetual property remains in an author, and his right continues after publication,* I cannot conceive what ſhould hinder him from the full exerciſe of that right in what manner he pleaſes; he may ſet the moſt extravagant price he will upon the firſt impreſſion, and refuſe to print a ſecond when that is ſold. If he has an abſolute controul over his ideas when publiſhed, as before, he may recal them, deſtroy them, extinguiſh them, and deprive the world of the uſe of them ever after; his forbearing to reprint is no evidence of his conſent to abandon his property, and leave it as a derilect to the public.

But it is ſaid, that the ſale of a printed copy is a qualified or conditional ſale, and that the purchaſer may make all the uſes he pleaſes of his book except that one of re-printing it; but where is the evidence of this extraordinary bargain? or where the analogy of law to ſupport the ſuppoſition? In all other caſes of purchaſe, payment transfers the whole and abſolute property to the buyer: there is no inſtance where a legal right is otherwiſe transferred by ſale, an example of ſuch a ſpeculative right remaining in the ſeller; it is a new and metaphyſical refinement upon the law, and laws, like ſome manufactures, may be drawn ſo fine as at laſt to loſe their ſtrength with their ſolidity.—When printing was firſt introduced, Cardinal Wolſey warned King Henry VIII. to be cautious how he encouraged it, as a matter which might he dangerous to the ſtate. The event however did not prove it ſo, and therefore the ſtatute of the 21ſt of James I. excepted it, as a reaſonable and allowable monopoly.

The ſubſequent licenſing act, gave only an adventitious right; and thus it reſted till the ſtatute of Queen Anne. The ſtatute certainly recognizes no Common Law right, *hinc illæ lachrymæ!* Nor can I ſuppoſe this omiſſion happened through ignorance or inadvertence, when I ſee ſuch great law-names as Holt, Cooper, Harcourt, Somers, &c. in the liſt of that parliament. This act adopts the language of the old privileges in terms, 14 years had been the term before granted to inventors, a ſpecification of the work too, as in the caſe of machines, was preſcribed; nor do I recollect an inſtance where a ſtatute gives ſuch a temporary remedy as is here granted in aid of an abſolute Common Law right.

If ſuch a right exiſted at Common Law, and it remained unimpeached by that ſtatute, why that anxiety in authors and bookſellers afterwards to obtain another ſanction for their property? Whence thoſe different applications to parliament, in the year 1735, 1738, 1739, for a longer term of years, or for life in this kind of property, and afterwards to get an act to prohibit the liberty of printing books in foreign kingdoms, and ſending them back again. The truth is, the idea of a Common Law right in perpetuity, was not taken up till after that failure in procuring a new ſtatute for an enlargement of the term; if (ſaith the parties concerned) the legiſlature will not do it for us, we will do it without their aſſiſtance, and then

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we begin to hear of this new doctrine, the Common Law right, which, upon the whole, I am of opinion, cannot be ſupported upon any rules or principles of the Common Law of this kingdom.

The Chief Juſtice anſwered the firſt queſtion in the affirmative; the ſecond and fourth in the negative; and the third and fifth in the affirmative.

Lord Chief Juſtice MANSFIELD declined giving his opinion.

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## THURSDAY, *February 24th.*

*The ſubſtance of Lord* CAMDEN'S *ſpeech.*

"After what the Lord Chief Juſtice yeſterday ſo ably enforced, there will be little occaſion for me to trouble your Lordſhips; nor will the preſent ſtate of my health, and the weakneſs of my voice, allow me to exert myſelf, were I ever ſo much inclined; but the nature of my profeſſion, and the duty I owe to this houſe, will not ſuffer me to remain ſilent, when ſo important a queſtion is to be determined. The fair ground of the argument has been very truly ſtated to you by the Lord Chief Juſtice; I hope what was yeſterday ſo learnedly told your Lordſhips, will remain deeply impreſſed on your minds.

"The arguments attempted to be maintained on the ſide of the reſpondents were founded on patents, privileges, ſtar-chamber decrees, and the bye laws of the Stationers Company; all of them the effects of the groſſeſt tyranny and uſurpation; the very laſt places in which I ſhould have dreamt of finding the leaſt trace of the common law of this kingdom: and yet, by a variety of ſubtle reaſoning and metaphyſical refinements, have they endeavoured to ſqueeze out the ſpirit of the common-law from premiſes in which it could not poſſibly have exiſtence.

"They began with their pretended precedents and authorities, and they endeavoured to model theſe in ſuch a manner, as to extract from them ſomething like a common law principle, upon which their argument might reſt. I ſhall invert the order, and firſt of all lay out of my way the whole bede-role of citations and precedents which they have produced: that heterogeneous heap of rubbiſh, which is only calculated to confound your Lordſhips, and miſlead the argument. After the firſt invention of printing, the art continued free for about fifty years. I mean to lay no ſtreſs upon this; I mention it only hiſtorically, not argumentatively; for as the uſe of it was little known, and not very extenſive, its want of importance might protect it from invaſion; but as ſoon as its effects in politics and religion were felt, all the crowned heads in Europe at once ſeized on it, and appropriated it to themſelves. Certain it is, that in England, the crown claimed both the power of licenſing what ſhould be printed, and the monopoly of printing. Two licenſes were granted to thoſe who petitioned for them. An author not only was obliged to ſue for a licence to print at all, but he was alſo obliged to ſue for a ſecond licence that he might print his own work.

"When the King had once claimed the right of printing, he ſecured that right by patents and by charters. Still further to ſecure his monopoly, he combined the printers, and formed them into a company, then called the Stationers Company, by whoſe laws, none but members could print any book at all. They aſſumed powers of ſeizure, confiſcation and impriſonment, and the decrees of the ſtar-chamber confirmed their proceedings. Theſe tranſactions, I preſume, have no relation to the common law; and when they were eſtabliſhed, where could an author, independent.

dent of the company, print his works, or try his right to it? Who could make head againſt this arbitary prerogative, which ſtifled and ſurpreſſed the common law of the land? Every man who printed a book, no matter how he obtained it, entered his name in their books, and became a member of their company: then he was complete owner of the book. Owner was the term applied to every holder of copies; and the word author does not occur once in all their entries. All ſocieties, good or bad, arbitrary or illegal, muſt have ſome laws to regulate them. When an author died, his executors naturally became his ſucceſſors. The manner in which the copy-right was held, was a kind of copyhold tenure, in which the owner has a title by cuſtom only, at the will and pleaſure of the Lord. The two ſole titles by which a man ſecured his right was the royal parent and the licenſe of the Stationers company; I challenge any man alive to ſhew me any other right or title; Where is it to be found? ſome of the learned Judges ſay the words *or otherwiſe* in the ſtatute of Queen Anne relate to a prior common law right; To what common law right could theſe words refer? At all the periods I have mentioned the common law rights were held under the law of prerogative. It was the general opinion that there was no other right, and the corrupt Judges of the times ſubmitted to the arbitrary law of prerogative. In the caſe of the Stationers Company againſt Seymour, all the Judges declared that printing was under the direction of the Crown, and that the Court of King's Bench could ſeize all printers of news, true or falſe, lawful or illicit. But if it was made uſe of to protect authors, what was this protection? a right derived under a bye law of a private company. A protection ſimilar to that which we give the great Mogul; when we want any grant from him, we talk ſubmiſſively, and pay him homage, but it is to ſerve our own purpoſe, and to feaſt him with a ſhadow that we may attain the ſubſtance. In ſhort, the more your Lordſhips examine the matter, the more you will find that theſe rights are founded upon the charter of the Stationers Company and the royal prerogative; but what has this to do with the common law right? for never, my Lords, forget the import of that term. Remember always that the common law right now claimed at your bar is the right of a private man to print his works for ever, independent of the crown, the company, and all mankind. In the year 1681 we find a bye law for the protection of their own company and their copy-rights, which then conſiſted of all the literature of the kingdom; for they had contrived to get all the copies into their own hands. In a few years afterwards the revolution was eſtabliſhed, then vaniſhed prerogative, then all the bye laws of the Stationers Company were at an end; every reſtraint fell from off the preſs, and the old common law of England walked at large. During the ſucceeding fourteen or ſixteen years, no action was brought, no injunction obtained, although no illegal force prevented it; a ſtrong proof, that at that time there was no idea of a common law claim. So little did they then dream of eſtabliſhing a perpetuity in their copies, that the holders of them finding no prerogative ſecurity, no privilege, no licenſing act, no ſtar chamber decree to protect their claim, in the year 1708 came up to parliament in the form of petitioners, with tears in their eyes, hopeleſs and forlorn; they brought with them their wives and children to excite compaſſion, and induce parliament to grant them a ſtatutary ſecurity. They obtained the act. And again and again ſought for a further legiſlative ſecurity.

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" Thus, my Lords, ſtands the pretence on the ſcore of uſage, of which your Lordſhips have heard ſo much on one ſide the queſtion. I come now to conſider upon what foundation ſtand the prerogative copies; and theſe were in fact caſes between co-patentees (for I muſt conſider the Stationers Company itſelf as a patentee of the crown), and no authorſhip right occurs here. The right in the crown is ſuppoſed to come either from purchaſe or contract; and our law argues from principles, caſes, and analogy; but not a word of this in the judgment of the court; but the arguments of counſel are adduced to prove the point. The argument of counſel is a ſorry kind of evidence indeed, in moſt caſes it would be very dangerous to rely on it, but here it is ſuch ſtuff as I am aſhamed to mention. You have them at length in Carter. Firſt, it is put on the topic of prerogative, next of ownerſhip. 1. Henry the ſixth brought over the printers and their preſſes, *ergo*, ſay the counſel, he has an abſolute right to the whole art, and all that it can produce. 2. Printing belongs to nobody, and what is nobody's is of courſe the King's. 3. The King pays his Judges, *ergo*, he purchaſes that right for a valuable conſideration. 4. He paid for the tranſlation of the Bible, therefore, forſooth, he bought a right to ſell bibles. Away with ſuch trifling! Mr. Yorke put it on its true footing. Ought not the promulgation of your venerable codes of religion and of law to be intruſted to the executive power, that they may bear the higheſt mark of authenticity, and neither be impaired, or altered, or mutilated? Theſe printed acts are records themſelves, are evidence in a court of law, without recurring to the original parliamentary roll. Will you then give this honourable right to your Sovereign as ſuch? or will you degrade him into a Bookſeller? indeed, had he no other title to this diſtinction, that could hardly be maintained. But if this will not ſerve the purpoſe, recourſe is next had to injunctions; they, it is ſaid, have put the right out of doubt: nay, Lord Hardwicke's name is triumphantly brought on the ſtage, and he is declared to have abſolutely decided the point: no man, I am ſure, can venerate his name (which will be dear to poſterity as long as law and equity remain) more than I do. But this boaſted caſe, like all the reſt that have been produced, entirely fails in the proof; and when my Lord Chief Juſtice read his own note of what Lord Hardwicke ſaid upon the occaſion, it appeared that Lord H.'s words had been twiſted to an oppoſite meaning to what he intended. All the injunction caſes have been ably gone through. I ſhall only add, in general terms, that they can prove nothing: they are commonly obtained for the purpoſe of ſtaying waſte, and the prevention of irreparable damage. They muſt therefore in their nature be ſudden and ſummary, or the benefit of them would be loſt before they are obtained, and they are granted though the right is not clear, but doubtful. The queſtion, whether I can maintain my right againſt the deviſee or the heir at law, may be diſcuſſed afterwards at leiſure; but unleſs upon ſhewing a reaſonable pretence of title you in the mean time tie up the ſpoiler's hands who is felling my timber, or ploughing my paſture; my remedy is gone, or comes too late to prevent the miſchief. What then if a thouſand injunctions had been granted, unleſs the Chancellor at the time he granted them had pronounced a ſolemn opinion, that they were grounded upon the common law? it would only come to this at laſt, that the right in queſtion was claimed on one ſide and denied on the other: therefore till the matter was tried and determined, let the injunction go. Lord Hardwicke after twenty years experience, in the laſt caſe of

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the kind that came before him, declared that the point had never yet been determined. Lord Northington granted them on the idea of a doubtful title; I continued the practice upon the same foundation; and so did the present Chancellor. Where then is the Chancellor who has declared *ex cathedra* that he had decided upon the Common-Law right? Let the decision be produced in direct terms. It is amazing that we should have been so long amused with this kind of argument from such vague authorities!

"At length, my Lords, having removed every stumbling-block that opposed our progress to the pure source of Common Law; having cleared the way of all those spurious, pretended authorities, which will not bear the test of a moment's serious examination, the question begins to assume its natural shape: Here then I feel myself upon my own ground, and I challenge any man to produce any adjudication, a precedent, a case, or any thing like legal authority on which this claim can be grounded. Does there a Scintilla, a glimpse of Common Law appear under any of those different heads I have mentioned, and which have been so often repeated to us? For my own part, I find nothing in the whole that favours of Law, except the term itself, Literary *Property*. They have borrowed one single word from the Common Law, and have raked into every store house of literary lumber to find out how to apply it to the subject, and to deduce some principles to which it may refer, and be governed by. And now what are they? What are the foundations of this claim in the English Common Law? Why, in the first place, say the Respondents, every man has a right to his ideas.—Most certainly every man who thinks, has a right to his thoughts, while they continue HIS; but here the question again returns; when does he part with them? When do they become *publici juris?* While they are in his brain no one indeed can purloin them; but what if he speaks, and lets them fly out in private or public discourse? Will he claim the breath, the air, the words in which his thoughts are cloathed? Where does this fanciful property begin, or end, or continue? Oh! say they, the ideas are marked in black and white, on paper or parchment——now, then, we get at something; and an action, I allow, will lie for ink and paper: but what says the Common Law about the incorporeal ideas, and where does it prescribe a remedy for the recovery of them, independent of the materials to which they are affixed? I see nothing about the matter in all my books; nor were I to admit ideas to be ever so distinguishable and definable, should I therefore infer they must be objects of private property, and objects of the Common Law? But granting this first position, we get footing but upon one single step, and new doubts and difficulties arise whenever we attempt to proceed. Is this property descendible, transferrable, or assignable? When published, can the purchaser lend his book to his friend? Can he let it out for hire as the Circulating Libraries do? Can he enter it as common stock in a literary club, as is done in the country? (Every thing of this kind, in a degree, prejudices the author's sale of the impression.) May he transcribe it for a charity? Then what part of the work is exempt from this defultory claim? Does it lye in the sentiments, the language, and style, or the paper? If in the sentiments, or language, no one can translate or abridge them. Locke's system might perhaps be put into other expressions, or newly methodized, and all the original system and ideas be retained. These questions shew how the argument counte-

counter-acts itſelf, how the ſubject of it ſhifts, and becomes public in one ſenſe, and private in another: and they are all new to the Common Law, which leaves us perfectly in the dark about their ſolution? And how are the Judges, without a rule or guide, to determine them when they ariſe, whoſe books and ſtudies afford no more light upon the ſubject than the common underſtandings of the parti-s themſelves? What diverſity of judgments! what confuſion in opinion muſt they fall into! without a trace or line of law to direct their determination! What a code of Law yet remains for their ingenuity to furniſh, and could they all agree in it, it would not be law at laſt, but Legiſlation. But 'tis ſaid that it would be contrary to the ideas of private juſtice, moral fitneſs and public convenience, not to adopt this new ſyſtem. But who has a right to decide theſe new caſes, if there is no other rule to meaſure by but moral fitneſs and equitable right? Not the Judges of the Common Law, I am ſure. Their buſineſs is to tell the ſuitor how the law ſtands, nor how it ought to be; otherwiſe each Judge would have a diſtinct tribunal in his own breaſt, the deciſions of which would be as irregular and uncertain and various, as the minds and tempers of mankind. As it is, we find they do not always agree, but what would it be, where the rule of right would always be the private opinion of the Judge, as to the moral fitneſs and convenience of the claim? Caprice, ſelf-intereſt, vanity would by turns hold the ſcale of juſtice, and the law of property be indeed moſt vague and arbitrary. That excellent judge, Lord Chief Juſtice Lee, uſed always to aſk the counſel, after his argument is over, "Have you any caſe?" I hope Judges will always copy the example, and never pretend to decide upon a claim of property, without attending to the old black letter of our law, without founding their judgment upon ſome ſolid written authority, preſerved in their books, or in judicial records. In this caſe I know there is none ſuch to be produced."

With reſpect to inventors, I can ſee no real and capital difference between them and authors; their merit is equal, they are equally beneficial to ſociety, or perhaps the inventor of ſome of thoſe maſter-pieces of art, which have been mentioned, have there the advantage. All the Judges who have been of a different opinion, conſcious of the force of the objection from the ſimilarity of the claim, have told your Lordſhips they did not know but that an action would lie for the excluſive property in a machine at Common Law, and choſe to reſort to the patents. It is indeed extraordinary that they ſhould think ſo, that a right that never was heard of could be ſupported by an action that never yet was brought. If there be ſuch a right at Common Law, the crown is an uſurper; but there is no ſuch right at Common Law, which declares it a monopoly; no ſuch action lies; reſort muſt be had to the crown in all ſuch caſes. If then there be no foundation of right for this perpetuity by the poſitive laws of the land, it will, I believe, find as little claim to encouragement upon public principles of ſound policy, or good ſenſe.

"If there be any thing in the world common to all mankind, ſcience and learning are in their nature *publici juris*, and they ought to be as free and general as air or water. They forget their creator, as well as their fellow creatures, who wiſh to monopolize his nobleſt gifts and greateſt benefits. Why did we enter into ſociety at all, but to enlighten one another's minds, and improve our faculties, for the common welfare of the ſpecies? Thoſe great men, thoſe favoured mortals, thoſe

thoſe ſublime ſpirits, who ſhare that ray of divinity which we call genius, are intruſted by providence with the delegated power of imparting to their fellow-creatures that inſtruction which heaven meant for univerſal benefit; they muſt not be niggards to the world, or hoard up for themſelves the common ſtock. We know what was the puniſhment of him who hid his talent, and providence has taken care that there ſhall not be wanting the nobleſt motives and incentives for men of genius to communicate to the world thoſe truths and diſcoveries which are nothing if uncommunicated. Knowledge has no value or uſe for the ſolitary owner: to be enjoyed it muſt be communicated. *Scire tuum nihil eſt, niſi te ſcire, hoc ſciat alter.* Glory is the reward of ſcience, and thoſe who deſerve it, ſcorn all meaner views; I ſpeak not of the ſcribblers for bread, who teaze the preſs with their wretched productions; fourteen years is too long a privilege for their periſhable traſh. It was not for gain, that Bacon, Newton, Milton, Locke, inſtructed and delighted the world; it would be unworthy ſuch men to traffic with a dirty bookſeller for ſo much as a ſheet of letter-preſs. When the bookſeller offered Milton 5l. for his Paradiſe Loſt, he did not reject it, and commit his poem to the flames, nor did he accept the miſerable pittance as the reward of his labor; he knew that the real price of his work was immortality, and that poſterity would pay it.

" Some authors are as careleſs about profit as others are rapacious of it, and what a ſituation would the public be in with regard to literature if there were no means of compelling a ſecond impreſſion of a uſeful work to be put forth, or wait till a wife or children are to be provided for by the ſale of an edition. All our Learning will be locked up in the hands of the Tonſons and the Lintots of the age, who will ſet what price upon it their avarice chuſes to demand, 'till the public become as much their ſlaves, as their own hackney compilers are.

" Inſtead of Saleſmen, the Bookſellers of late years have foreſtalled the market, and become engroſſers. If therefore the monopoly is ſanctified by your Lordſhips judgement, exorbitant prices muſt be the conſequence; for every valuable author will be as much monopolized by them as Shakeſpeare is at preſent, whoſe works, which he left carelefsly 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 bookſeller 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 will 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? His Lordſhip concluded with ſeveral obſervations on the ſtatute of Queen Anne, in which he took notice that the old copies were entitled to twenty-one years, and the new ones but fourteen, and ſaid, that if the legiſlature had intended to make the right perpetual they would have taken care that the remedy ſhould be ſo too.

SATURDAY,

## SATURDAY, February 26.

The Lord Chancellor, Lord Lyttleton, the Biſhop of Carliſle, and Lord Effingham Howard, gave their ſeveral opinions.

The Lord CHANCELLOR prefaced what he was about to ſpeak, by declaring, that he had made the decree entirely as of courſe, in purſuance of the deciſion upon the right in the Court of King's Bench, and that as what he had decreed, as a Chancellor, was merely a ſtep in the gradation to a final and determinate iſſue in the Houſe of Peers, he was totally unbiaſſed upon the queſtion, and therefore could ſpeak to it as fairly from his own ſenſe of it, as any one of the Judges, or any of the Lords preſent.

He then entered into a very minute diſcuſſion of the ſeveral citations and precedents that had been relied upon at the Bar, ſhewed where they failed in application to the preſent caſe; and one by one deſcribed their complexion, their origin, and their tendency; in each of which he proved that they were foreign to any conſtructions which could ſupport the Reſpondents in their argument; he was no leſs preciſe and full in expoſing the abſurdity of the authorities derived from the Stationers Company; quoting ſeveral extraordinary entries to be met with in their books; among others, he ſaid, 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. He then very fully ſtated the ſeveral caſes of injunctions in the Court of Chancery, produced ſeveral original letters from Swift to Faulkner and others, relative to the ſtatute of Queen Anne, and gave an hiſtorical detail of all the proceedings in both Houſes upon the ſeveral ſtages of that act, and the alterations it had undergone in the preamble and enacting clauſes, all tending to ſhew the ſenſe of the legiſlature, at the time of paſſing it, to be againſt the right; and that they rejected the other bills afterwards, drawn up chiefly by the advice of Dean Swift, and the countenance of Mr. Addiſon, which were preſented in the ſame ſpirit, and upon the ſame grounds; and concluded with declaring that he was clearly of opinion with the Appellants.

Lord Lyttleton owned that he had no great acquaintance with the quirks and quibbles of the law. He ſpoke to the matter merely as a queſtion of equity; he would not enter into a deluſive, refined, metaphyſical argument about tangibility, the materiality, or the corporeal ſubſtance of Literary Property; it was ſufficient for him, that it was allowed ſuch a property did exiſt. Authors, he preſumed, would not be denied a free participation of the common rights of mankind, and their property was ſurely as ſacred, and as deſerving of protection, as that of any other ſubjects. It was of infinite importance to every country, that the arts and ſciences ſhould be cultivated and encouraged; where men of letters were beſt protected, the people in general would be moſt enlightened, and where

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the minds of men were enlarged, where their underſtandings were equally matured in perception and in judgment, there the arts and ſciences would 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 ths free country. In his Lordſhip's opinion, at preſent there were but two monarchs in Europe, who were the encouragers of the arts and ſciences, and were themſelves men of letters, the King of Pruſſia, and the King of England. It had been urged, that authors wrote for fame only; that glory was their beſt reward, and that immortality of renown was an ample recompence for their labours; they therefore did not ſtoop to claim a further right than that of a firſt communication of their ideas to the public. This, his Lordſhip obſerved, was in a confined ſenſe, a proper and a noble obſervation, but it would not hold generally. He begged their Lordſhips to remember, that genius was peculiar to no clime, it belonged to no country, it was more frequently found in the cottage than the palace; it rather crawled on the face of the earth than ſoared aloft; when it did mount, its flight ſhould not be impeded. To damp the wing of genius was, in his mind, highly impolitic, highly reprehenſible, nay, ſomewhat criminal. If authors were allowed a perpetuity, it was a laſting encouragement; making the right of multiplying copies a matter common to all, was like extending the courſe of a river ſo greatly, as finally to dry up its ſources. After ſeveral poetical ſentiments, his Lordſhip concluded with giving his opinion that the decree ſhould be affirmed.

The Biſhop of CARLISLE then ſpoke as follows.

" My Lords,

" As the proceedings 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 Lordſhip's 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 regu-

regulations in it; more particularly that act in the 8th of Q. Anne, which has been so much tortured and perplexed in arguments offered at your Lordship's 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 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 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 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 lose 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 law 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 nature. 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 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

ſons 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, *i. e.* ſome *poſitiv* 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 that 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, were deſigned to be branded as 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, (tho' 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 each of them; but yet for all the pains taken with it, is ſtill, I humbly conceive, of too deluſory and unſubſtantial a nature to be laid hold of by common apprehenſions—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."

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Lord Effingham Howard ſpoke to the queſtion merely as likely to affect the Liberty of the Preſs. He thought that the confining the right of multiplying copies to the author and his aſſigns, might prove dangerous to the conſtitutional rights of the people, and he juſtified this idea by declaring that the preſs was the ſole controuler of the actions of Princes and Miniſters; that if a deſpotic meaſure was adopted by either, the freedom of the preſs would be properly and efficaciouſly exerted in informing the people and rouſing a ſpirit of reſiſtance. He finally inſtanced that ground of his argument by ſuppoſing that upon the occurrence of ſome very unconſtitutional and deſpotic meaſure, a pamphlet properly deſcribing the matter was publiſhed, and that the miniſter bought up the impreſſion and copyright, thereby choaking the channel of public information, and ſecuring in his cloſet the ſecret which might prevent the loſs of freedom to the ſubject. His Lordſhip concluded with declaring that he was ſatisfied in himſelf, that the Liberty of the Preſs was of ſuch infinite conſequence in this country, that if the conſtitution was over-turned, and the people were enſlaved, grant him but a free preſs and he would undertake to reſtore the one and redeem the other. His Lordſhip therefore was for reverſing the decree.

The Decree of the Court of Chancery was accordingly reverſed; and the Defendants have ſince preſented a petition to the Houſe of Commons, praying relief, which is now under the conſideration of a Committee.

FINIS.