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M O D E S T P L E A

F O R T H E

P R O P E R T Y

O F

C O P Y R I G H T.

B Y

CATHARINE MACAULAY.

*approved  
Graham  
JK*

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M DCC LXXIV.

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M O D E S T P L E A

F O R T H E

P R O P R I E T Y

O F

C O P Y R I G H T.



C A T H A R I N E M A C A U L A Y.

P R I N T E D B Y R. C R U T T W E L L I N B A T H.

F O R

E D W A R D A N D C H A R L E S D I L L Y, I N T H E P O U L T R Y, L O N D O N.

M D C C L X X I V.

[ 10 ]

T O T H E

P U B L I C.

**F**OR the errors and improprieties which  
may be found in the following sheets,  
the Author's excuse is, that they were com-  
posed in a great hurry, under a heavy op-  
pression of sickness, and languor of body,  
and at the distance of above a hundred miles  
from

from the capital,---a distance which deprived her of the advantage of seeing all the arguments urged by the council on both sides the question, or indeed any other argument but what she got from the news-writers.

THESE obstacles to the conducting with success a cause of such importance as literary property, where the welfare of many worthy members of society, and thousands yet unborn, are at stake, appeared so insurmountable, that she could not have had spirits and resolution to attempt it, had it not been for  
the

the encouragement given her by that generous benefactor to suffering merit, and patriotic citizen, her very good and worthy friend, Dr. WILSON, who condescended to assist in the fatigue of correcting the press, and furnished her with the two interesting anecdotes, concerning the distressed circumstances in which Dr. WALTON died, and the starving condition of MILTON's posterity.

CATHARINE MACAULAY.

BATH,

March 9, 1774.

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CATHARINE MACALEER

Printed by  
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M O D E S T P L E A

F O R T H E

P R O P E R T Y

C O P Y R I G H T.

I SHALL not enter on the subject of those precedents which a noble Lord, in his arguments on this important cause, so properly dismissed: they were very injudiciously used: therefore, I shall only venture a few remarks on the pleas of equity,—of moral fitness,—and public convenience,—which it seems were urged by the council on the side of the respondent bookellers.

B

SIR

SIR EDWARD COKE, that great oracle to well-meaning lawyers, says, I think, somewhat to the following purport,—“That the law of the land is the perfection of reason carried into practice in all matters of dispute between man and man.” The good Chief Justice, when he made this eulogium on the law of England, undoubtedly agreed in sentiment with other old-fashioned philosophers, THAT THE PERFECTION OF REASON IS THE POWER OF JUDGING AGREEABLE TO THE ETERNAL RULE OF RIGHT, AND MORAL FITNESS OF THINGS.

IT is a common observation, that the longer a wife man lives, the more he is confirmed in the opinion, that there is nothing in this terrestrial state worthy a wife man's regard and estimation: Indeed I am afraid there is too much truth in this observation, and that the world itself is grown too old and too wise. Oh, the happy days of ignorance!

THAT



THAT worse than Goth, that infant in knowledge, the once-famed CICERO, amused himself with laying down excellent rules for government and law, to meet in one point of moral perfection for the protection, happiness, and virtue of mankind; but we wiser moderns, have, I think, very unfortunately found out, that good government is too sublime a blessing for the frail state of human nature; and that the law of the land is so far from a rule of equity, that it is often incompatible with the moral fitness of things.<sup>a</sup>

THOUGH I cannot agree with a very popular writer, that the common sense of mankind is an infallible rule for religion and morals; yet surely it is very sufficient

<sup>a</sup> Though it may be right for Judges invariably to follow the rule of precedents, yet where precedents are wanting, if the common law is a law of equity, surely Judges have a right to set the first precedent according to equity.

sufficient to matters of common justice between man and man. We are told, by the best authorities, that the common law is founded on common usage, and common usage on the common sense of the people. And if what one of the noble debaters, on the side of the appellants, advanced, be matter of fact, “that for a succession of fourteen years no action was brought for the security of a property, on which great sums of money had been expended,” it is to be presumed, that, during this space of time, there were few or no invaders, and that this property, as in other cases of property, was for a long time effectually secured by the common sense of the people.<sup>b</sup>

THUS

<sup>b</sup> If, according to what a noble Lord said in the Upper House, all literary works were at the time of the revolution in the hands of the Stationers' Company, the ravages which must have been made

Thus much in vindication of the pretensions of fordid bookfellers, who, it seems, claim an equal privilege with the rest of their fellow citizens engaged in trade, to eat and drink; and if in the good graces of dame Fortune, to leave estates to their families. But authors, it seems, are beings of a very high order, and infinitely

made on this property by a number of invaders, were the property not secured by a supposed common law right, would have obliged them, before such a term as twenty years were expired, to have had recourse to the Legislature for a legal security. The proprietors of copy right assert, that the statute of the eighth of Queen ANNE was granted on the principle of facilitating legal redress: Had it been taken in the sense of a full decision in the case, surely such a number of proprietors of old copies as now suffer by the present decision, would not have laid out their fortunes on such untenable property. But if it is so very obvious, that no common law right exists for securing copy right, surely the granting injunctions could only tend to deny to one party what the law entitled them to, and to amuse the other to their greater ruin.

infinitely above the low considerations of the useful,  
the convenient, and the necessary!

Incessantly they toil, to instruct and please mankind,

With studies pale, with midnight vigils blind ;

Tho' thank'd by few, rewarded yet by none,

Content to appeal to Fame's superior throne ;

Let but the Goddess the just prize bestow,—

For Fame is all that authors ask below !

THESE are undoubtedly fine sentiments; but, alas!  
the love of filthy lucre, or the cravings of nature,  
will sometimes prevail, even over the refinements of  
genius and science! There are some low-minded ge-  
niusses, who will be apt to think they may, with as  
little degradation to character, traffic with a bookseller<sup>c</sup>  
for

<sup>c</sup> Three members of the Upper House, the Bishops of GLO-  
CESTER and BRISTOL, and LORD LYTTLETON, have not  
thought it beneath their station, as authors and nobles, to take  
large sums of bookfellers for their literary publications.

for the purchase of their mental harvest, as opulent landholders may traffic with monopolizers in grain and cattle for the sale of the more substantial product of their lands. They will be apt to consider, that literary merit will not purchase a shoulder of mutton, or prevail with sordid butchers and bakers to abate one farthing in the pound of the exorbitant price which meat and bread at this time bear; the brewer, the linen-draper, the hosier, &c. &c. will all think their ignorance in letters an excuse for extorting, for the mere necessaries of life, sums which the wretched author has not wherewithal to pay; and it is to be doubted, if a sheriff's officer, when a cast of his office is necessary to conduct the self-denying philosopher to the last scene of his glory, it is to be doubted, I say, whether he will abate one tittle of his accustomed extortions.

THESE are evils which the sublime flights of poetic fancy do not always soar above.

POPE

POPE was so far from being ashamed of his economical prudence, in the article of gain, that he boasted of the happy independence he had obtained by the sale of his literary publications; and represents the tantalizing state of an admired author with empty pockets, in the following forcible language:

“Is envied, wretched, and is flatter'd, poor.”

THIS is the uncomfortable state of an admired author: for it is not every writer, who merits the approbation of the public, is sure of obtaining it, at least during his life-time. Such a disappointed being may possibly have gained a tolerable sum from a bookseller, on mistaken speculative grounds; and may be vulgar enough to be comforted with the prospect of a good dinner, for two or three years at least, for the chagrin which the want of judgment, or prejudice in the public, occasions him. An empty stomach is a bad at-

tendant

tendant on spleen and melancholy; and the best means of relieving a friend, oppressed with the two great evils of hunger and sorrow, is to refresh his spirits with proper nutriment for the body, before you attempt the administering that balsam of consolation intended for the relief of his mind.

To be more serious: with the intention of depriving authors of the honest, the dear-bought reward of their literary labours, they have been raised a little higher instead of lower than the angels, and at the same time levelled with the inventors of a very inferior order: But supposing improvement of the human mind is not more worthy the attention of the Legislature, than the luxuries, or at least those conveniencies, which are not absolutely necessary to the ease of common life, were the inventor of inferior order and the author to stand upon the same footing, in regard to time and other circumstances, for the emoluments

C

arising

arising from their different inventive faculties; the inventor of inferior order would find himself much better rewarded than the author, for his ingenuity. Every common capacity can find out the use of a machine; but it is a length of time before the value of a literary publication is discovered and acknowledged by the vulgar; and when the merits of a work of this kind, in regard to the honest intentions of the writer, and the execution of the composition is in general allowed, the malice of party prejudice, and that leaven of selfishness, which prevails in the characters of the greater number of individuals, may for a long term of years keep back the sale of a book, which teaches an offensive doctrine, or tells disagreeable truths to the public.

THE names of BACON, NEWTON, MILTON, and LOCKE, have been brought into the arguments, as examples to prove that the first-rate geniusses have laboured



boured in the literary way, on the single motive of delighting and instructing mankind: Nay, the Player SHAKESPEARE, it is urged, made a generous bequest to the public, of every one of his almost inimitable dramatic productions.

IN the times in which this great Poet lived, genius and science were so little esteemed by the generality, that property in copy right was hardly thought worth securing: There were few individuals who would venture to print editions of any voluminous author; and if the player and the prompter, who published the first edition of SHAKESPEARE, were indemnified for paper and print, it is to be presumed, that they were indebted for the indemnification to those patrons of that poet to whom they dedicated his work: But be it otherwise, as SHAKESPEARE did not assign to any individual, or to the public at large, a right in his manuscripts, according to the most equitable idea of

obtaining property, they became the property of those persons, who first laid out money and labour on them.

THAT SHAKESPEARE is not one of those sublime characters who had no view of gain in their works, is obvious from a transitory view of his writings; the fame he has acquired he thought so far out of his reach, that he never took the pains of correcting a page; and if he had any view to instructing mankind, the view appears to be secondary to the view of gain, by that abundance of low ribaldry to please a barbarous audience, which load and disgrace the most excellent of his dramatic pieces.<sup>e</sup>

SHAKESPEARE,

<sup>e</sup> Shakespeare, when he first sought his fortune in London, took care of gentlemen's horses during their stay at the play-house; at length, by his industry, and the exertion of his great abilities, he

SHAKESPEARE, whom you and ev'ry play-house bill,  
 Stile the divine, the matchless,—what you will,  
 For gain, not glory, wing'd his roving flight,  
 And grew immortal in his own despight.

DISINTERESTED principle had so little influence over the conduct of the Philosopher BACON, that the fortune and title he possessed were solely obtained, not as a reward for his virtue, genius, and science, but on the merits of his servile and corrupt compliance with the humours of the Sovereign, and his prostituting those glorious talents to the interests of an arbitrary ill-designing Court. Indeed, when this great Author published his Philosophical Ideas, they were so little understood that they were deemed literary lumber ;  
 nay,  
 he became actor, author, and patentee: He wrote plays on the single motive of filling the house, and was so successful as to die with a fortune, which in the times he lived was called opulent.

nay, the learned and royal JAMES, whom the EARL of SHAFTESBURY terms the School-master of his people, compared it to the ways of GOD, past finding out.

LOCKE was fortunate enough to live in times when the rights of nature, and the interest of the Sovereign who sat on the throne, were supposed to be inseparable; whatever therefore might be the generosity and disinterestedness of his character, he did not go without his reward.

NEWTON was gratified with a place and pension;<sup>f</sup> and MILTON, for his spirited and noble defence of the

<sup>f</sup> So precarious is the respect which posterity pays to men of genius and science, that it was with some difficulty the admirers of this Great Philosopher could preserve to his statue the place of honour which the Royal Society had formerly assigned it.

the people of England, had the honour of receiving thanks, accompanied with a present, from the most patriotic government that ever blessed the hopes and military exertions of a brave people. When indeed the times altered, and the matchless Author of Paradise Lost had fallen on evil days; when his prospects in regard to lucrative advantage was vanished; when he had lost his eyes in the attempt of fixing the ideas of good government and true virtue in the minds of a wavering people; when his fortunes were entirely ruined in the crush of his party; this excellent, this heroic, this god-like man, instead of flying, like TIMON of ATHENS, from the haunts of the human species, amused his distressed imagination with forming, for the delight and the instruction of mankind, a Poem, whose merit is of such magnitude, that it is impossible for a genius inferior to his own to do it justice in the description.

SUCH

SUCH an example of love and charity, it is to be owned, does great honour to MILTON's religious and moral principles, and to human nature; but yet I think it is an example, which may with much more propriety be brought on the other side of the question. Can any man, capable of feeling and tasting the compositions of MILTON, reflect without sorrow and anguish of heart, that a society of rational beings should be so void of every grateful sentiment, so dead to every moral instinct, as to suffer the posterity of this illustrious citizen, to be reduced to a state of poverty, which necessitated them, for the support of a miserable existence, to solicit a share in the distribution of public alms.

IN MILTON's days, had literary property stood on the same footing it was supposed to stand on before  
the

the fatal decision against it in the House of Lords, a bookfeller, notwithstanding this worthy man was under the frowns of a Court; notwithstanding the virtue of his conduct had subjected him to a load of unpopularity, from the change of sentiment in his giddy countrymen; notwithstanding, I say, these difficulties, a bookfeller, on speculative grounds, might possibly have given him such a sum for that incomparable Poem, as would in some measure have helped to support him comfortably under the cloud of his fortune, and enabled him to leave such a decent provision for his posterity, as to have prevented, to the indelible

D disgrace

\* If some positive law does not lend its aid to the support of the tottering state of literature in this country, this decision will be a more mortal stab to the freedom, virtue, religion, and morals of the people of England, than the unthinking multitude in general at present apprehend.

disgrace of this country, the necessity of their asking alms.<sup>b</sup>

FOR the propriety of the Lords' decision on literary property, it has been objected, that if there were no means of compelling the putting forth a second impression of a useful work, the impatient public must wait till a wife and children are provided for, by the sale of an edition: and that all learning would be locked up in the hands of the booksellers, who would set what price upon it their avarice chose to demand.

IF the news-writers have been fair in their representation of the arguments urged by a noble and  
learned

<sup>b</sup> This will not appear an extravagant supposition, when we consider the price which the present BISHOP of BRISTOL got from the booksellers, for writing a few notes on this incomparable Poem.



learned debater on the side of the appellants, I protest, I do not understand the force of his objection. The public cannot want a second edition of a work before they have bought of the first; and surely neither that benevolent Lord, or the public, would wish to have it in their power to deprive the necessitous children of an ingenious man, with whose literary labours they had been delighted and instructed, of the just emoluments arising from those labours.

If the noble Lord supposes, that the proprietor of a copy would, through necessity or an inordinate desire of gain, keep up the price of an edition to an exorbitant height, it must be, because his high offices and occupations in the State have prevented him from being at all informed in the business of bookselling.

It is the true interest of the proprietor of every copy, to sell off at the most moderate price, as many editions as with all his art and industry he can dispose of. Is the edition near sold? is the eager question of every author to his bookseller.<sup>i</sup> And suppose the avarice of a proprietor of a valuable copy should, on mistaken grounds of interest, be led to keep up the price of his property, by giving none but expensive editions to the public; that public, according to what the noble Lord observed on another occasion, may have recourse to the unlimited power of printing editions of English authors, claimed by the Irish and the Americans.

It is the opinion of the noble Lord, that if there is any thing in the world common to all mankind, science  
and

<sup>i</sup> Besides lucrative advantage, every new edition is supposed to add to the reputation of a work.

and learning are in their nature *publici juris*; and they ought to be as free and general as air and water: Indeed, I am so far of this noble Lords' opinion, as to regard with horror those diabolical governments, who, by arbitrary decrees and punishments, have barred all the avenues of arriving at science and learning from a wretched people, who, to govern like beasts, they have endeavoured to deprive of the use of that reason, which was given by the benevolent Creator, for the preservation, the happiness, and the glory of the species. But sure if there is any thing which an individual can properly call his own, it is, acquired science, and those high gifts of genius and judgment, with which the Almighty has in a peculiar manner distinguished some of his creatures; gifts which, if they are properly exerted for the service of mankind, deserve the respect, the care, and the attention of society.

THE

THE council on the side of the appellants have made use of all those popular complaints, which, whether on true or false grounds, have at various times, by authors and the public, been made against the booksellers. The public do not sufficiently respect and love learning to be easily satisfied with the price of books, and it is impossible for a bookseller to satisfy the expectations of an unsuccessful author. But however avarice, (for avarice more or less governs all bodies of men) may formerly have occasioned booksellers to impose on the wants of a necessitous author, in the purchase of a copy, or on the public in the sale of a literary work, there are at present too many in the trade, for an author to be reduced to the necessity of disposing of a saleable copy for less than it is worth: Booksellers also, in these times, understand their interest better than to give very bad editions of authors. We have in general better paper, better print, and more elegant editions

tions of English authors, than I believe were ever known, since literature flourished in England; and in regard to moderateness of price, books in these times, when every commodity, every material in the way of trade, pay such a high tax to the government; books, I say, are the cheapest articles sold.<sup>k</sup> This is so notorious a truth to those enlightened, generous individuals, who understand the use of literature, and respect learned and ingenious persons, that they lament that frivolous taste, which is so generally prevailing, as to occasion both sexes to give with pleasure, to

fee

<sup>k</sup> There are many who pretend they would not grudge the giving a reasonable price to an author for a book, but they are unwilling to comply with what they call the exorbitant demands of the bookseller: This is all fallacy and compliment; the author's and the bookseller's interest in this case are inseparable: If booksellers ask sufficient prices for their books, authors will insist on a sufficient price for copy right; but when books are sold as drugs, authors must lower their demands.

see a farcical representation on the stage, or to revel at a masquerade, double, treble, and, in the last instance, often above ten times the sum, which they grudge to bestow on an instructive book.

THESE enlightened, generous individuals do, I say, lament that those debauchers of the good sense and morals of the people, those dealers in (not to give them a harsher name) trifling amusements, with dancers and singers, should be supported in all the high luxuries of pampered sense, and at the same time enabled to pocket thousands obtained from the giddy, unthinking multitude; whilst those who are fit to instruct and to delight the intellectual sense of mankind,

Not to mention more modern instances, FARINELLI, and another famous Italian singer, have built palaces in Italy, with the plentiful harvest which they reaped from the irrational taste of the English.

kind are driven to the greatest straits to obtain the necessaries and decencies of life.<sup>m</sup>

THE very few readers, among the public, are in so little danger of the want of mental food by the scarcity of editions, that, alas! the literary market is overstocked, as those many warehouses which totter under the weight of immense piles of printed copies can very sufficiently evidence.<sup>n</sup>

INDEED

<sup>m</sup> Dr. WALTON, the editor of the Polyglot Bible, a work highly esteemed by all the literati in Europe, died in debt; nay, the great Archbishop TILLOTSON died in mean circumstances; and if it had not been for a copy of his sermons, sold to the booksellers, his family might have been under the necessity of, perhaps, applying in vain for relief to their country.

<sup>n</sup> There are many of our best authors, the poets excepted, who will not pay the re-publication; and works of merit sufficient to