

THE LORDS at pronouncing their former judgment, had considered the author of a book as having a property therein *vi statuti*, and that the profits made of any subject by a third party without the owner's consent belong to the owner; but now on more mature consideration, they were of opinion, that as antecedent to the statute, an author had no property in a book composed and published by him, further than in the copies remaining in his hand, as nothing remained with him after printing and publishing his book but the thought of his mind, which does not admit the notion of property more than the invention of any machine, or of gun-powder, admits the notion of property in the author; so in the statute, though in the preamble the terms 'author' and 'proprietor, are used promiscuously, yet no more is meant by proprietor than an expression exegetick of author; and in the enacting part not a word is said of property, but only of the sole and exclusive privilege of printing; and that no more was intended was plain from the penalties going to the common informer, and their being limited to three month from the offence; which shews that the transgression was not considered as an encroachment on another's property, but as a transgression of the public law.

And whereas it had been urged, that such action for damages lay to the pursuers in England before the Chancery, for proof whereof the signed opinions of certain English lawyers of character were produced; the LORDS had no great regard to this; as the authority of a private lawyer is no evidence, further than that such processes were brought, but not of the judgment given in them, or how the law stands.

N. B. The opinions produced of the English counsel carried the matter thus far, that the action in equity for damages lay in Chancery, even although no entry at all had been made in Stationers Hall. But notwithstanding the great character of the lawyers, this was what the LORDS thought impossible to hearken to, as the entry in Stationers Hall was the express condition upon which the privilege was given to the author, and without which no printer could know what he was or was not at liberty to print; and therefore, supposing action of damages to have lain, where entry was made, none could lie where no entry was made; 'and accordingly the LORDS also *separatim* so found.'

Kilkerran, (Books.) No 1. p. 96.

* * * This case was appealed. The result is mentioned p. 8315.

1773. July 28.

HINTON *against* DONALDSON.

No 2.

ALEXANDER DONALDSON, and others, having reprinted and published, in Scotland, an edition of Stackhouse's History of the Bible, Hinton of London, who laid claim to the property of that work, not under the statute of Queen Anne, but in virtue of a supposed common-law right derived from the original publisher, brought action in the Court of Session against Donaldson and o-

- No 2. thers, for damages and reparation, on account of this encroachment on his alleged right; but the COURT, after a full discussion of the question, being of opinion, that such a right did not exist in authors or publishers at common law, assolizied from the action.

Fol. Dic. v. 3. p. 388.

- No 3. 1775. DODSLEY *against* M'FARQUHAR.

THE letters written by Philip Earl of Chesterfield to his son Philip Stanhope, having, at the death of the latter, come into the possession of his widow, were, by her, sold and assigned to Dodsley, bookseller in London; who, with consent of the Earl's executors, published them, and entered the work in the Stationers' Hall. M'Farquhar, and others in Edinburgh, having soon afterwards printed an edition of this book, Dodsley, before its publication, applied to the Court of Session for an interdict against the Edinburgh printers. *Urged* in defence, *imo*, That the exclusive right given by the statute was merely personal to authors, and to those to whom they, during their lives, might assign their copy-right, and could not descend in the course of legal succession after their deaths; *2do*, That this right could not, at any rate, extend to the editors of works which the authors themselves never intended to publish, such as private letters. THE COURT being of opinion, that the statute was entitled to a more liberal construction, granted the interdict.

Fol. Dic. v. 3. p. 388.

- No 4. 1776. December 21. TAYLOR and SKINNER *against* BAYNE and WILSONS.

TAYLOR and SKINNER published, in a series of engraved maps, a survey which they had made of all the roads in Scotland; and they likewise published an abstract of this survey in a small pocket volume, under the title of "The Traveller's Pocket-book." Wilson, publisher of the Town and Country Almanack, copied into that work several entire pages of the above abstract. Taylor and Skinner applied, by bill of suspension, for an interdict against the sale of this Almanack, as an invasion of their property, which had been entered in Stationers' Hall; *urging*, That the honest fruits of their labour, in a work which had cost them years of toil and much expense, were thus carried off, by persons who had never laid out a shilling, nor exerted the smallest ingenuity on the subject. The defence was, That the Almanack contained nothing but a mere list of stages and their distances, known before the pursuers' survey ever appeared, and in which it was ridiculous for any body to claim a property. The act was for the encouragement of learning; but there was no exertion of learning in publishing a list of roads and stages. THE COURT were of opinion,