APPENDIX.

PART I.

LITERARY PROPERTY.

1775. *July* 27.

JAMES DODSLEY, Bookseller in London, *against* COLIN M'FARQUHAR, Printer in Edinburgh, and CHARLES ELLIOT, Bookseller there.

No. 1.
Whether the exclusive right to literary property be merely personal to authors or their assignees during their life, or be descendible to heirs?

IN the year 1774, Mr. Dodsley purchased from Mrs. Eugenia Stanhope, the widow of Philip Stanhope, Esq. "certain original letters and other pieces of "the late Philip Earl of Chesterfield, now in the possession of the said Euge- "nia Stanhope, at and for the price or sum of £1575." These letters were printed by Mr. Dodsley, entered in Stationer's Hall in terms of the statute 8 Anne, Cap. 19. and published with consent of Lord Chesterfield's executors, under the title of "Letters written by the late Right Honourable Philip Dor- "mer Stanhope, Earl of Chesterfield, to his son Philip Stanhope, Esq. late "Envoy Extraordinary at the Court of Dresden."

Soon after the publication of the book, Mr. Dodsley learned that several persons in Ireland and Scotland were preparing surreptitious editions of it. He therefore applied to the Court of Session for an interdict, prohibiting and discharging certain booksellers in Edinburgh from "printing and selling all such "spurious editions of the foresaid work;" or importing such editions from Ireland.

See No. 3. p. 8398.

The bill of suspension and interdict was reported to the Court by the Lord Ordinary, to whom it was presented, and their Lordships appointed it to be answered within twenty-four hours, and in the mean time granted the interdict.

Mr. Dodsley afterward raised an action against Messrs. M'Farquhar and Elliot, concluding for the penalties in the statutes 8 Anne, Cap. 19. and 12 Geo. II. Cap. 36. He also found caution to pay to these persons any loss which they might eventually be found to sustain by the interdict having been

No. 1. granted. The bill of suspension and interdict was passed of consent; and Lord Gardenstone, before whom the cause was afterward debated, ordered the parties to give in informations to the Court.

Messrs. M'Farquhar and Elliot, in their informations, contended,

1*st*, That supposing the book in question to be such a one as is capable of being the subject of literary property; yet in the circumstances of this case, no property could be claimed under the statute of Queen Anne.

2*d*, That the book was not a work of that kind that is capable of being made the subject of property at all; and

3*d*, That the requisites of the statute for vesting in authors or editors a right of property, had not been complied with.

In support of the first of these propositions, it was maintained, that though an author might, during his own life, transfer the property of a book to a bookseller for a valuable consideration, yet if he should die without making such transfer, the act did not vest any right in his representatives.

Thus the act proceeds in the preamble, that printers and other persons had of late printed and published "books and other writings, without the consent of "the *authors* or *proprietors* of such books and writings."

In the clause which respected books which had been published before the passing of the act, it was declared, that the authors of books already printed, who had not transferred to others the copy or copies of such books, or the booksellers or printers who should have "purchased or acquired the copy or copies" of such books, should have the sole right of printing the same for 21 years.

With respect to books which should be published after the date of the act, it was provided, "that the author of any book or books already composed, "and not printed and published, or that shall hereafter be composed, and his "assignee or assigns shall have the sole liberty of printing and reprinting such "book or books for the term of 14 years, to commence from the day of first "publishing the same."

The last clause of the statute also provided, "That after the expiration of "the said fourteen years, the whole right of printing or disposing of copies "shall return to the authors thereof, if they are then living, for another term "of fourteen years."

From a consideration of all these clauses of the statute, it was maintained, that the intention of the Legislature was not only to give no right to the heirs and executors of authors, but expressly to exclude any claim upon their part. Thus, in the preamble, no notice is taken of books printed without the consent of the *representatives* of authors. No right of property is conferred upon the heirs of authors of books already printed. The clause which vested in authors of books not then published, the property of such books, made no mention of their representatives. And the last clause of the statute declared, that it was

only in case the author himself should be alive at the expiration of 14 years, that the right of property should return to him. No. 1.

The Legislature, it was said, presumed that an author, by publishing, meant to make a donation of his works to the world; unless by entering them in Stationer's Hall, before publication, he evinced that he meant to secure the property of them to himself. If this was necessary even during the life of an author, it seemed to follow, that in the event of his death, his intention to secure the property could only be ascertained by such entry; or at least, by an actual assignment to some person. If he died without executing either, the presumption of law must take place, that the work was intended as a donation to the public.

And that this interpretation of the statute seemed to be that given to it by the London booksellers themselves, appeared from a bill which they procured to be introduced into the House of Commons, after it was decided in the House of Lords, that there was no common law copy right of books. In that bill, the words "executors and administrators" were expressly introduced, which would not have been the case had the act of Queen Anne not been considered as excluding them.

II. With respect to the second point, viz. That the book was not a work capable of being made the subject of property,—it was maintained, that it was a collection of letters written by Lord Chesterfield to his son, calculated for his instruction and perusal alone, and never meant for the public eye. The statute of Queen Anne was intended for the encouragement of learned men to write useful books; but by no means as an encouragement to persons to write letters to their friends. Neither Mrs. Stanhope, nor her husband, to whom they were addressed, could be called the author of these letters. Lord Chesterfield wrote them, and if the property could be acclaimable at all by the statute, his Lordship was the proprietor; or if transmissible by succession, it belonged to his heirs or executors. At the same time, the letters being out of their possession, it was not in their power to avail themselves of that right of property.

Nor could it be said, that by sending these letters to Mr. Stanhope, Lord Chesterfield conferred on him such a right to them, as to entitle him, if he published them, to the protection of the statute. When a person writes letters to his friend, there is an implied prohibition to publish them. And the Legislature could never mean to encourage such a breach of trust as the publication of private letters. In the case of Pope against Curl, 5th June 1741, Lord Hardwick expressed his opinion, that "sending a letter transferred the "paper on which it was written, and every use of the contents, except the li-"berty and property of publishing."

In some of these letters, also, Lord Chesterfield enjoined his son to keep them secret.

No. 1. Accordingly, during the lives of Mr. Stanhope and Lord Chesterfield, these letters were industriously concealed. It was true, that after his Lordship's death, his executors, after obtaining an injunction from the Lord Chancellor against the publication, had given their consent to such publication. But it was not pretended that these executors had any title from Lord Chesterfield to the property of these letters. On the contrary, his Lordship certainly never intended that his letters should be published. But even the consent of the executors to the publication of the letters was not an assignation of their right of property in them, if they ever had such right.

III. But in the third place, it was maintained, that the requisites of the statute had not been complied with by Mr. Dodsley.

It was enacted, that not only the titles of books meant to be protected by the statute, but the consent of the proprietor or proprietors of such books, should be entered in Stationer's Hall. Now in this case, the entry, after mentioning Mr. Dodsley's name, and the title of the book, is in these words; "Published "by Mrs. Eugenia Stanhope, from the originals now in her possession." Mr. Dodsley, by obtaining the consent of Lord Chesterfield's executors to the publication, had acknowledged their right to prevent it; but as he had not recorded that consent, he was not entitled to the protection of the statute.

In the information for Mr. Dodsley, after giving a very full account of the state of the law of England, with respect to literary property, previous to the act of Queen Anne, he answered to the first objection, viz. that the statute was personal to authors, and did not extend to their heirs:

That the statute was meant to be an *universal standing patent* for authors and proprietors of copy rights; and to supersede the necessity of applying for exclusive grants from the Crown. It must therefore be presumed, that all who by former usage were entitled to obtain patents from the Crown, were also entitled to the protection of the statute. And many instances occurred of patents being granted to heirs of authors.

Had the Legislature meant to exclude heirs; so remarkable a circumstance would have been specially mentioned.

The application for the act of Parliament was made, not by authors, but by printers and booksellers, whose interest it was to obtain the same protection for all books, whether sold to them by authors or their heirs. And that application, which was quoted in the information, seemed particularly to have in view the wives, childern, and families of authors, and the purchasers from authors.

The words "Authors OR proprietors of books," in the preamble of the act, and the words "purchased OR *acquired*," in the clause respecting books published before the act, are broad and comprehensive, without limitation, and may with propriety be applied to heirs and purchasers from heirs, as well as to persons purchasing from authors.

The liberty of printing for 14 years all books published after the date of the act, is given to authors and their *assigns*. *Assigns*, in the ordinary legal accep-

tation of the word, comprehends assignees in law as well as assignees by deed. Indeed, by the ancient law of England, that word was understood to denote assigns in law. Thus, "If a man had previously purchased to him, and his "*assigns* BY NAME, he might alienate the acquisition; but if his *assigns* were "not specified in the purchase deed, he was not empowered to aliene." Blackstone's Commentaries, Vol. 2. p. 289. The statute, therefore, must be understood to have used the word in its most common legal sense. No. 1.

The subsequent clauses of the act tend to confirm this interpretation of it, the word *author* being dropped, and the word *proprietor* used as more comprehensive.

It was also argued, that the practice of authors and booksellers, since the date of the act, was in favour of the doctrine contended for by the pursuer. Not only many instances occurred of heirs of authors taking the protection of the statute, but the case had been decided in the English Courts.

Sir Mathew Hale, Lord Chief Justice of the Court of King's Bench, died in 1676, leaving many manuscript works of great value. In 1680, the House of Commons ordered, that his executors should be desired to print his "History "of the Pleas of the Crown," and that a Committee should be appointed to take care of the printing of it. Various accidents, however, prevented the publication of it till 1736, when the copy right of it was assigned, by a person having right to it, to Gyles, a bookseller, who entered it in Stationers' Hall in terms of the statute. In 1740, another bookseller attempted to reprint it, but was prevented by an injunction granted by the Court of Chancery.

The consequences to which the doctrine contended for by the defenders would lead, would be in the highest degree absurd and detrimental to the interests of learning. No posthumous work could be printed with advantage or security to the heirs of the author. Authors would thus be deprived of a strong incitement to the composition of works requiring long time, labour, and expense; as men engage generally in such pursuits not only with the view of informing mankind, and acquiring fame and reputation, but likewise, with the design of deriving from their labours profit to their families. In short, to confine the privileges of the act within such narrow limits could never be a liberal construction of a statute declared to be for the encouragement of learning.

Upon the *second* point, viz. Whether this was a book of that kind which was meant to be protected by the statute, Mr. Dodsley contended, that the act extended to literary productions of all denominations. The letters of eminent persons were certainly as much entitled to the protection of a statute, made for the encouragement of learning, as works of other descriptions. Viewing the publication merely as a collection of letters, therefore, it could not be pretended that the proprietor of it had a less secure right to it, than he would have had to any other work. But, it was said by the defenders, that these letters were not written with the intention of being published. That however, was a mat-

No. 2. ter with which they had no concern. It was an argument which Lord Chesterfield's executors might avail themselves of, to prevent the publication, and to them alone was it competent. They had consented to the publication; but by doing so, they conferred the right of printing and disposing of the work on one person only, and not upon the public at large.

Nor was it of any consequence to enquire, whether the letters belonged to the representatives of the writer of them, or of Mr. Stanhope, to whom they were adressed; for both parties agreed to the publication.

In the *third* place, the book was entered in Stationers' Hall in the regular and customary manner. The entry mentioned that the letters were published from the originals in the possession of Mrs. Stanhope. And she was without doubt the absolute proprietor of them; for not only were they in her possession, but she had the consent of Lord Chesterfield's executors to their being published.

The Court having advised the informations, appointed a hearing in presence, after which, the following interlocutor was pronounced, (27th July 1775):

'On report of Lord Gardenstone, and having advised the informations *hinc* '*inde*, and heard parties procurators in presence, the Lords continue the inter- 'dict formerly pronounced against the chargers, prohibiting them from print- 'ing in Scotland or importing from Ireland, the book entitled "*Letters writ-* "*ten by the late Right Honourable Philip Dormer Stanhope, Earl of Chesterfield,* "*to his Son Philip Stanhope, Esq. late Envoy Extraordinary to the Court of Dres-* "*den,*" and from vending or selling the said book so printed or imported as 'aforesaid; and they declare, that the said interdict shall continue and subsist 'during the term of years fixed and ascertained by the statute of 8th of Queen 'Anne: Further, the Lords declare the bond of caution by the suspenders, to 'answer any damages sustained by the chargers on account of said interdict, 'to be discharged, and ordain the same to be delivered up to the suspenders, 'and decern.'

Lord Ordinary, *Gardenstone.* For Dodsley, *Sol. Gen. Murray, R. Cullen.*
For M'Farquhar, &c. *Ilay Campbell, A. Crosbie.*

W. M. M.

Opinion by Mr. Dunning.

I AM of opinion, that Mr. Dodsley, having, as I understand, an assignment in the common form, of the copy of the Letters lately published from Lord Chesterfield to his son, from Mrs. Stanhope, the widow and executrix of the son, and likewise a consent to the publication on the part of the executors of Lord Chesterfield, *who alone* could dispute her right to publish them, is *well entitled* to the protection of the act of Queen Anne; and presuming that he

has made the proper entries at Stationers' Hall, I apprehend, that any person reprinting this book will be liable to the penalties by that act imposed. No. 1.

I apprehend too, that, in a suit instituted upon this act, it cannot be competent to the defendant to revive the question agitated in the Court of Chancery, between Mrs. Stanhope and Lord Chesterfield's executors; but that a person reprinting, without any pretence of authority derived from any of these parties, is clearly a person reprinting without the consent of the *proprietor*.

Lincoln's Inn,
12*th Jan.* 1775. (Signed) J. DUNNING.

1776. *December* 21.

GEORGE TAYLOR and ANDREW SKINNER, Pursuers, *against* DONALD BAYNE and ROBERT and RICHARD WILSON.

No. 2.

TAYLOR and Skinner published a survey of all the roads in Scotland, in a series of engraved maps. They also published an abstract of this survey in a small pocket volume, under the title of "The Travellers Pocket Book, or an "abstract of the survey of the roads in Scotland." Statute 8. of Queen Anne. See No. 4. p. 8308

In the Town and Country Almanack for the year 1777, published by Robert and Richard Wilsons, several entire pages of this abstract were copied.

Taylor and Skinner applied by a bill of suspension for an interdict against the sale of this Almanack, which was refused by Lord Kennet.

Pleaded for them in a reclaiming petition. The survey of the roads in Scotland, and the abstract of that survey, were the result of great labour and expense on the part of the pursuers. There is not a single line in the Traveller's Pocket Book that was not acquired by the labour of travelling many miles, and measuring every footstep of the road as they travelled. This painful and expensive survey has been of very considerable public utility. The pursuers are certainly entitled to reap the benefit arising from the publication; and the publishers of this Almanack, who have not laid out a shilling of expense upon the subject, cannot be permitted to ruin the sale of the pursuers' work, and to increase the sale of their own by inserting a material part of that publication. If these almanack-makers shall think proper to measure the roads themselves, and to publish the observations they have made, the pursuers will not then interfere with them; but though they may do this, they are not entitled to avail themselves of the observations given to the public by others, and which have cost so much trouble and expense to make.

It is no sort of defence, that the Wilsons have not printed the pursuers' work entire. The statute of the 8th of Queen Anne imposes a special forfeiture upon every single sheet of the work printed, published, or exposed to sale, contrary to its enactments. This is altogether incompatible with the idea, that