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It is equally incompetent in a court of law, to found an argument upon an alleged breach of confidence in the receiver of these letters, which resolves itself altogether into a question of morality. Whoever intrusts any secret, or makes any communication to another, commits himself in some measure to the discretion of his friend, and he can never hope, by means of a suspension and interdict, to prevent him from telling the secret.

But farther, there is no such thing as literary property at common law; and, as the letters in question are not protected by the act of Queen Anne, the suspenders cannot pretend to any exclusive privilege of publishing the correspondence.

The Lords (May 17, 1804), "having advised the informations for the parties, "continue the interdict, declare the same to be perpetual, and decern." The heirs of Burns were also found entitled to expenses.

And a reclaiming petition against this interlocutor was refused without answers.

There was little difference of opinion upon the Bench. The ground upon which the Court seemed to pronounce the decision was, That the communication in letters is always made under the implied confidence that they shall not be published without the consent of the writer, and that the representatives of Burns had a sufficient interest, for the vindication of his literary character, to restrain this publication.

Lord Ordinary, *Gleulee.* For Suspender, *Solicitor-General Blair, Bell.* Agent, *T. Manners, W. S.* Alt. *Fletcher.* Agent, *Geo. Yool.* Clerk, *Menzies.*

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1804. *December* 18.

CADELL and DAVIES, and Another, *against* ROBERTSON.

No. 5.
Entry at Stationers' Hall, in terms of 8th of Queen Anne, cap. 19. is necessary to create a property in literary publications.

IN the year 1793, a new edition of the Poems of Burns was published by Cadell and Davies, booksellers in London, and William Creech, bookseller in Edinburgh; to whom Burns had conveyed the property of that volume of poems which he first published in 1787, with such additions to it as he might afterward make. Upon this occasion, the author furnished twenty additional poems, which were inserted in the new edition. Burns died in 1796;—so that the exclusive privilege of publishing the original poems expired in 1801: but with regard to the additional poems, continued till 1807. These last poems were not entered at Stationers' Hall, in terms of the 8th of Queen Anne; but the original volume of poems was regularly entered.

In 1802, when the exclusive privilege had expired, so far as regarded the original volume, James Robertson, printer in Edinburgh, published a small

edition of the Poems of Burns; in which he comprehended those poems which had been furnished by the author for the edition of 1793. No. 5.

Upon this, Cadell and Davies, and Creech, applied, by a bill of suspension, for an interdict; and at the same time raised an action against Robertson, for damages, on account of an infringement upon their property, by publishing these additional poems. The bill of suspension was passed, conjoined with the action of damages, and reported by the Lord Ordinary. The pursuers

Pleaded: The statute of Queen Anne is an universal and unconditional patent of exclusive privilege, in favour of authors and their assignees, for a certain term of years. The entry at Stationers' Hall is not necessary for the constitution of the right; but is merely a condition of one particular remedy provided in the event of its violation, viz. an action for penalties and forfeitures. The preamble of the act bears, that it was a statute for the encouragement of learning, by giving to authors a right in their works after publication; and for this purpose the Legislature made two distinct provisions. In the first place, it declared, in absolute and unqualified terms, that the author should have the exclusive privilege of printing his own work for fourteen years from the date of the publication, and for a second term of the like duration, if he should survive the first. And, in the second place, with a view of guarding this right still more strongly, the Legislature held out a reward to informers, to give notice of the printing of any piratical edition, by the imposition of forfeitures and penalties. But as these penalties are declared to attach before the offence has gone the length of publication, it is provided, that they take place only where care has been taken to intimate to the world the author's exclusive right by entry upon the public records at Stationers' Hall, so as to infer *mala fides* against the contravener. If this act of Queen Anne had gone no farther than the first enactment, vesting an exclusive right in an author and his assignees, there can be no doubt that this right of property would have been protected by the ordinary remedies of law, and that the author must have been entitled to an action of damages, if it should be violated. The object of the second branch of the statute is not to take away any of those securities which the author has against contravention by the nature of his right, but to strengthen it with additional securities; and as the condition of entry at Stationers' Hall applies only to that branch of the statute in which the penalties are enacted, it does not in the least impair the common-law remedies for infringement of the exclusive privilege created by the first part of the statute.

In a question upon the construction of a British statute, the decisions of the Courts of England may be regarded as precedents, especially as it is of importance to have an uniform interpretation throughout the island. Accordingly, it has long been the prevailing opinion in England, that entry at Stationers' Hall is only necessary to authorise the penalties, and that an ordinary action of damages is at any rate competent; Tonson against Collins, 1. Blackstone's Rep. 330; Miller against Taylor, Burr. 4. 2380: And the point was expressly

No. 5. so decided, Beckford *v.* Hood, 11th May 1798, 7. Term. Rep. King's Bench, 620.

Answered: Literary property has no existence at common law, and is altogether the creature of statute; Midwinter against Hamilton, 7th June 1748, No. 1. p. 8295; Hinton against Donaldson, 28th July 1773, No. 2. p. 8307; Cadell against Anderson, 17th July 1787, No. 6. p. 8310; Clark against Bell, 29th February 1804, No. 3. *supra*; Donaldson against Becket, House of Lords, February 1774, See Burr. Rep. vol. iv. p. 2408, for a full account of the decision of the House of Lords, and the opinions of the Judges. The exclusive right of an author to his works after publication, rests entirely on the statute of Queen Anne, and therefore can only be sustained if he comply with all the requisites prescribed by that act of Parliament. One of these is, that the work be regularly entered at Stationers' Hall.

The pursuers have endeavoured to divide this statute into two distinct parts; and because the condition of the entry at Stationers' Hall happens to be mentioned at the end of the act of Parliament, they hold, that it refers only to the latter branch of the enactment. But there is no foundation for any such mode of interpretation; and it is clear from the terms of the statute, that the previous entry at Stationers' Hall, is an essential condition of the right created by the Legislature. It is an unfair mode of interpretation to divide a law into different parts, or to select particular sentences in an act of Parliament, with the view of drawing general inferences. It is only from the whole act, taken altogether, that an accurate notion of its import can be ascertained.

There seems no reason for holding an entry at Stationers' Hall to apply only to the penalties, upon the ground of imputing a greater degree of *mala fides* to the printer, to justify such a conclusion against him; for the conclusion of damages may be followed with much more severe consequences than of the penalties; and therefore, it is so much the more necessary, that the act of publication should be known. Unless the terms of the act be complied with, no right is vested, and, of course, no action of damages can be competent.

But, even supposing the publication had been regularly entered, as there existed no common law right, antecedent to the statute, no other remedy is competent than that which is prescribed by the statute, which is pains and forfeitures. An action of damages is not authorised by the act, nor was any such remedy demanded, and therefore none is competent.

The Lords (May 16th, 1804) in the suspension, recalled the interdict, and found the letters orderly proceeded; and in the action of damages, assoilzied the defender.

And, upon advising a reclaiming petition, with answers, their Lordships, by a great majority, adhered to this interlocutor.

Two of the Judges were for sustaining the action of damages, upon the notion, that the provision in the act of Parliament, requiring entry at Stationers' Hall, applied only to the penalties and forfeitures, and also because it seemed

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to be highly expedient, that the same mode of interpretation should be adopted in this country which had been received in England, since this was a species of property which must be the same in either country. But the majority of the Court held, that the right of authors was created by this statute, not absolutely, but under certain conditions; that these conditions had not been complied with in this instance; that the case of Midwinter in 1748, and of Hinton in 1773, where the doctrine of literary property underwent the most solemn and deliberate discussion, must be held as precedents, which ought not now to be controverted, especially after having been so strongly sanctioned by the decision of the House of Lords in the case of Donaldson and Becket. It was observed, that the Court of King's Bench, in the late case of Beckford, seem to have reverted, in a great measure, to the old doctrine of literary property at common law. But, however desirable it might be, that uniformity of opinion should take place, the majority of the Judges could see no good reason why they should depart from the principles which they have hitherto followed in all such cases, even if they should think themselves at liberty to throw aside the judgment of the House of Lords, which, in its real import, they conceived to be adverse to the judgment thus given in the Court of King's Bench.

Lord Ordinary, *Glenlee*. Act. *Solicitor-General Blair, Bell.* Agent, *T. Manners*, W. S.
Alt. *Fletcher*. Agent, *Geo. Tool.* Clerk, *Mackenzie.*

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