No 6.

The Lord Ordinary reported the cause; when

The Court found, 'that the pursuers, under the authority of the statute, had an exclusive right of publishing the work in question.'

Against this judgment a reclaiming petition was preferred; which, so far only as respected the first volume, was refused without answers. But with regard to the other three volumes, answers were appointed; and on again advising the petition, along with these,

The Lords pronounced this interlocutor: "Find, that the pursuers have the sole right of printing and re-printing the first volume of Sir William Blackstone's Commentaries, for and during the second term of 14 years after the expiration of the first 14 years, secured to him and his assignees under the statute of Queen Anne? And find, that the pursuers also have the sole right of printing and re-printing the other three volumes of the said Commentaries, with the corrections and continuations, as entered by them in Stationers' Hall, for and during the term of 14 years after the date of such entry; but remit to the Lord Ordinary to hear parties procurators, how far, and to what extent, the penalties of the act of Queen Anne may or can be applied to the printing of these three volumes by the defenders, as now complained of in this action."

Reporter, *Lord Justice-Clerk.* Act. *Blair, Fraser-Tytler, Steuart.* Alt. *Lord Advocate, Dean of Faculty, Hope.* Clerk, *Sinclair.*

S. *Fol. Dic. v.* 3. *p.* 389. *Fac. Col. No* 340. *p.* 522.

1787. *July* 17.

Thomas Payne and Thomas Cadell, *against* William Anderson and John Robertson.

No 7.

No action on the statute of 8th Queen Anne, cap. 19. except for the penalties.

Whether the *præsumptio juris et de jure* of *ignorance* established by this statute can be admitted in a case which of itself implies *knowledge.*

Messrs Payne and Cadell purchased the copy-right of a novel, entitled 'Cecilia;' but they neglected to enter the work in the register of Stationer's Hall, as the act 8th of Queen Anne directs.

Some time after they had published this book, Messrs Anderson and Robertson re-printed it in Scotland, in an edition which exhibited the same title-page, so as to assume the names of the true editors; and by a studied similarity of type and paper, and an exact imitation throughout in the printing of every letter, they formed an almost perfect copy of the original.

Messrs Payne and Cadell sued those persons; 1*mo*, In an action of damages, and for penalties, on the statute; and, 2*do*, In an action of damages at common law, for having improperly assumed their names, and other circumstances, by which they were distinguished in their profession.

Pleaded for the pursuers,—with respect to the action on the statute; This act first confers on the authors of books 'the sole right and liberty of printing

'such books' for a certain term. Thus a right of property is constituted; and although the statute had proceeded no farther, the inherent power of vindicating the right would have been implied as a necessary consequence. But it goes on to enact the forfeiture of the unlawful publication, together with penalties proportioned to the extent of the offence. These two enactments are distinct in their object, and separated in the language of the statute. It is to the latter only that the condition of entry at Stationers' Hall is annexed. Thus: 'Nothing in this act shall extend to subject any person to the forfeiture or penalties therein mentioned, unless the titles of the books be entered in the register book of the company of stationers.' Were there not still an action for reparation of damage competent to authors, the statute could hardly be said to protect their property. The enactment of penalties in which any one of the people who shall give information of the offence obtains an interest, exclusive of theirs, was never intended for their indemnification, nor directly for their emolument in any degree, who are likely to be among the last to obtain such information. No 7.

From the whole tenor of the statute, it is evident a right of property was intended to be conveyed, independently of entry. The clause, towards the conclusion, which declares, that all actions 'for any offence that shall be committed against this act, shall be brought within three months after the offence,' affords the strongest proof of this intention. By the words, 'offence committed against this act,' is meant, offence against that right of property, thus defended by the penalties and forfeitures of the statute; for which penalties and forfeitures all action is debarred, unless brought within three months from the commission of the offence. But the statute having once vested and declared a right of property during a certain period, that right is defended by the common law, like any other property, during the whole term of its endurance. Many cases may occur, where, from the artifice of offenders, the offence may be kept secret for more than three months; and thus the party injured is of necessity deprived of all action for the statutory penalties; but it would be most absurd to maintain, that the property conferred by the statute is therefore not defensible by the common law.

In this special case, even the penalties may be exacted, notwithstanding the omission in question. If a book has not been registered at Stationers' Hall, the statute presumes, that any transgression of the author's exclusive right has happened through ignorance, and on that account exempts the offender from penalties. This, no doubt, is a *præsumptio juris et de jure*; because, when once received, it cannot be counteracted or excluded by any proof whatever. But the law does not presume, in any case, that which is inconsistent with the case itself, or, in other words, what is absurd. For example, the negative prescription of 40 years is founded on a *præsumptio juris et de jure* of dereliction, in consequence of none of the rights of property having been exercised during that period. This is the general description of the case to which the presump-

No 7. tion applies. But if a party has been *non valens agere*, a circumstance absolutely incompatible with the idea of negligence or dereliction, (for he who is *non valens* neither does nor omits any thing, and consequently does not derelinquish,) the presumption becomes inadmissible, and of course prescription cannot take place. Now, there enters into the present case an essential ingredient, which as certainly obstructs the admission of the *præsumptio juris et de jure* of the statute in question, as *non valentia agendi* does that of the act of Parliament of 1469.

As it is necessary the law should determine in every case subject to its decision, whilst full evidence is but seldom to be obtained, it holds its presumptions until they be disproved *pro veritate*, in the same manner as if they were the result of demonstrative evidence. One of the most unquestionable of these presumptions is this, that if a man commits an act fraudulent in its own nature, he will be presumed to have done so with the correspondent fraudulent design, though possibly the act may be occasioned by mere folly or caprice, or even by accident. If A. enters the house of B., and by means of his assuming the character of the owner, appropriates or wastes his goods, this no doubt may be owing to accident or mistake; but the law in the mean time will presume fraud. When Arnaud du Tilh took on him the character of Martin Guerre, and by counterfeiting his whole appearance usurped his rights as a husband, the law could not but presume that which was the consequence, to have been likewise the motive of the imposture. *Causes Celebres*, v. 1. p. 1. In like manner, when the defenders assumed the names and character of the pursuers, with every exterior mark distinguishing them as the publishers and the proprietors of the work in question, and with such painful industry, surmounted all the difficulty of producing an exact counterfeit edition of their book, to pass in the market for the true, is it not the presumption of law, that this fraudulent act, a direct instance of the *crimen falsi*, (*vid.* Matth. and Carpzov,) was committed in order to the usurping of that just and equitable right, no matter whether protected by the statute or not, which belonged to the character thus counterfeited? Most certainly it is, and of necessity the knowledge of the right is implied. But this individual act of publication, and no other, is the violation of property here complained of: A case, therefore, as incompatible with the *præsumptio juris et de jure* of ignorance, founded on the statute under consideration, as that of *non valentia agendi* is with the *præsumptio juris et de jure* of dereliction established by the act of Parliament of 1469.

Answered, 1*mo*, By the decision of the Court, in the case of Midwinter *contra* Hamilton, 7th June 1748, No 1. p. 8295. it was expressly "found, That no action lies upon, or in consequence of the statute, but only for the penalties:" A judgment which has ever since been held as established law.

2*do*, Registration is a requisite, essential for founding the statutory privilege; and the want of it cannot be supplied, either by the private knowledge

of the defenders that the pursuers had a right under the statute which they proposed to exercise, or by any other means whatever. "If intimation, publication, or registration, be required by law to complete a right, or even merely to certify the lieges of its existence, the private knowledge of parties does in no case serve instead of legal form. Thus, a debtor's private knowledge of an assignation by his creditor will not supply the want of intimation, or put the debtor *in mala fide* to pay to the creditor denuded. In like manner, the private knowledge of an inhibition, having been raised and executed, will not prevent a party from contracting with the common debtor, unless the inhibition be likewise recorded." No 7.

Replied, 1*mo*, The judgment in the case of Midwinter is hardly to be deemed a final determination of the question, Whether the statutory right of property can be vindicated at common law? When that cause came by appeal before the House of Lords, they did not consider that point as properly brought under their consideration; their decision being, "That the action ought to be dismissed as irrelevant, without prejudice to the points pleaded therein, when they should be properly brought in judgment."

2*do*, The defender's reasoning really affords an additional illustration of the pursuer's argument. If the law be as they suppose, then the want of intimation founds a *præsumptio juris et de jure* of ignorance, or *bona fides* in the debtor. But could this presumption be admitted in behalf of the person who, at the moment while he pleaded it, was, by means of a counterfeited conveyance or discharge of the debt, fabricated by himself, in the name of the assignee, actually usurping his right? See *voce* ASSIGNATION. Inhibition is nothing to the purpose. No diligence can add to the equitable foundation of a right; it is merely a legal engine; and if not properly completed, is good for nothing. A man, to be sure, need not go to prison, because his creditor is meditating a caption against him.

Pleaded for the pursuer, With respect to the action of damages at common law, the defenders, in publishing a spurious edition of the pursuer's book, have assumed the name, description, and professional character of the latter. This is a species of the *crimen falsi*. Voet, *ad tit. D. Ad leg. Cornel de fals.* § 6. Carpzov. *Pract. crim. quæst.* 93. And by it the best earned reputation for probity or mechanical skill may be sacrificed to the avarice of any unprincipled individual. On this ground, then, a claim for damages at common law must lie. Viner's Abridgement, *voce* COUNTERFEIT.

Answered, "It is in vain to apply to the ordinary transactions of life abstract and speculative notions of right and wrong, as forming any invariable rule. There are in every profession certain arts which practice has sanctified, although neither from their nature nor object they could bear to be tried by the precise rules of morality; but which have at length become perfectly innocent, as every person lays his account with them, and deals accordingly."

No 7. Of the truth of this observation, the trade of printing or selling books has ever afforded a remarkable instance.

The LORD ORDINARY reported the cause; when

With regard to the first ground of action, the Court seemed to be clearly of opinion, That as literary property was not protected by the common law, so no action could proceed on the statute, except for the penalties there mentioned. But

"THE LORDS found, That it was irregular and hurtful in the defenders to publish the work in question with the names of the pursuers affixed to the title-page; and therefore prohibited and discharged them in time coming to sell any copies of the said work with such title-page; and found them conjunctly and severally liable in expenses: And further, found the defender, William Anderson, liable in damages to the pursuers; which the LORDS modified to the sum of L. 20 Sterling."

Reporter, *Lord Justice-Clerk.* Act. *Blair, Fraser-Tytler, Stewart.* Alt. *Lord Advocate, Dean of Faculty.* Clerk, *Sinclair.*

Fol. Dic. v. 3. *p.* 389. *Fac. Col. No* 342. *p.* 524.

1790. *May* 22.

His MAJESTY'S PRINTER & STATIONER *against* Messrs BELL & BRADFUTE, and Others.

No 8.
The King's Printer has the exclusive privilege of printing Bibles. A Commentary, large and voluminous, although the whole of the Bible was printed along with it, was found to be no infringement of the privilege; but a Bible, published with short notes under it, was prohibited.

THE letters patent conferring the office of King's Printer, bear, that he shall have *solum et unicum privilegium imprimendi in Scotia Biblia Sacra, Nova Testamenta, Psalmorum libros, et libros Precum Communium, Confessiones Fidei, Majores et Minores Catechismos, in lingua Anglicana.*

Upon that title, a bill of suspension was presented to the Court, complaining of, and craving an interdict against the publication of several Commentaries on the Bible, in respect that each of them contained a complete copy of the Bible itself; and in particular those of Henry and of Ostervald, the first of which is very voluminous, while the other is remarkable for its brevity.

Pleaded for the complainer, Of the royal prerogative to grant this exclusive privilege, there can be no doubt. It was in particular recognised by a judgment of the Court in 1717, in the case of Mr Watson, *see* APPENDIX, who was then the patentee; and in the late celebrated questions concerning the existence of literary property at common law, this exercise of prerogative was on all hands considered as indisputable.

By the publications in question, the complainer's right is infringed. They contain the whole of the Bible from beginning to end; and though they also