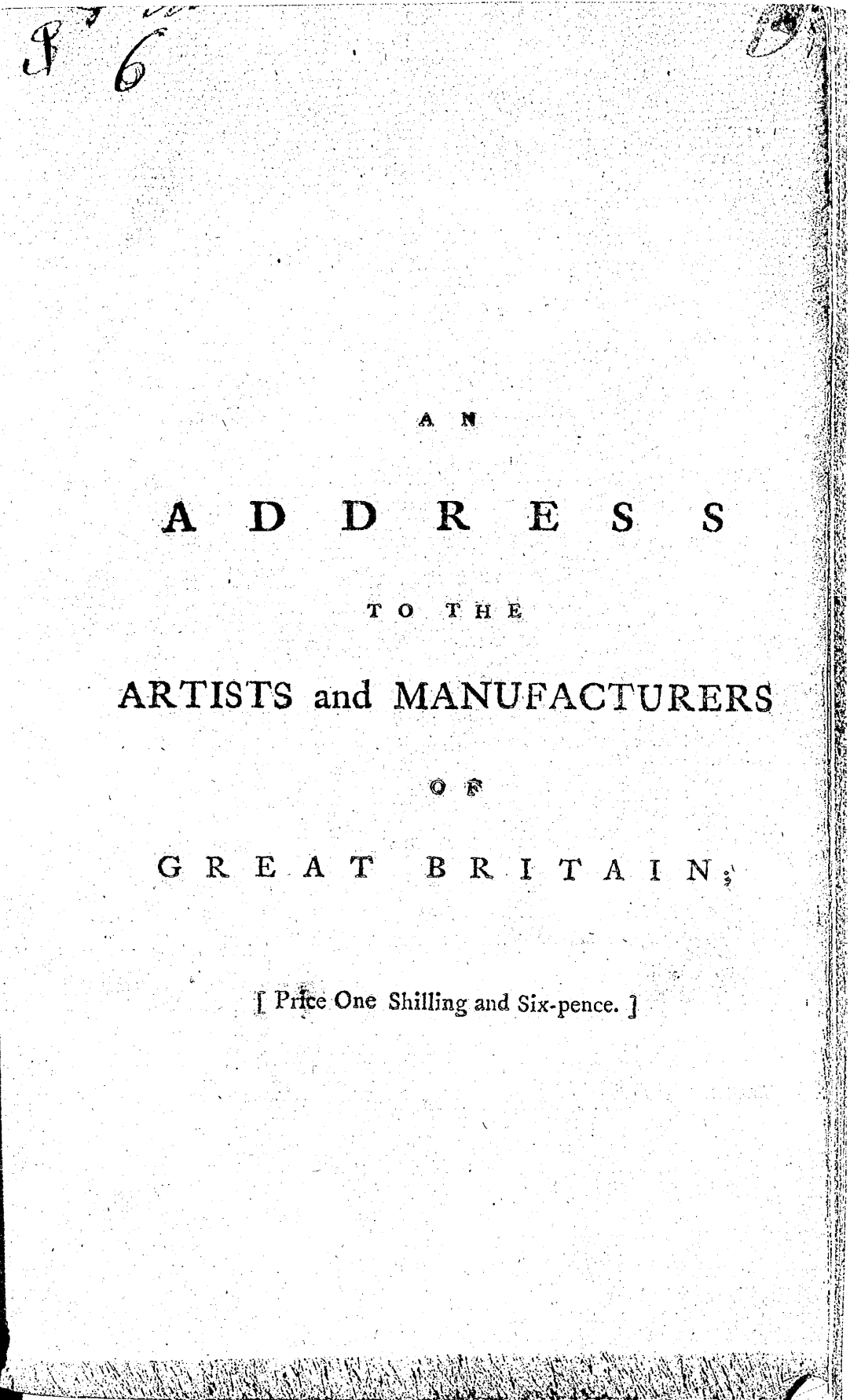


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AN
 ADDRESS
 TO THE
 ARTISTS and MANUFACTURERS
 OF
 GREAT BRITAIN;

[Price One Shilling and Six-pence.]

A N
A D D R E S S
T O T H E
A R T I S T S and M A N U F A C T U R E R S
O F
G R E A T B R I T A I N ;

Respecting an APPLICATION TO PARLIAMENT for the farther
Encouragement of *New Discoveries* and *Inventions* in the
USEFUL ARTS ; to the facilitating future *Improvements* in the
Produce, Manufactures and *Commerce* of these Kingdoms.

To which is added,

A N A P P E N D I X,

Containing *Strictures* on some singular Consequences, attending
the late Decision on LITERARY PROPERTY.

By W. K E N R I C K, LL. D.

L O N D O N :

Printed for Messrs. DOMVILLE, at the Royal Exchange; DILLY, in
the Poultry; NEWBERRY, Ludgate-Street; WILLIAMS, Fleet-Street;
EVANS, in the Strand; and RILEY, Curzon-Street, May-Fair.

M D C C L X X I V .

T O T H E

P U B L I C A T L A R G E .

A N Attachment to *Letters*, and a regard for the profession of an *author*, would, perhaps, never have permitted the writer of the following pages, to doubt the superiority of the *literary artist*, or the propriety of the encouragement given to *his* labours above those of *others*; had not an equal encouragement been obtained of the Legislature, a few years ago, for *Engravers, etchers* and *mezzotinto scrapers*.

This circumstance leading to an enquiry into the respective merits

(vi)

of Artists in general, the *practitioners* of the *useful*, were found to lay so similar a claim to public encouragement with the *professors* of the *polite* arts, that the distinction, which the Law had made in the right of property to their different labours, could not fail to appear extremely partial and inequitable.

With a view to state this partiality to the publick, the following tract, in which the *scientific* and *useful* Arts are compared with those of *Literature* and *Curiosity*, in the respect abovementioned, would have earlier appeared, agreeably to the notice given in the Public Advertiser of June 29, 1771, had not the argument been thought
to

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to be affected by the then uncertain state of *Literary Property*. This being since in some Measure determined, and the Doctrine in question having received the sanction of very high authority, the present Publication is judged expedient to promote the Design of obtaining farther encouragement for the exertions of *useful Ingenuity*, and thence facilitating future Improvements in the *Produce, Manufactures, and Commerce* of these Kingdoms.

Not that *Artists* in general will probably think it prudent to solicit an innovation, at present so repugnant to public prejudice, as that of being put *precisely on the same footing*

(viii)

footing with *Authors* and *Engravers*. By displaying, however, the equity of their pretensions to equal consideration and encouragement, it is presumed that the less objection may be made to their application for a parliamentary extension of the usual term of exercising their inventions by patent, with a repeal of the clause in the monopoly act, which now restrains the crown in all cases indiscriminately, from granting such patents for more than fourteen years; a term in many particular cases greatly inadequate to the labour, pains and expence, attendant on bringing useful inventions and discoveries to perfection.—The Moderation of such a request may possibly induce
some

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some public-spirited patron of the *useful arts*, to urge more powerfully the expediency of granting to their professors privileges proportionate to their personal merit and public Utility.

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A N

A N
 A D D R E S S
 T O T H E
 A R T I S T S and M A N U F A C T U R E R S
 O F
 G R E A T B R I T A I N.

I N T R O D U C T I O N.

A Writer, who has devoted his time as much to the *useful* as the *polite* Arts, may take on him, without impropriety, to treat of that very partial distinction, which the laws of his country have made between his right of property to the emoluments arising from his different pursuits.

As an *Author* and an *Artist* of a *certain class*, an exclusive right, to profit by his compositions and inventions, is secured to him by Statute for a considerable term of years; as an *Artificer* or *artist* of any *other class*

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class, he is destitute of such security. Let his *inventions* or *discoveries* cost him what time, or expence they may, let them rebound ever so much to public utility, or private profit, the author of them is adjudged to have no exclusive right to the exercise of his invention or the use of his discovery.

It is indeed whimsical that, in a *scientific* age and *commercial* nation, a property in *words* should be held more sacred than a property in *things*; that an *Artist*, who has *literature* enough to give a *verbal description* of the nature and design of any newly-invented and useful machine, should be legally entitled to the sole right of multiplying the copies of such *description*, though he is denied such right of manufacturing or multiplying the copies of the *Machine* itself. This is still more whimsical if we reflect, that such *verbal description* may be only a matter of *mere curiosity*, and the first copy of it have been composed with facility in a few hours; while the *real instrument* may be a subject of *great utility*, and its fabrication have cost the inventor the study, application and labour of years, to surmount the difficulties attending its first construction.

At

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At a time, therefore, when the farther indulgence of the Legislature is solicited in favour of *literary property*, and even that, which has been already granted by Statute, is thought by many an infringement of the natural rights of genius, the professors of the *useful arts* will be wanting to themselves if they neglect the opportunity of laying claim to at least an *equal* indulgence, founded on a plea of at least equal validity.

Not that the *Useful Artist* need rest his cause solely on *comparative* merit, or found his pretensions to a like indulgence on the Statute in favour of *Literary Property*. With equal claim to the natural rights of Genius, it is by no means difficult to support his *superior* right to public encouragement on principles of political expediency.

At the same time, it is not pretended that this partial distinction between the *Author* and the *Artificer* is altogether peculiar to this island. The practice of most other nations, respecting the *common property* of discoveries and inventions in the useful arts, affords a strong presumption that, even granting a natural right of property in them to subsist, it is either inca-

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pable

pable of being ascertained and secured by Law, or incompatible with the political interests of the community: And it is in vain for individuals to talk of possessing a property which the law cannot ascertain and secure; or to contend for such possession, if it militate against the general interests of Society.

How far a right of property in useful inventions and discoveries be founded in Nature, be capable of being protected by Law, or consistent with the general good of a commercial people, becomes of course the subject of disquisition in the following pages.

S E C-

S E C T I O N I.

Of a NATURAL RIGHT of PROPERTY in new Inventions and Discoveries in general.

IN the late contests about *Literary Property* much hath been said and written on the nature and origin of property in general. The common lawyers, wedded to words and forms, have bandied about the technical terms of *corporeal* and *incorporeal* till they have almost forgot their simple use. It hath been proved, however, against them, that there are *incorporeal* rights as easily ascertainable by law, and as justly entitled to the protection of it, as others which are *corporeal*. Without entering therefore into the dispute of the *jus in re*, or particularly discussing the nature of the property contended for, I shall enquire only how it originated and became the natural right of the claimant.

The Lawyers in general have not less perplexed the question, respecting the *origin of property*, than they have puzzled that about the *nature* of it. Restricted by the narrow notions, which confine property to

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a *corpus*

[6]

a *corpus* or body, they have recurred no farther back for a right of possession than *prior occupancy*; setting discoveries and inventions in literature and science on the same footing with the use and improvement of corporeal possessions. But the *Author* and *Inventor* may deduce a right of property to their respective labours from a still earlier and more general source. Every man whom Providence sends into the world hath a natural right to live in it; and, if to live in it, to the means of subsistence. In the present state of society, however, the man who is born to no estate real or personal, finds the means of subsistence by mere possession already engrossed by prior occupants; he is therefore of necessity reduced to the creation of new means of livelihood; a right to all *corporeal* property being already secured to others, he must have recourse for subsistence to the *incorporeal* property he is endowed with by Nature in the use of his personal talents; he must live by his wits or his labour. *Steal* he must not, and if to *beg* he be ashamed, shall he be denied a right to the contrivance of his brain or the work of his hands? This were to affirm, that the *poor* are the natural-born *Slaves* of the *Rich*; and that the possession of corporeal property, however obtained, gives a right to the possession

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session of all other: an affirmation which, I presume, no free-born subject of this country will venture to make.

It is indeed now very generally admitted, that a man can have no better natural right to any thing in the world, than to the fruits of his own ingenuity and industry; it were needless, therefore, to throw away time in confuting the casuistry, by which the contrary opinion hath been maintained.

SECTION

S E C T I O N II.

Of the pretended difference between AUTHORS and ARTIFICERS, regarding a right of property in their respective inventions.

THE Advocates for *Literary Property* have laboured much to maintain as *real*, an *imaginary* difference, which they have set up between the *Author* and the *Artificer*, in regard to an exclusive right of property in their respective compositions. Not that they had any valid plea to offer in support of their argument; but because the right of the *Artificer* being universally held untenable at Common-law, if they admitted the *Author* to stand in the same predicament, they could not support his claim to a *perpetuity* in his *copy-right*; which they modestly contended for.

The futility of the arguments, adduced to maintain this supposed difference between the inventors of machines and the authors of books, hath been so fully displayed in several late publications and pleadings, that it were superfluous to attempt to corroborate what has been delivered with so much equity and energy by the
the

the first lawyers of this and perhaps any other nation*.

A certain celebrated writer, however, having since taken up the pen to urge a similar plea, it may not be amiss to take some notice of it †. With the intention, says Mrs. Macaulay, 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 been levelled with the Inventors of a very inferior Order. These *inventors* of an order *very inferior* to *authors* of *books*, are the *authors* of *new inventions* and discoveries in the *useful arts*; who, it is asserted, would be better rewarded for their ingenuity than writers, even did they both stand upon the same footing, in regard to time and other circumstances, for the

* It will be sufficient to refer the reader, who is curious to peruse them at large, to a pamphlet entitled, *An Enquiry into the Nature and Origin of Literary Property*, published in 1762; to the late pleadings of the Court of Sessions in Scotland, the Speeches of Lord Camden and several of the Judges, on the Appeal and final determination of the cause in the House of Lords.

† See *A modest Plea for Copy-right*, by Catharine Macaulay.

‡ *Ibid*, page 17.

emolu-

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emoluments arising from their different inventive faculties.

I know not how this ingenious writer will make good this assertion; but I am persuaded that, if the *authors* of such *new inventions* and *discoveries* did stand upon the same footing, in regard to a legal security of a right of property in their respective productions, as *authors of books* do, they would not complain of injustice or contend for a *perpetuity* in such right.

Every common capacity, says this writer, can soon find out the use of a machine, which is not the case with a book. I accede to the latter part of the assertion, because there are many books whose use cannot be found out at all, as they are totally *useless*, if not hurtful: the former part I deny, for as good a reason. Had this advocate for literary merit been familiar with the labours of our mathematical, philosophical and even mechanic artists, she would have known that there are many curious and useful machines, with whose use the very makers of them are totally unacquainted.

“ It is a length of time (continues this author) before the value of a literary
“ pub-

[11]

“ publication is discovered and acknow-
“ ledged by the vulgar; and even, when
“ the merits of a work of this kind, in
“ regard to the honest intentions of the
“ writer, and the execution of the com-
“ position, is in general allowed, the ma-
“ lice of party-prejudice and that leaven
“ of selfishness, which prevails in the
“ characters of the greater number of in-
“ dividuals, may, for a long term of years,
“ keep back the sale of a book, which
“ teaches an offensive doctrine or tells dis-
“ agreeable truths to the public.”

I hope the writer does not speak experimentally on this occasion, as I am ready to go still farther in favour of deserving *authors*. It is not only to the selfishness of individuals and the prejudice of party we may impute the keeping back the sale of a good book; it may also be imputed to ignorance, inattention, or want of taste in the Public, in general: from which causes, the more curious, refined and instructive the book, the longer it will be before it attract sufficient notice to obtain a general sale.

If I do not mistake, no less than seven and twenty years elapsed before Sir Isaac Newton's *Principia* came to a second edition;

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edition: and I may cite Mrs. Macaulay's own authority for saying, that when Lord Bacon published his Philosophical Ideas, they were so little understood that they were deemed literary lumber: nay, that the learned and Royal James, whom the Earl of Shaftesbury terms the school-master of his people, compared them to the ways of God, past finding out.

In the same predicament may also the last book of Newton's *Principia* be said to stand, even with most of our best mathematicians to this very day.

This is undoubtedly a good argument for extending the term at present limited by statute in literary copyright. There are certainly many laborious and expensive works, whose sale during that term will by no means compensate the authors or undertakers, for the intense study, long labour, and immense cost attending their execution.

But the same argument holds equally good with respect to the authors of new inventions and discoveries, in the arts and sciences; many of which are effected only by amazing application, tedious process
and

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and prodigious expence. And yet the *author* thinks eight and twenty years too short a term, in which to reap the benefit of his labours, while the *artist* or *artificer* is not entitled, by any law in being, to a property in the effects of his ingenuity for a single day.

I will not censure the impropriety with which the above mentioned writer calls the latter an inventor of a *very inferiour* order; I beg leave, however, to remind the reader that it is not in the capacity of *writers* that either Bacon or Newton, particularly the latter, lays claim to public veneration. The genius of Newton was not of a *literary* cast, nor does he raise our admiration or command our respect so much as an *author*, as he does in the capacity of an *inventor* or *artist*. The superiority of his character is not derived from his superior talents in turning periods and making *books*, but in solving geometrical problems, making physical experiments and manufacturing prisms and optic-glasses. It is Sir Isaac Newton the *mathematician*, the *experimentalist*, the *mechanic*, and not the *writer*, whose name is so highly honoured and transmitted with so much renown to posterity.

It

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It was to this great philosopher in these capacities also; that the respect paid to him when living, and the emoluments he reaped in consequence of it, are more immediately to be attributed: and shall the ingenuity of those talents which made his fortune in life, and confer immortality on his name after death, be held *very inferiour* to his literary abilities; which were at best on a level with mediocrity?

Locke hath remarked it, as a circumstance affecting to a speculative mind, that a rational being should be employed all day long, like a mere mechanical machine, in sawing a block of marble. Montesquieu thought it no less so that a man of learning and ingenuity should employ himself as constantly in culling out words of the same sound, in order to express himself in rhyme: and yet we have numerous instances, in which a knack at versification (though almost as easily attained as the gift of counting one's fingers) has raised the possessor into a degree of public estimation; and hath elevated a blockhead, destitute of science as of sense, to an equal rank with men of invention and genius*.

* It may be said of *Montesquieu*, that he was no great poet, and that *nulla ars habet osorem nisi ignorantem--*

None

[15]

It is hinted by the writer abovementioned, that *authors* claim a greater indulgence of the legislature than other *artists*, because their writings tend to the improvement of the human mind, whereas the productions of inventors of an *inferiour* order, serve only to promote the purposes of luxury, or at best to furnish those conveniences which are not absolutely necessary to the comforts of life. I shall not here enter into the discussion of the political dispute about the conveniences of life, or take on me to determine how far the purposes of luxury may be rendered compatible with the interests of a commercial nation: but this I may venture to declare, that there is a wide difference between the encouragement, politically

None despise any art but they who are ignorant of it; whence the poets infer, that authors who write prose do it merely because they cannot write verse. It may be retorted, however, on the versifiers, that the high opinion they conceive of their own art, generally proceeds from their ignorance of most others. At the same time it must be owned that, as far as *writers* are concerned, none can be accounted an adept in his art, or fully master of the language in which he writes, who has not both a taste and a talent for versification. In this view, the art of poetry is like that of dancing, an accomplishment worth the attainment of youth, though constantly neglected as wisdom and gravity are attained by age.

necessary

necessary to be given to literature in the infancy of a language and uncivilized state of society, and that which is either necessary or expedient when both are arrived to a degree of cultivation and refinement.

Indeed, I do by no means admit that the human mind is so much improved by *reading* as is generally imagined. An application to practical science enlarges and improves it frequently much more than the study of mere theory. But, were it even otherwise, I cannot help thinking that the literary productions of a refined and luxurious age tend less to the farther improvement of the minds of individuals, than new inventions and discoveries in the arts and sciences contribute to the farther improvement of the body politic, and the political happiness of a people.

Be this as it may, whatever general argument affects the interest of the *author*, in regard to his right of property in new literary compositions, it must equally affect the *artificer* in respect to a right of property in new mechanical or other useful inventions. It is therefore very inconsequentially inferred, that the one hath a greater or less natural right to the fruits of his industry and ingenuity than the other.

If

If the case of ingenious *authors*, or of their representatives the booksellers, be then in any degree hard and deserving relief, that of ingenious *artificers* is still much more so; as they would be well satisfied were they only placed on the worst footing in which the former securely stand under the protection of the statute.

...the same manner as the author of a book is entitled to the profits of his work, so the artificer is entitled to the profits of his invention. The law of nature is the same in both cases. The author of a book has a right to the fruits of his industry and ingenuity, and the artificer has a right to the fruits of his industry and ingenuity. The law of nature is the same in both cases. The author of a book has a right to the fruits of his industry and ingenuity, and the artificer has a right to the fruits of his industry and ingenuity.

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C S E C

S E C T I O N III.

On the political expediency of giving public encouragement to INVENTIONS and DISCOVERIES in the ARTS and SCIENCES, in general.

IT may be thought needless to urge any other argument, to prove the political expediency of encouraging improvements in arts and sciences, than the universal practice of enlightened and well-regulated states. Among commercial nations in particular, the superiority which the one acquires over the other, is universally allowed to result from a superior degree of ingenuity and industry in its respective inhabitants. It is these that give rise to improvements in agriculture, manufactures and commerce, and are the inexhaustible resources of national wealth and political happiness.

While a spirit of emulation, therefore, prevails between states, as among individuals, it becomes the national interest, and thence the indispensable duty of Government to promote a spirit of industry, and foster the seeds of ingenuity; not only among the superior class of authors and artists,

artists, but also among the lower order of artificers, mechanics, mariners and husbandmen.

The favourites of the Muses and such of the higher order of inventors, whose thirst of glory or natural curiosity sufficiently animate them to exploits of genius; these, I say, need no stimulation to urge them forward in the pursuits of fame or knowledge. It is to such, however, that Government has been frequently liberal, as if it were laudably necessary to make a generous provision for those who devote their talents disinterestedly to the service of the public, without regard to their private emolument. With the generality of mankind, nevertheless, whatever be their inventive talents or intellectual capacity, a principle of self-interest is the ruling motive of action, and the only constant stimulative to the exertion of their private abilities for the public service*. Hence it is that a reward proportional to the merit of that service should ever be held forth, for their encouragement.

* Not that the greatest of our poetical geniuses have been insensible to pecuniary emoluments; even Shakespeare himself, as a brother bard observes,

“ For gain, not glory, wing'd his tow'ring flight,
“ And grew immortal in his own despite.”

As to mere labour, though it should not, as Virtue is said to be, left merely to its own reward, it certainly should be, as Virtue generally is, rewarded but moderately. Men possessed of no property and capable of nothing but labour, are entitled to nothing but the means of daily subsistence. Were they possessed of more they would remit their daily labour; so that a numerous body of industrious poor is a fund of real wealth to the community. But the reward of incessant labour, and that of industrious ingenuity should be different; the perseverance of the *labourer* providing merely for the subsistence of the individual or of a few; while the industry of the *inventor* provides for the convenience of hundreds, the subsistence of thousands, and the support of the State. The difference, which Nature hath thus made among men, and which is infinitely more striking and characteristic than the gewgaw distinctions of civil society, gives them a real title to pre-eminence. The marks of superior talents are indelible proofs of their rightful claim to superior respect and consideration. It is hence with the utmost injustice that the ignorant and indolent Great blend the artificer and the labourer together, and confound them indiscriminately with the refuse of mankind.

With

With the *labourer* may also be ranked the retailer of simple commodities, whose profession, requiring the meanest of natural talents, should be as little profitable as possible, consistent with the support of a family employed in domestic duties, or engaged like himself in the business of his profession.

Nothing, it is true, is more common than to see an opulent retailer live luxuriously himself and maintain his family in idleness, out of profits oppressively wrung from the hard hands of the labourer, or insidiously derived from the inventive brain of the artisan; but where the channels of consumption are not increased by the increasing number of traders, their multiplicity becomes a burthen to the state, and their extravagance a political evil of the most fatal tendency. These therefore merit no encouragement that may serve to increase their number, which is already become a public nuisance.

With venders of their own manufactures, cultivators of their own or other mens' lands, and with traders of a superior class, by whom the Art of Commerce itself is almost improved into a Science, the case is different. As patrons and promoters

promoters of the useful arts in general, they merit every encouragement which the law can secure or ministerial policy bestow.

Again, it is necessary to distinguish not only between the merits of different classes of artists, but between the *real* and *nominal* artists of the same class: between the Manufacturer, for instance, who merely copies and vends the inventions of others, and he who fabricates and vends his own. Any peculiar encouragement, given to the former, tends to establish a monopoly injurious to traders in general; but without such encouragement being given to the latter, the spirit of invention is checked, ingenuity droops, and the want of improvement in the commodities of sale prove equally injurious to trade itself.

That the Legislature have in some instances looked on the expediency of giving public encouragement to useful inventions and discoveries in the same light, is obvious. The parliamentary rewards, that have been offered and paid for the finding out the Longitude, for the method of making salt water fresh, for a nostrum for the Stone, and for several other inventions and discoveries, afford a sufficient
proof

proof that the encouragement of ingenuity, by rewarding the authors of such inventions and discoveries, is in general adjudged to be politically expedient.

From the many objections, therefore, that have been started to almost every such particular encouragement, it is presumed that exceptions must have been taken either to the nature and extent of it, or to the method in which it has been bestowed; I shall for this reason proceed to take a view of the several modes in which such encouragement hath been offered and given, and endeavour, by obviating those objections, to point out a method of bestowing it in such a manner, as may be least hurtful to individuals and most conducive to the ends proposed; viz. the contributing to the conveniencies and embellishments of life, and the facilitating future improvements in the produce, manufactures and commerce of our country.

SECTION

S E C T I O N IV.

On the methods, which have hitherto been taken, to encourage improvements in the Arts.

AS the first of these methods I rank *parliamentary premiums*, being the most liberal and best becoming the character of an opulent and powerful people.

To this method, however, may be made many objections, as well on the part of the public, whose money is thus bestowed; as on the part of the *artist*, or *inventor*, who is to receive it, as a compensation for his labour or ingenuity. The expence and difficulty of obtaining it may be grievous to the one, as that of granting it may be burthensome to the other; while the *quantum* of it will always run the risk of being inadequate either to the utility of which the invention may prove to the public, to the merit of the discovery, or to the pains which the author may have taken to bring it to perfection; whereas such premium should be ever adapted to all three.

We

We have a remarkable instance of all these circumstances united in the affair of Mr. Harrison's contrivance for finding out the Longitude. There is no doubt that the ingenious contriver, after the success of forty years application, deserved the reward to which he was entitled. It was yet with difficulty he obtained it; and, though it might be deemed adequate to the pains he had taken, and the ingenuity of his contrivance; it is indubitable that the discovery of his invention hath proved of little utility in Navigation. I do not find his clock is ever likely to become of general and common use, as the encouragement given by so ample a compensation seems to require.

It is remarkable also, that Mrs. Stevens's famous medicine for dissolving the Stone, for the discovery of whose composition the Legislature granted five thousand pounds, however efficacious before, has cured hardly any body since it was made public.

I will not call in question Mr. Irwin's method of making salt-water fresh; but am well assured that the discovery of as simple and speedy a process might have been purchased for less money.

There

There is indeed no little danger that both the *quantum* and the facility of obtaining of parliamentary premiums, may depend as well on personal interest as on particular ingenuity, or public utility. The merit of the incomparable Hogarth is universally acknowledged, and yet it will hardly be denied that an useful artist of equal ingenuity hath some right to complain, that he is entitled to no property in his inventions, when the widow of that ingenious engraver was indulged with an additional term of twenty years' copy-right in the designs of her deceased husband, over and above the fourteen years that had already been enjoyed by virtue of the Statute.

The indulgence, lately granted by Parliament to the proprietors of that elegant pile of building, the Adelphi, to dispose of their property by way of Lottery, appears to have given very general disgust. It is to be hoped the like favour, bestowed on the ingenious Mr. Cox, to dispose of his Museum, will give more satisfaction. But, whatever merit might justly recommend these Artists to parliamentary indulgence, this method, of giving public encouragement to the Authors of new inventions,

is so liable to be perverted by partiality or prejudice, that it can, by no means, be consistent with sound policy to permit the indiscriminate application of individuals to be indulged in the use of it.

Of the petty premiums presented by the Societies for the Encouragement of Arts and Manufactures, supported by popular subscription, I shall say but little, as indeed but little is to be said. Instituted on public-spirited principles, but perverted by private cabals, the laudable purposes of their institution have been seldom attained. In the mean time, we hear the candidates for their premiums as clamorous in their complaints of injustice done to their merit, as severe in their invectives against the want of knowledge or candour in those who are to judge of it. It is with these, as with all other mixed societies; however unanimous and moderate in their commencement, like the parts of an heterogeneous fluid, the more solid and important subside, while the volatile and insignificant rise uppermost and float constantly on the surface. The more sensible and judicious of the members remain silent or retire; leaving the business of the association

ciation to be transacted by the empty, the ignorant and the vain.

From such societies, therefore, little good, and still less permanency in the administration of it, is to be expected. If partiality and prejudice also may be supposed to affect the great council of the nation, how much more may such an unwholesome leaven be supposed to affect the fermenting particles of so preposterous a compound!

As an essential part of the criterion, by which the quantity and quality of public encouragement, proper to be given to artists and inventors of any kind, is the public utility of their compositions and inventions, it is indeed highly improper that the *quantum* at least of such encouragement, should be determined before such utility be eventually decided.

The most plausible and politic method of bestowing that encouragement is, therefore, that by which the eventual utility of such inventions is made the measure of reward. This is effected either by vesting a legal right of property in the inventor,

ventor, as in the case of writers, engravers, &c. or by the grant of Letters-patent from the crown, as in the case of mathematical artists, chemical experimentalists, artificers and manufacturers.

S E C-

S E C T I O N V.

On the similarity of predicament between the practitioners of the SCIENTIFIC and MECHANIC arts, and the professors of the arts of DESIGN.

I Have already endeavoured to shew that authors, who practise rather the imitative than the inventive arts, (at least all but those few writers, whose productions are truly original) have not a more natural right to the proprietary indulgence, granted them by the legislature, than have the artificers, whose inventions and discoveries are really new and useful. I am not a little flattered to find an opinion, long since suggested by my own reading, coincident with a late reflection of that great luminary in law and equity, Lord Camden.

I shall beg leave to expatiate here, therefore, somewhat more diffusely on the impropriety of that distinction, which the legislature hath made between the practitioners of the useful and those of the polite arts, and of the injurious partiality of the law in regard to their right of property in their respective productions.

I

But

But perhaps, the state of dereliction and oppression, under which the useful arts at present labour, proceeds rather from involuntary neglect than design. Inventors and artificers have been wanting to their own interests, in not applying, like authors and booksellers, for a copy-right in their inventions and compositions. Time has been when literary artists were obliged, as others are now, to purchase a temporary property in their works, with letters-patent from the Crown: nay, the use of the press itself was once held dependant on royal prerogative. Writers have been emancipated from such a state of slavery; the press hath been laid open and, on application to the legislature, authors and their assigns have been vested with an exclusive right of property in their productions. Nay, practitioners in the arts of design, and, as I conceive, composers of music too are invested with a similar right. Shall the authors then of chemical discoveries, the inventors of mathematical instruments, the contrivers of essential improvements in manufactures; shall these, I say, hesitate to follow the example, or doubt of obtaining similar redress?

On principles of equity no rational objection can be made to it, nor indeed on any

any other ground without arguing inferior merit from superior utility: and hard indeed were the case of industrious ingenuity if its desert should defeat its reward.

The *polite* arts, it is true, make a more splendid and imposing appearance; they assume a dignity and importance, which may seem to give them a right to property and support; but it is merely on the presumptuous plea by which a reduced and beggarly *nobleſſe* infer from the poſſeſſion of empty titles, a right to the luxuries of life, while they indolently eat the bread of idleneſs.

'Tis great, 'tis wonderful, ſublime,
No doubt, to build the lofty rhyme!
But, deaf to what the poet ſings,
Though charm his muſe the ear of kings,
The patriot ſees more wit and good in
Th' invention of a marrow-pudding.

ANON.

But, granting that *authors*, under the auſpices of the Muſes and the ſpecious pretence of improving the human mind by their writings, are entitled to greater encouragement than other artiſts, the merit of *engravers*, *etchers* and *mezzotinto-*

tinto-ſcrapers, ſurely places them in the ſame predicament, in the eye of reaſon, with that of practitioners in the other manual arts! It cannot be pretended that the labour of the engraver of a print or the copyiſt of a picture in *chiaro oſcuro*, is either more ingenious or uſeful than that of the contriver of a mathematical inſtrument or mechanical machine. And yet the *engravers* and *mezzotinto-ſcrapers*, following the example of the *authors*, obtained by degrees, an equal indulgence from the Legislature to an excluſive right of property in their labours.

It may not be amiſs to trace the proceeding of theſe favoured artiſts in their ſucceſſful attempts to obtain this deſired indulgence.

It appears from the Journals of the Houſe of Commons, that the petition of the *engravers* for the act, which paſſed in their favour in the 8th of George II, refers to the ſtatute of Queen Anne in favour of *authors*; with whom the petitioners deſired to be put *on the ſame footing*. This deſire, however, ſeems at that time to have been rather premature, as they could obtain only a ſtatutory right for the ſingle term of *fourteen* years, and that only

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in the copies of their own original designs. The obtaining this, was yet encouragement to ask more.

By a subsequent act in the 7th of his present Majesty, they were accordingly indulged in the very ample manner following. "Be it enacted, That all and every person and persons, who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched or worked, any print taken from any picture, drawing, model or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act [*meaning the act of the 8th of George II.*] and this act for the term herein after mentioned, in like manner as if such print had been graven or drawn from the original design of such graver, etcher or draftsman; and if any person shall engrave, print and publish or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and herein after mentioned."

The term of the exclusive privilege granted by the former act, was in this also extended.

"The sole right and liberty, intended to be secured and protected by the said former act and this act shall be extended, continued and be extended, continued and be vested in the respective proprietors for the space of *twenty-eight years*, to commence from the day of the first publishing of any of the works respectively herein before and in the said former act mentioned."—We see here the mere copyist or *imitator* put on a footing with *original inventors*, and even the manual exercise of the graver, scraping knife, stippling punch and needle more fully rewarded than even the labours of the writer*.

But will it be pretended that the use of those tools in their operation on the surface of a copper-plate, is more ingenious

* For it is to be observed, that the *author's* right to the *second* fourteen years is conditional; he cannot legally transfer it to the bookseller till the expiration of the *first*; nay, it may admit of a doubt whether he can do it *then*, for a longer term than his own life, should that fall short of eight and twenty years from the time of the first publication.

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or useful, and therefore more worthy of public encouragement than is the use of the same, or similar tools in their operation on any other substance or to any other purpose?

It is remarkable, that by the last mentioned act, the partiality complained of by useful artists is extended also to the *polite* (I had almost said the *useless*) ones. It will not be doubted that the arts of sculpture, and of casting figures of plaister of Paris, potter's earth, &c. from models, are equally ingenious and curious with those of etching, engraving and scraping delineations of them on copper; and yet the engraver, who copies after any such model, either ancient or modern, is vested with an exclusive right to multiply such copies for his own profit; whereas the artist, who is at the pains to form moulds from such models, and casts the very figure itself, has no such right; but may have his figures imitated and multiplied to the profit of others, without legal redress.

A singular instance of partiality, respecting the right of property in this particular, may be observed between the caution, with which *engravers* invade the right and attempt to pirate the works of
each

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each other, and the temerity with which *modellers* copy without scruple the ingenious works of their brother artists.

Nay, so little idea of copy-right have the latter in their respective labours, that they disregard even the privilege of a patent in the hands of other artists, under pretence that their manufacture is not of new invention*. I know not how far our courts of *law* may countenance this pretext, but the modellers are certainly as much entitled, in *reason*, to an exclusive right of copying models ancient and modern, as the engravers to copy ancient or modern drawings of them.

I might indeed go farther, and insist that in equity they should be admitted to claim a right under the same act, which seems peculiarly intended to favour the arts dependent on the *press*: for if the linen-printers, paper-stainers [there are other *paper-stainers* besides *authors*] claim under

* At least this is the plea, which I have seen advanced in the public prints, against the validity of the patent of those ingenious and excellent artists Messieurs Wedgwood and Bentley, for taking off the figures of antique models in a *terra-cotta* peculiar to themselves.

it, as some of them do *, an exclusive right to their respective *prints* and *patterns*, the *caster* of *impressions* of models in *plaster of Paris*, *potter's clay*, or *papier-maché*, has an equal right to insist on his exclusive property to the *copies* taken off his *moulds*: unless, indeed, an essential difference be made by the surfaces, sustaining the impression, being *hollow* or *flat*; between a seeming plane and a *basso-relievo*; which, I think, will be hardly asserted, as it would lead to a farther distinction between the *basso* and *alto*, and the whole argument become ridiculous.

If then, linen-printers, paper-stainers, papier-maché-workers, and modellers of every kind are equally entitled in *equity*, and some of them by *law*, to an exclusive *copy-right* in their respective labours, no good reason can possibly be given why artificers of all kinds should not be equally entitled to such an exclusive privilege of fabricating any manufacture, whose no-

* That is such as print and stain from engravings or scrapings on copper-plates. Now it might puzzle the most able casuist at the statute law to give a reason why an exclusive copy-right should be granted in an impression taken from a *copper-plate* and not in the same impression taken from a block of *cut wood*. And yet, if I am not much misinformed in this matter, such is the state of the case.

velty

velty of form, or use and design are peculiar to themselves.

The late Lord Hardwicke, speaking of the act of Queen Anne in favour of authors and booksellers, called it "a general standing patent," calculated to save them the trouble and expence (from between four-score and an hundred pounds) of applying to the King for a privilege every time they printed a new book.

Now the acts of the 8th of George II. and of the 7th of his present Majesty, are nothing but copies of the said act of Queen Anne; confessedly passed to put engravers, etchers, mezzotinto-scrapers and print-fellers, on the same footing with authors and booksellers*.

But why are authors, engravers, etchers, mezzotinto-scrapers, and by virtue of their right, booksellers, printfellers, linen-printers, paper-stainers, &c. to be so highly favoured above letter-founders, wood-cutters, modellers in plaster, chasers,

* What a pity the wood-cutters and letter-founders did not join in the petition, that the legislature might have seen either the absurdity of passing such an act, or that of not putting *artists* of all kinds on the same footing.

enamel-

enamellers, engravers on plate and gems, and indeed all other artists and artificers employed in the embellishments and conveniencies of life?

If this question be unanswerable, surely that must be equally so, which asks why the authors of *new inventions* in the *useful arts*, the *improvers* of our *produce* and *manufactures*, the *promoters* of our national *trade* and *commerce*, should not be equally favoured!

The *inventor* of a *machine*, or *art useful* in life, is now almost universally admitted to stand precisely on the same footing with the author of a book; but, were this still doubted, it cannot be doubted that he stands upon as good a footing, and has the same right to encouragement, as the *engraver* of a *print*, or the *practitioner* of an *art* more *ornamental* than *useful*.

Would it not be extremely inequitable, therefore, and highly derogatory to the wisdom and justice of the legislature, that the *latter* should continue to enjoy the benefit (to use Lord Hardwicke's words) of a *general standing patent*, without any expence for every new print he publishes, and that the *former* shall still be put to the

the trouble of applying to the King for a patent, and put to the expence of eighty or a hundred pounds*, every time he *publishes a new invention*?

An artificer may be very ingenious, and at the same time be very poor; he may have bestowed his time and industry, he may even have expended a moderate patrimony, in bringing his invention to perfection; and shall his labour, time and money, be after all thrown away (at least with regard to himself and his family) unless he can raise an hundred or an hundred and forty pounds to purchase a right of property in the fruits of his past labour? Yet so it is, and the consequence is, that either the invention is suppressed, and the public deprived of its advantages, or it is sold for a trifle to some wealthier artisan, whose purse enables him to profit by the other's ingenuity. Well may the *useful artist* exclaim with the poet:

* I rate the expence here in the most moderate manner. If the patent require to be engrossed on more than one skin of parchment (and the clerks in office generally find it necessary to have at least two) the fees are doubled and the expence of a patent amounts to much more.

Sic

Sic vos non vobis nidificates aves.
Sic vos non vobis vellera fertis oves.
Sic vos non vobis mellificatis apes.
Sic vos non vobis fertis aratra boves.

And well may these lines be thus paraphrased :

So, for the cuckow builds the lark her nest;
 For fleecing shearers sheep provide the vest;
 For goading plow-men oxen turn the soil;
 And bees make honey for the wasps to spoil.

But perhaps I am unnecessarily labouring to prove what is sufficiently obvious; for, if I rightly recollect, it has been long since maintained, " That the author of
 " a machine or useful invention, has, as
 " well as the author of a book, an
 " equitable right to insist, that he should
 " have the exclusive right of selling his
 " work for such a length of time as ought
 " to reimburse him his expence, and
 " recompence him for his trouble." *

How far this argument will hold good, respecting what the legislature hath already done, in placing *inventors*, and even mere

* See an Enquiry into the Nature and Origin of Literary Property, 8vo. 1762.

practi-

practitioners of the *polite* arts on the footing of *authors*, I will not pretend to say: but if it hath done right with respect to the *ornamental* arts, the argument will hold *a fortiori* in favour of the *useful*. Either the legislature hath done too much for *engravers*, *etchers*, *stipplers* and *scrapers*, or it hath done too little for all other artists.

As it would ill become an individual, therefore, to impeach the wisdom and justice of the legislature, I admit the propriety of what it has done for the former artists in particular, and thence infer the propriety of the application, for its extending the like indulgence to artists in general.

SECTION

S E C T I O N VI.

On the objections that may be made to placing the USEFUL and POLITE arts on the same footing.

I am not insensible that, in the contracted view of a narrow minded politician, a thousand imaginary difficulties will attend the adoption of the expedient proposed: but things are not impracticable or improper merely because they are difficult. If the useful arts have this claim on the justice of the community, we may rest assured that the adopting it will have a good effect on its public interests.

As general reflections, however, tend not to convince those who can raise only particular exceptions, I shall examine into the validity of a few of the most striking objections.

The first difficulty, that presents itself against the granting an exclusive privilege to the authors of new inventions in the useful arts, is the general one of establishing *monopolies*; which are supposed to have

have the pernicious effects of enriching a *few*, and depriving a *multitude* of the means of subsistence; of enhancing the price of the manufactures monopolized; and thence of course proving injurious to domestic œconomy and foreign commerce.

As to *monopolies*, it is an odious word without a determinate meaning. In its legal sense, as defined by Hawkins, Blackstone and others, it has no proper reference to *new inventions* in the *useful arts*.
“ Monopolies, says Blackstone, are much
“ the same offence in other branches of
“ trade, that engrossing is in provisions;
“ being a licence or privilege, allowed
“ by the King, for the sole buying and
“ selling, making, working or using, of
“ any thing whatsoever, whereby the
“ subject in general is restrained from
“ that liberty of manufacturing or trading
“ which he had before. These had been
“ carried to an enormous height, during
“ the reign of Queen Elizabeth; and
“ were heavily complained of by Sir
“ Edward Coke, in the beginning of the
“ reign of King James the first: but
“ were in a great measure remedied by
“ statute 21. Jac. 1. c. 3. which declares
“ such monopolies contrary to law and
“ void; except as to patents, not exceed-
“ ing

“ing the grant of fourteen years, to the
“authors of new inventions.”

It was owing (as that very eminent lawyer very justly observes) to the *enormous height* to which those royal grants were carried, in the time of Elizabeth and James, that the act of parliament passed against them. It was owing also to the just resentment of the two houses of parliament, against the violent stretch of the prerogative, by which they rose to that height, that they lost sight of the real object of that resentment; falling into the absurdity of inserting a clause, excepting *new inventions*, in an act to restrain *monopolies*; with which new inventions had nothing to do.

For, if a monopoly be only a licence or privilege for the sole buying, selling, making, working or using of a thing, whereby the subject in general is restrained from that liberty of manufacturing or trading *he had before*, it is plain that the subject is *not* so restrained by any exclusive privilege granted to the author of a new discovery, produce, invention or species of manufacture, which the subject in general *COULD NOT manufacture*, and in which of course he *DID NOT trade* before.

In

In respect to the effects of exclusive privileges, in *enriching a few persons, impoverishing others, and keeping multitudes poor*; the circumstance is inseparable from new inventions, discoveries and improvements. Till it be determined good policy, therefore, for a nation not to encourage such inventions and improvements, the private interest of individuals must necessarily give way to that of the public.

Let us suppose that a *scientific* or even *practical* artist should invent a machine, by means of which one man might be capable of doing the work of a thousand; should not his invention be encouraged because a number of labourers would be to seek for employment? It is hard, no doubt, for poor men, who are as dull and uninventive as they are poor, to be obliged at an advanced period of life, to turn their hands to a species of labour to which they are not accustomed. But this plea might be urged against almost all useful improvements whatever; most of them tending to expedite mechanical operation and render manual labour cheap. Hence machines, to save or expedite such labour, are encouraged in all well-governed states. What, indeed, would be the consequence if in any one they were not? Would not the neglected inventors
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of such machines repair to other states, where they might meet with deserved encouragement? And would not the state, in which labour should be cheapest and manufactures most expeditiously fabricated, have, *cæteris paribus*, the advantage of others at all foreign markets. About sixty years ago, if I mistake not, application was made to parliament for encouragement to certain individuals for erecting mills for the sawing of timber. It was opposed by the petition of a numerous body of lawyers; compassion for whose families prevented such encouragement then taking place. We have been contented since to pay to the Dutch and other nations, many hundred thousand pounds, for the sawing of timber; which they have earned by the same kind of mills, that might otherwise have been erected in this kingdom.

The legislature indeed have, of late years, seen into this impolicy; but, tho' they indemnified Mr. Dingley, for what he suffered by the indiscretion of the populace in destroying his saw mill at Limehouse, they have not as yet thought it expedient to give sufficient encouragement for the erection of more.

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It is certain that, upon every *new-invention* or essential improvement in any species of manufacture, the manufacturers in the *old-way*, in that branch of business, will be clamorous against an exclusive privilege being granted to the improver or inventor; but should this have any weight with the legislature? The dullest and most uninventive artisan in the world, bearing the name of the same profession or occupation, may thence claim a right to equal emoluments with the most expert and ingenious of his vocation; but would it be either just or politic to admit his claim? I have before hinted at the difference which nature itself hath made, and of consequence sound policy should make, between those who have *ingenuity* to *contrive*, and those who have only *strength to labour*.*

The skillful cultivator, or the ingenious artificer, may be compared to the bee, that extracts from the flowers of the field, those mellifluous sweets, of which drones and wasps would gladly partake when ready-made. But, because drones and wasps would live, like bees, on honey, are we therefore to rob the hives of the latter

* See page 20.

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to give the former an equal share of the sweets of a manufacture they are not qualified to fabricate? As the mere retailers of commodities ought not to grow rich by the labour of others, so mere labourers ought to be kept poor that they may continue to be labourers.

That they may be capable of labour, also, they should not be permitted to *starve*; hence, on every temporary revolution, which new inventions in the mechanic arts necessarily occasion among our labouring artificers, their relief should be provided for by the state; either by giving a public reward to the authors of such inventions, and making them common, or by providing a temporary subsistence for such artificers, till they can turn their hands to some other employment.

We have a recent instance of a numerous, industrious, and useful body of artificers being hurt by a new, ingenious, and useful invention: this is the method of bending timber for carriage-wheels, so that the periphery or rim, which used to be composed of different fellys, consists of one piece.

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The ingenious inventor hath, it seems, spent a considerable time, and been at prodigious expence and trouble to bring his scheme to perfection; and, as he has obtained a patent for the exercise of it, he may probably indemnify himself, and even reap some profit by it adequate to its merit. In the mean time, however, the superior strength and lightness of the wheels of this manufacture, giving them a preference to all others, the common wheel-wrights, for the present, labour under a hardship, from which, tho' they have a right to ask relief of the legislature, they have none to complain of the inventor, or of the exclusive privilege he enjoys by his patent. Many instances of a similar nature might be pointed out amongst the ingenious artificers of this kingdom.

I have indeed already observed, that the bestowing of parliamentary premiums, for discoveries and inventions, whose utility is problematical, is a very improper mode of encouraging ingenuity, for the reasons then assigned*. Those reasons do not oppose the giving such premiums for inventions, whose utility is publicly experienced.

* See page 25.

As to the pretext, that grants of exclusive property or privilege in the exercise of new inventions, tend to enhance the price of the newly-invented manufactures; it may be answered that, as such grants do not compel any one to purchase these new manufactures, the public are left at liberty, at the lower price, to encourage the *old*: and this they will certainly do, neglecting the *new*, if their superiority of merit be not adequate to the advance of price.

But it hath been said, of patentees in particular, that their privileges tend to throw advantages into the hands of foreigners; who, not being restricted by our patents, can fabricate and carry such new and improved manufactures to market, cheaper than our countrymen the patentees. —When they who advance this objection, can bring one single instance to corroborate their assertion, I shall think it merits a reply. Till then I hold it sufficient to say, in favour of patentees in general, that, as it is their interest to extend the use and sale of their commodities as much as possible, it becomes their interest also, to vend them as cheap as they can well be afforded. At the same time, it may not be improper to add, that the sooner their patent or exclusive privilege of property expires,

pires, the higher the price will they be induced to set on them: whereas the longer the term of their privilege, the cheaper can they afford and will therefore be induced to sell them.

It will be objected perhaps (for every trifling difficulty will be made an objection) that, if Artists and Artificers in general, were put on the same footing as Authors and Engravers, claiming an exclusive property in their new productions, on the same easy terms of publication or entrance of their claim in some public office, the pretenders to such claims would be so numerous, and the pretended inventions of many, so frivolous, that it would give rise to endless vexatious suits and litigations. But to this it may be replied that, the increasing number of pretenders to new inventions would be a proof that the encouragement offered, had answered the end of it, by awakening the spirit of ingenuity and industry; and would give ground to hope that, out of so many pretenders, some might deserve encouragement.

As to those whose inventions were really new, or whose improvements were essentially useful, the point of right would

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would be soon settled*: Whereas with such contrivances as were futile and frivolous, the point of right would be soon found not worth contending for, either by the invader or defender: So that this kind of litigation would soon be at an end.

At the same time the curiosity of Genius would be awakened, its industry roused, and the spirit of enterprize revived. The ingenious, though indigent artificer, would not then be deterred from prosecuting a favourite and useful pursuit, from the consideration that he could not raise money to purchase a patent, should he succeed in his endeavours, and that he was only racking his brains for the emolument of others. A proper distinction would be then made between the *inventive artificer* and the *uninventive artisan*, those who are qualified to employ others, and those who are capable only to work themselves. The respect due to each

* For it will hardly be pretended that the claim, dependant on a precise mode of specification, which is now secured by patent, could not be equally as well secured by act of parliament. I have indeed given an instance, in which the right of the Engraver, secured by Statute, is admitted even by those who contest a similar right secured by patent. See page 37.

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would be ascertained, their due degree of encouragement pointed out, and every branch of the arts and sciences flourish, while the trunk would be nourished by being properly watered at the root.

S E C-

S E C T I O N VII.

On the restraint laid on the KING'S PREROGATIVE from giving encouragement to USEFUL ARTISTS.

I AM not to learn that exclusive privileges, whether by parliamentary grant or royal prerogative, are extremely unpopular; or that they are particularly obnoxious to the penurious Great; who, instead of grudging the artificer the reward of his ingenuity, should be the first most liberally to encourage it. Unhappily indeed, both for ingenuity and industry, the superior privilege, of being born to *do nothing*, induces such highly-favoured mortals to conceit that their inferiours were born to do, for nothing, every thing for them. Hence the situation of industrious ingenuity at present, reminds one of the state of slavery under which the Egyptians held the Israelites of old; whom their insolent task-masters required to make brick, without furnishing them with straw.

It hath been before observed that such privileges do not compel the public to purchase new manufactures; there is, therefore, less reason for wealthy individuals

viduals to complain against them, than artificers and traders whose private interest may be materially affected. At the same time if we reflect that, without the encouragement of such exclusive privileges, no new inventions or improvements of any considerable consequence can be expected, the opposing them is not less impolitic and absurd, than illiberal and unjust.

And yet, notwithstanding all that may be both politically and equitably urged, in behalf of giving a general parliamentary encouragement to new inventions, and placing ingenious artists *of all kinds* on the same footing, I am not without apprehensions, that the policy of the times may be found too pusillanimous to carry so salutary a measure into execution.

But, though neither reason nor justice should prevail so far as they ought, I flatter myself with the hope that a power, of *properly* and *readily* rewarding industrious ingenuity, may be lodged somewhere.

In other countries (as it was in *this*, before the passing the act against monopolies) a discretionary power is placed in the hands of Government, to give such encouragement by exclusive privileges for a term

term of years; which may be renewed or extended according to the exigencies or peculiar merits of the case. In England this power, held universally elsewhere to be still inherent to the dignity of the sovereign, was abridged by the Statute before mentioned of the 21st of James I. It may not be improper, therefore, in this place to enquire a little into the motives and propriety of this abridgment of the Royal Prerogative. With this view I shall beg leave to cite the following passage from Blackstone's Commentaries.

On the accession of King James I, no new degree of royal power was added to, or exercised by him; but such a sceptre was too weighty to be wielded by such a hand. The unreasonable and imprudent exertion of what was then deemed to be prerogative, upon trivial and unworthy occasions, and the claim of a more absolute power inherent in the kingly office than had ever been carried into practice, soon awakened the sleeping lion. The people heard with astonishment doctrines preached from the throne and the pulpit, subversive of liberty and property, and all the natural rights of humanity. They examined into the divinity of this claim, and found it weakly and fallaciously supported:

ported: and common reason assured them, that, if it were of human origin, no constitution could establish it without power of revocation, no precedent could sanctify, no length of time could confirm it. The leaders felt the pulse of the nation, and found they had ability as well as inclination to resist it: and accordingly resisted and opposed it, whenever the pusillanimous temper of the monarch had courage to put it to the trial; and they gained some little victories in the cases of concealments, MONOPOLIES and the dispensing power."

It appears, from the above state of the case, that this restraint on the king's prerogative was laid at a time, when the people, alarmed for their most essential and valuable privileges, were in a state of hostility with the Crown; of whose encroachments they were, to the highest degree jealous, and whose exertions of power they were determined on every occasion to oppose. Their fears excited, their passions heated, and their resentment roused against real injuries, it is no wonder their discretion was not sufficiently on its guard to prevent their encountering imaginary ones.

Not

Not that many of the royal monopolies then established were not injurious, oppressive and deserving abolishment: but they might, and doubtless would at any other period, have been abolished without depriving the prerogative of one of the brightest jewels of the Crown. For such we may justly term the power of patronizing ingenuity and promoting the arts of civil life.

But the rage of reformation, as I have before observed, stifled the reflection that the exercise of *new inventions* were not *monopolies* in that sense, which had thrown on the word an odium, continued to this day. The times, however, are altered, and though new inventions remain destitute of proper encouragement, we see monopolies, of the most destructive tendency, established by the combination, and sometimes even the separate influence, of opulent individuals, not only without being countenanced by the crown, but even directly contrary to the most express and positive acts of the legislature.

Change of times will justify change of measures. So far is the nation at present from hearing any "doctrines preached from the throne or the pulpit subversive
" of

" of liberty, property and the natural " rights of humanity" as in the time of James I. that we have not the least reason to apprehend an abuse of any additional power, that may be restored to the crown respecting this part of its prerogative.

Should it be judged, therefore, at present inexpedient to grant, or be found through popular prejudice impracticable to obtain the general parliamentary encouragement above-mentioned; it is to be hoped the legislature will have no objection to repeal the clause in the aforesaid act of the 21st of James I. restricting the grants of the crown by patent to the term of fourteen years.

Certain, indeed, it is that there are some pretended improvements and inventions so trivial and useless, that their authors do not merit an exclusive privilege to exercise or profit by them a single day: but this is far from being the case with *all*. The term of fourteen years, however, is so short, that few inventors chuse to ask for less, and it is not at present in the power of the crown, if any deserve it, to grant more. It is this circumstance which eventually and in fact prevents any distinction being made between the encouragement

agement given to the most difficult, expensive and important of such inventions, and the most obvious, insignificant and trivial.

A number of instances might be particularized, in which the grant, of an exclusive right for fourteen years only, is greatly inadequate and disproportional to the ingenuity, labour, expence and utility of such inventions: but, the legislature itself having acknowledged it by particular grants of premiums to inventors, even after the expiration of the term of their patents, it is presumed needless to insist farther on what is so manifestly expedient and equitable *. How far what I have

* In justice, however, to a most useful invention and the ingenious contriver of it, I cannot forbear instancing Mr. Hartley's expedient for preventing houses taking fire, by lining the ceilings with thin plates of iron; a method so extremely simple and efficacious, that one would imagine, in a case of such necessity, it need only to be seen to be adopted. But if we reflect on the unaccountable security of inattention and indolence, which every day's experience teaches us, we shall not be inclined to wonder if fourteen or even forty years relapse before it come into sufficient use to make the inventor any compensation equal to its merit. This gentleman, therefore, certainly deserves an exclusive privilege for a much longer term than fourteen years, or a present parliamentary premium, adequate to the importance and utility of his invention.

written

written may tend to excite *useful artists* to apply for redress, or induce the legislature to grant it, time will determine: but, be the consequences what they may, I lay down the pen well satisfied with having testified my inclination to promote the cause of industrious ingenuity, and in that the general interests of my country.

APPEN-

A P P E N D I X.

Containing strictures on certain singular consequences, attending the late decision on LITERARY PROPERTY.

AFTER the copious and masterly manner, in which the subject of literary property hath been lately treated, as well in the Court of Sessions in Scotland, as in the House of Lords, it may be deemed impertinent to think any farther animadversion necessary. But a circumstance or two, to which it was not the immediate business of the speakers to pay attention, leading to consequences that appear strangely inconsistent with modern practice, I am induced to take the present opportunity of noticing them.

By the solemn decisions in the courts abovementioned, denying the *perpetuity* of such property and resting copy-right merely on the statute, the practice of the Court of Chancery, in granting injunctions against pretended pirates and invaders of such property, is materially affected.

If authors have no foundation for copy-right at common-law, the proceedings in equity must be founded solely and strictly on

on the statute; by which it does by no means appear that *abstracts, abridgements* and *compilations* (of which the greater number of the new books now published consist) are at all contrary to law.

It is to little purpose to determine whether literary property be *temporary* or *perpetual*, unless the *nature* of that property be also precisely determined. In the works of original writers, such as Shakespeare, Milton, &c. this property is sufficiently ascertained; but for one original writer that appears in the republic of letters, there are five hundred copyists and compilers. Their number also of necessity encreases, as books are multiplied: nor can it well be otherwise, unless all improvements in literature be precluded. *Nil dictum quod non dictum prius*, was said near two thousand years ago. With how much more propriety therefore may it be said at present? In historical writings and books of science of any extent, originality cannot be pretended to; and, if compilations, abstracts and epitomes are to be no longer allowed, the paper-mills may stop, the printing-press stand still, and its numerous retainers be obliged literally to starve.

It hath been long the custom in the Court of Chancery to grant injunctions against the printers and publishers of historical and other compilations, under the pretence of staying waste; in consequence of which, an injunction *ex parte* is granted; by which the publication is stopped, till, after every studied delay of exception to the defendant's answer, the complainant's bill is on hearing dismissed and the injunction dissolved; when it is frequently impracticable to resume the publication, and the author or bookseller is reduced to the necessity of sitting down with the loss attending an imperfect work, with that of a procrastinated and litigious lawsuit into the bargain.

The practice of the Court of Chancery teems with suits of this kind; in which the complainant waves his right to such damages as he might claim under the act of parliament, although he often confessedly grounds his bill on that act; applying in the first instance to the Chancellor, to whose hands the decision, of what is or is not securable property in every book, is thus transferred.

Another inconvenience, still less attended to and more singular than the above, arises from confining the right of literary

literary property merely to the statute; and this is, that in such case this right itself, being conditional; *viz.* depending on the entry of the book or pamphlet in the hall book of the Company of Stationers; an author, who does not comply with this condition, the statutory *sine qua non* of his copy-right, can have no pretensions to such right at all. So that an author hath in fact no copy-right in an *unentered manuscript*; which any person may therefore, openly or surreptitiously copy and publish for his own profit at pleasure. Macklin, the player, some time since, obtained an injunction, and on a hearing got damages, of Richardson the bookseller, for printing and publishing part of the farce of *Love A-la-Mode*; which the latter employed Gurney to take down at the theatre in short-hand. But since the late decision in the House of Lords and the reference of copy-right only to the *statute*, I presume no such injunction in Chancery can be granted. In what a predicament then stand the authors of unpublished manuscripts; particularly our English Aristophanes, Mr. Foote, several of whose performances are unpublished, and it is necessary to the emoluments of his theatre that they should remain so? Will it not be expedient for him

him, and every other possessor of unpublished manuscripts, to enter them without delay in the hall-book of the Company? Or will indeed such entry without the actual printing and publication of the work suffice? I cannot help thinking that some difficulty attends the solution of these questions.

It is for these reasons hoped, that as the legislature will probably find it expedient to make some farther alteration in the laws relating to literary property, some farther regulation respecting the *security* of it will be deemed consistent with its wisdom, more precisely to determine the limits of its appropriation, so that both writers and booksellers may know how far they are authorized to abridge, copy or make quotations from the works of their predecessors; without which they cannot safely exercise their calling, and all improvements in works of *history*, *philology* and *science* must speedily have an end.

T H E E N D.