

John Baskett, his Majesty's Printer in London, William, Agnes, and Elizabeth Hamilton, Grandchildren to the deceased Andrew Anderson, and Archibald Campbell Husband of the said Agnes, and Patrick Alexander Husband of the said Elizabeth, for their Interests, and John Campbell Printer in Edinburgh, claiming to be his Majesty's Printers in Scotland, *Appellants* ;
 James Watson, claiming to be one of his Majesty's Printers in Scotland, - - *Respondent*.

Case 45.

15th Feb. 1717-18.

Public Officer.—A gift of the office of King's Printer in Scotland is made to a person and his heirs, and his partners, assignees, and substitutes; he afterwards assigns to two others, each one-third of the patent; these assignees and the original grantee had each right to a third share in the grant of the office, equal in all respects, and each might use the title of one of his Majesty's Printers.

Certain objections made to an assignee under this grant, that the original grantee had not taken the oaths required by law, for taking which a space of time was limited, having assigned in the intermediate period; that this grant was made during the subsistence of a former grant, though to commence after expiration of such former one; and that it contained clauses and powers (some of which had been renounced) that were stated to be unusual and contrary to law,—found not relevant to reduce the same.

A new patent being obtained during the currency of the former, without any reduction thereof, and being founded on in this action, the decree is nevertheless ordained to be extracted, without prejudice to the grantees in the new patent, to insist on the gift in their favour as accords.

The Court having found, however, that the partners in the patent first mentioned might print Bibles, &c. and dispose of the same *in any part of his majesty's united kingdom or elsewhere*; upon appeal, these last mentioned words are ordered to be omitted in the affirmance of the judgment.

KING Charles the Second, in May 1671, granted a patent to Andrew Anderson deceased and his assignees, to be his majesty's printer in Scotland, with the sole power of printing Bibles, New Testaments, acts of parliament, and every thing published by authority, for and during the term of 41 years. This patent expired on the 12th of May 1712.

Soon after it had been granted Andrew Anderson died, and the office was enjoyed and the business carried on by his widow.

When the patent to Anderson was near expiring, the respondent, a printer in Edinburgh, Robert Freebairn, a bookseller, and Richard Watkins a stationer, the latter being trustee for the appellant John Baskett, his majesty's printer in England, entered into an agreement to use their joint interest to procure a new patent. And accordingly by articles executed by them on the 9th of March 1710-11, it was agreed, "That if a grant of queen's
 " printer in Scotland could be obtained, in one or either of their

“ names, or to any other person for their behoof, they should be
 “ equally concerned in the same, and should employ their interests
 “ conjunctly. And Mr. Freebairn obliged himself to go to Lon-
 “ don; and the charges (if the said grant was procured) were in
 “ respect of Freebairn’s trouble therein to be borne by the other
 “ two; but if the same did not succeed, Freebairn was to be at
 “ equal charge with the rest.” And the respondent states, that
 he advanced to Freebairn 300*l.* towards the charges of obtaining
 such grant.

On the 11th of August 1711, her then majesty granted her
 letters patent of the office of king’s printer in Scotland to the said
 Robert Freebairn, reciting the said former grant to Anderson, and
 the time it would expire; “ and considering that it would be neces-
 “ sary for her and her subjects in that part of Great Britain called
 “ Scotland that the said office should be timely provided for: and
 “ that they on whom she should bestow the same should be pro-
 “ vided with materials and printing instruments whereby they
 “ might more readily and commodiously serve her and her sub-
 “ jects in that part of her said kingdom, as soon as the said grant
 “ to Anderson should expire: and that the said Freebairn had
 “ undertaken for himself and his heirs, and for his partners,
 “ assignees, and substitutes, that all books to be there printed
 “ should be more correctly published than heretofore they had
 “ been by his predecessors; her said majesty did make, nominate,
 “ and appoint the said Freebairn her sole and only printer in
 “ Scotland, for the term of 41 years, to commence immediately
 “ after the expiration of the said grant to Anderson, without pre-
 “ judice to the time therein mentioned; giving and granting unto
 “ the said Freebairn and his aforesaid the sole privilege of print-
 “ ing all Bibles, New Testaments, Psalters, Common-prayer books,
 “ according to the use and custom of Great Britain and Ireland;
 “ and of printing and re-printing acts of parliament, proclama-
 “ tions, and whatever should be published by authority; and of
 “ the books of the common and municipal laws of Scotland,
 “ whensoever the grant thereof to her majesty’s then printer or
 “ other particular persons should respectively expire;” with the
 clauses and powers of prohibiting all others, and confiscations as
 usual in the like grants.

In September 1711, Freebairn assigned the third part of his
 interest to the appellant Baskett; who by agreement was to cre-
 dit the company with paper for 12 months, and also was to pay
 a moiety of the charges of passing the said patent, and a propor-
 tionable part of the charges of setting up and hiring a printing-
 house. And on the 30th of April 1712, Freebairn also assigned
 to the respondent one just third part and share of the said office,
 and of all privileges and profits thereof; the 300*l.* advanced by
 him, as he states, being more than his share of the charges of
 obtaining the patent.

Disagreements, however, soon arose among the parties, and in
 January 1713, the respondent took a protest under the hands of a
 notary, requiring Freebairn and Watkins (on behalf the appellant
 Baskett)

Baskett) to perform their respective parts of the said agreement, or, otherwise, that he would act separately. The respondent afterwards brought an action of declarator before the Court of Session against Freebairn, the appellant Baskett, and Watkins his trustee; and his libel concluded, "That it should be found and declared, that the respondent had as good a right in the said gift of printing as the said Freebairn and Baskett, and that neither of them ought to assume other title, than one of his majesty's printers, and that the respondent as one of his majesty's printers might print Bibles, acts of parliament, &c. and might sell and dispose of the same in any part of the united kingdom and elsewhere." Freebairn made defences, that the gift of the office was to him solely, and that the assignment was only of a share of the profits, to be managed in company according to the articles. The Lord Ordinary, on the 8th of February 1715, found that the respondent had a right to a third share in the gift pursued on, equal in all respects with the said Freebairn and Baskett, and that he might use the title of one of his majesty's printers." And this interlocutor was afterwards adhered to both by his lordship, and by the Court, on the 17th of June 1715.

Pending this action, the parties had acted separately under the said office; and on the 8th of December 1714 Freebairn, assisted by the interest of Baskett, obtained a warrant from King George the First to have a new grant of the office made to him solely. The respondent, however, having represented that he had right under the said patent granted by Queen Anne, a stop was put to the passing of the said new grant.

The respondent afterwards brought an action against Agnes Campbell, since deceased, widow and assignee of the said Andrew Anderson, and the other appellants his representatives, to have it declared that the gift in favour of Anderson was expired, and that all Bibles and other books contained in the gift to the respondent, and printed by the said Agnes Campbell or the representatives of Anderson, since the expiration of the gift to him, should be confiscated in terms of his gift; and that they might be discharged to print any more of such books or to sell those already printed. It was insisted for Agnes Campbell, that the gift made by Queen Anne was granted to Freebairn alone; but he not having qualified himself for the said office by taking the oaths required by law, the gift became void, and he could not communicate the benefit of it to any other person whatsoever. That the grant to Freebairn was during the subsistence of the former grant to Anderson; and that the grant to Freebairn, under which the respondent claimed, was by express words recalled *and voided* in a subsequent grant to him by King George the First. The Lord Ordinary having made a report of the cause, the Court, on the 17th of July 1716, found, that the respondent's interest and title by the gift did not fall or become irritable by Mr. Freebairn not qualifying within three months of the date of the gift; and also repelled the defence, that after the said first gift to Freebairn he obtained a second gift; and also repelled the defence that the said

“ first gift was granted, before expiring of the former gift in fa-
 “ vour of the said Agnes Campbell, the said first gift to Freebairn
 “ being to commence at the issue or expiration of the said for-
 “ mer gift.”

1 Geo. 1.
 c. 13.

It was afterwards contended that the respondent himself had not qualified according to law; but he insisting that he had qualified within the time limited by the act of 1 Geo. 1. c. 13., the Lord Ordinary on the 19th of July “ repelled the allegation, and “ decerned and declared, that the respondent, as one of his ma- “ jesty’s printers, might print Bibles and acts of parliament, and “ other public papers, and sell and dispose of them in any part “ of his majesty’s united kingdom or elsewhere; and declared “ the gift in favour of Andrew Anderson and his heirs expired; “ and decerned the said Mrs. Anderson and the appellants her “ grandchildren to desist from any new impression, or further “ printing of any Bibles, acts of parliament, and other papers “ concerning the Government, or selling the same, from and “ after the 1st of July 1715.”

Pending this last action, the king granted a new patent for being king’s printer in Scotland to the said Mrs. Anderson, and to the appellant Baskett; but she died soon after. Baskett and the representatives of Mrs. Anderson produced the new patent to the Court and claimed the benefit thereof, and prayed that the right under the same, and the right to that under which the respondent claimed, might be discussed and settled before any judgment given. But the Court, on the 14th of December 1716, “ Ordained the “ respondent’s decree to be extracted, but prejudice to the ap- “ pellant Baskett to insist on the new gift in his favour as ac- “ cords.” Baskett and the other appellants afterwards brought an action of reduction to make void the gift under which the respondent claims; and then they presented a petition, (in the former action) complaining of the before mentioned interlocutors: but the Court, on the 18th of December 1716, “ refused the desire “ of the petition, reserving the appellant’s right by the new gift “ as accords.”

Entered,
 22 March
 1716-17.

The appeal was brought from “ an interlocutor or decree of “ the Lord Grange in Scotland, made the 8th of February 1715, “ and the affirmance thereof by the Lords of Session the 17th of “ June 17 5, and also from another interlocutor or decree of the “ Lords of Session of the 17th of July 1716; and also from another “ interlocutor or decree of the said Lord Grange, the 19th of the “ same July, whereby his lordship decerned and declared, amongst “ other things, ‘ That James Watson, as one of his majesty’s “ printers, might print Bibles and acts of parliament, and other “ public papers, and sell and dispose of them in any part of his “ majesty’s united kingdom or elsewhere;’ and also from two “ other interlocutors of the said Lords of Session of the 14th and “ 18th of December 17 6.”

Heads of the Appellants’ Argument.

The patent to Mr. Freebairn, under which the respondent claims, contained several very illegal clauses: particularly it gave the

the patentee a liberty and privilege of printing and importing Bibles from beyond sea, which is contrary to all good policy, and of very dangerous consequence. It contains a power of confiscation or forfeiture of all books printed or imported contrary to the privilege granted by that patent, and gives the half of the penalties to the patentee; but this seems to require the warrant of an express law, and not to be imposed without the authority of the legislature. It grants the sole privilege of printing all books of law, viz. the municipal laws of Scotland, which is entirely illegal and against the just liberty both of authors and printers, which by no law in Scotland is restricted, as to books of law, more than as to books of divinity or medicine, or any other science. These and several other illegal clauses are contained in this patent, and no sooner was it granted, but they were complained of, and a reference was made to Sir James Stewart, then Lord Advocate, who reported the said patent, upon these and other reasons, to be absolutely void and null, which should either oblige the patentee to renounce and surrender the same, or at least subject it to be reviewed and rescinded, and so make place for another, more legal and warrantable. His majesty has accordingly granted a patent to the appellant Baskett, and to Mrs. Anderson, under whom the other appellants claim, avoiding that formerly granted to Mr. Freebairn.

It is the constant practice and custom of the Court of Session, not to determine in favour of any grant, when another appears and pleads a better right till they once hear both parties; for it is otherwise prejudicing the one party by giving judgment unheard: and the rather in this case, because the respondent having brought his action to have his grant established, the appellants pleaded this new grant as a separate and total defence to that demand.

Mr. Freebairn being the only patentee, and not having taken the oaths within the time limited by law, the gift became void, and the office fell, and therefore he could not communicate the same, nor any of its consequences; and though he assigned a third part to Watson before the time in which he should have taken the oaths, yet the title to the office was imperfect and incomplete in the person of Freebairn until he should take the oaths; but he never having done that, the right resolved and became void from the beginning.

Supposing Mr. Freebairn's grant were good, it was against reason to decree a confiscation of all books to the respondent alone, since the appellant Baskett has by his own shewing an equal share in that grant with the respondent.

By the decree the respondent is declared to have right to print Bibles, &c. and to dispose of and sell the same in any part of his majesty's united kingdom. This is directly contrary to and inconsistent with the patent granted to the king's printers in England, whereby all persons are prohibited to import any Bibles into England,

Heads

Heads of the Respondent's Argument.

The said Freebairn was only a trustee for the respondent as to one third of the grant; and the respondent cannot by the laws of Great Britain incur any forfeiture by Freebairn's delinquency; not only because Freebairn was neither convicted nor the time elapsed for taking the oaths. No new grant can be legal during the subsistence of a former grant. The respondent, for a valuable consideration of 300*l.* paid to Freebairn before such delinquency, had a grant of one third in the interest of the said former patent, and hath also expended 2000*l.* for carrying on the said employment for the benefit of the public. But Baskett, who has a grant of the office of king's printer in England, and who farms the University presses in that country, seeks by this present appeal to engross the whole trade of printing the *word of God* in Scotland also, which, if he prevail in, it will make Bibles, New Testaments, and Common Prayer Books very scarce and dear, having already raised the price some 60 per cent. And in further prejudice of the respondent's right he has assumed to himself in his late editions of Bibles and Common Prayer Books the stile of King's Printer for Great Britain.

The appellants' aforesaid action of reduction is not yet ripe for the determination of the House of Peers, till the same have had a previous and judicial determination in Scotland.

Judgment,
25 Feb.
1717-18.

After hearing counsel, *It is ordered and adjudged, that the said interlocutor of the 19th July 1716 be so far varied as that the words after-mentioned, viz. "in any part of his majesty's united kingdom or elsewhere," be omitted, and that the said interlocutor or decree as to all other parts thereof, as also the several other interlocutors complained of in the said appeal be affirmed.*

For Appellants,	Spencer Cowper.	Sam. Mead.
For Respondent,	Tho. Lutwyche.	Rob. Raymond.