

July 11. 1828. at these Acts of Parliament, they do not apply to fisheries on the sea-coast, and that the proprietors of fisheries on the Don have no right to maintain this suit. I should recommend to your Lordships, under these circumstances, that the judgment of the Court below be affirmed.

*Appellants' Authorities.*—(Title.)—Colquhoun, July 6. 1804, (14,283.); Kinnoul, Jan. 26. 1802, (14,301.); Athole, March 7. 1812, (Fac. Coll.); Hamilton, March 5. 1793, (12,824.); Braid, Jan. 24. 1800, (No. 2. App. Prop.)—(Merits.)—Kinnoul, (supra); Athole, (supra, and Dow's Reports, vol. v. p. 291.); Leslie, June 29. 1593, (14,249.); Gairlies, July 30. 1605, (14,249.); Magistrates of Inverness, Jan. 27. 1776, (14,257).

*Respondents' Authorities.*—Boece, fol. 5. edit. 1574; *Discriptione del regno di Scotia*, p. 17.—(Title.)—Coble Fishers of Don, Feb. 10. 1693, (14,287.); Colquhoun, July 6. 1804, (14,283.); Athole, March 7. 1812, (Fac. Coll. and Buchanan's Reports, p. 263. and 300.); Grotius de Jure Belli, lib. 11. c. 2. § 3.; Puffendorf, lib. 4. c. 5.; Dig. 1. lib. 47. tit. 10.—(Merits.)—Balfour's Pract. p. 544.; Rhymer's *Fœdera*, tom. 7. p. 246.; tom. 8. p. 271. 551.; Bellend. *Descrip. de Alb.* c. 1.; Spalding's *Troubles*, 1. 60.; 2. Stair, 3. 70.; 2. Bank. 3. 8.; 2. Ersk. 6. 15.; Mag. Chart. c. 23.; 12. Edw. 42. c. 7.; 1705, c. 2. Queen Anne.

*Statutes relied on by both Parties.*—Alex. II. c. 16. (or William the Lion); Rob. I. c. 12.; 1424, c. 11. and 12.; 1427, c. 6.; 1429, c. 131. (c. 22. new edit.); 1457, c. 86. (c. 33. 34. new edit.); 1469, c. 38. (c. 13. new edit.); 1477, c. 73. (1478, c. 6. new edit.); 1488, c. 16.; 1489, c. 15.; 1535, c. 17.; 1563, c. 3.; 1579, c. 89.; 1581, c. 111.; 1685, c. 20.; 3. Jac. I. c. 12.

A. M'CRAE—RICHARDSON and CONNELL,—Solicitors.

No. 14.

MANNERS and MILLER, and Others, Appellants.

*Dr Lushington—Keay.*

The KING's Printers, (Sir D. BLAIR, and Others), Respondents.

*Sugden—A. Bell.*

G. BUCHAN, and Others, Appellants.—*Dr Lushington—Keay.*

OFFICERS OF STATE, and The KING's Printers, Respondents.

*Att.-Gen. (Wetherell)—Sol.-Gen. (Tindal)—Sugden—A. Bell.*

*Literary Property—King—King's Printer.*—Held, 1. (affirming the judgment of the Court of Session), That the right of printing Bibles, and certain other books, (enumerated in the patent granted by the Crown to the King's printers in Scotland), and of prohibiting their importation, belongs exclusively to the King, as part of the royal prerogative in Scotland, and, by virtue of his patent, to the printers appointed by him: And, 2. (reversing the judgment), That the privilege and prohibition extended to the 'Book of Common Prayer,' as well as to the other books mentioned in the patent.

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1ST DIVISION.

Lord Meadowbank.

IN 1785, the King, by a commission or letters patent under the Union Seal, after narrating a former grant of the office of King's printer, nominated and appointed James Hunter Blair and John Bruce, their heirs and assignees, for forty-one years,

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'solos et unicos nostros architypographos, in illa parte regni  
 'nostri Magnæ Britanniae Scotia vocata; idque pro spatio qua-  
 'draginta unius annorum, computando ab et post expirationem  
 'diplomatis, pro præsentis existentis, præfato Alexandro Kincaid,  
 'pro simili spatio quadraginta unius annorum concessi; cum  
 'plena potestate ipsis Jacobo Hunter Blair, et Joanni Bruce,  
 'conjunctim, eorumque hæredibus, assignatis, seu substitutis,  
 'antedictis, præfato munere et officio, durante spatio antedicto,  
 'utendi, exercendi, et gaudendi, cum omnibus proficuis, emolu-  
 'mentis, immunitatibus, exemptionibus, et privilegiis quibus-  
 'cunque eidem spectantibus, in quantum cum articulis Unionis,  
 'legibusque Magnæ Britanniae nunc existentibus, congruunt:  
 'Et speciatim, solum et unicum privilegium imprimendi, in  
 'Scotia, Biblia Sacra, Nova Testamenta, Psalmorum libros,  
 'libros Precum Communium, Confessiones Fidei, majores et  
 'minores Catechismos in lingua Anglicana;—necnon solam  
 'potestatem imprimendi et reimprimendi acta Parliamentaria,  
 'edicta, proclamationes, omnesque alias chartas in usum nos-  
 'trorum publicorum in Scotia officiorum imprimendas: Et ge-  
 'neraliter omne quod ibidem publicandum erit, auctoritate re-  
 'gali, imprimendi et reimprimendi: Prohiben. per præsentis,  
 'omnes alias personas quascunque, tam nativos quam extraneos,  
 'imprimere vel reimprimere, seu imprimi seu reimprimi in  
 'Scotia causare, vel importare seu importari facere in Scotiam,  
 'a quibusvis locis transmarinis, ullos dict. librorum, et charta-  
 'rum publicarum supra mentionat. absque licentia vel auctori-  
 'tate a dict. Jacobo Hunter Blair et Joanne Bruce, hæredibus  
 'eorum, assignatis, vel substitutis, sub pœna confiscationis om-  
 'nium talium librorum, chartarumque publicarum, ita impress.  
 'seu importat. in Scotia; unius eorund. dimidii ad nos, alteri-  
 'usque in usum dict. Jacobi Hunter Blair et Joannis Bruce,  
 'eorumque antedict.'

For several years the King's printers in England and Scotland had tacitly tolerated the importation into the two kingdoms of books printed by them respectively. But active and rigorous measures having been adopted by the King's printers in England to exclude Scotch Bibles from being introduced into that country, the King's printers in Scotland presented a bill of suspension and interdict against Manners and Miller, booksellers in Edinburgh, and several other booksellers, from importing, selling, or exposing to sale, any of the books contained in the Scotch King's printers' commission, which were not printed at the Scotch King's printers' press, or under their authority. The

July, 21. 1828. bill was passed to try the question of right. The Lord Ordinary repelled the reasons of suspension, and refused the interdict; but this interlocutor was, 'in respect of the decision 22d May 1790, King's printers v. Bell and Bradfute,' recalled, and informations on the whole cause ordered to the Court. Thereafter, on a hearing in presence, the Court (7th March 1823) suspended the letters simpliciter, granted interdict, and decerned.\*

Manners and Miller appealed, and maintained, that the letters patent founded on by the respondents did not, by their true meaning and construction, vest in them any right or title to complain of or prevent the free importation from England of Bibles printed by lawful authority there; and this was made manifest by the prohibition being directed only against books brought 'a quibusvis locis transmarinis.' The respondents on the other hand contended, that the words of the patent distinctly conferred the sole right of printing in Scotland the books specified in the commission, and that the verbal criticism was unauthorized.†

LORD GIFFORD. This question, which is one of very great importance, was discussed fully at your Lordships' Bar; namely, Whether the respondents, under the patent they hold from the Crown in Scotland, conferring upon them the sole right of printing works of this description, have the right to prevent any other person from selling within Scotland, Bibles, and the other books mentioned?

The patent granted to the respondents gives the sole and unlimited privilege of printing within Scotland, Bibles, New Testaments, Psalm Books, Books of Common Prayer, Confessions of Faith, or larger or smaller Catechisms in the English tongue; and your Lordships will perceive, by the decision of the Court, they have granted a suspension and interdict, as applying to all those books, Bibles, New Testaments, Psalm Books, Books of Common Prayer, Confessions of Faith, or larger or smaller Catechisms.

My Lords,—The question mainly agitated at your Lordships' Bar, and I may say the only question discussed at any length,

\* 2. Shaw & Dunlop, No. 253.

† This discussion took place in 1825; and as it was resumed in the question which afterwards arose with Buchan and others, it will be found fully stated there. See post, p. 275.

principally turned upon the language of this patent; and it was contended on the part of the appellants, that although the sole right of printing had been conferred by this patent of 1785, and by a previous patent to other persons, yet that the prohibitory clause in the patent prohibiting the importation of books of this description into Scotland, did not exclude importation from England; and I will tell your Lordships why it was so contended. The prohibition is, 'of all other persons whatsoever, as well natives as foreigners, from printing, or causing to be printed in Scotland, or importing, or causing to be imported into Scotland, from whatsoever places beyond the seas, any of the said books and public charters above-mentioned.' The appellants contended, that this prohibition could only apply to parts beyond the seas, and could not be contended to apply to England; and that they had a right to carry to Scotland these books printed by the Universities or by the King's printer in England. In answer to this it was contended, that as the sole right was conferred of printing in Scotland books of this description, that the respondents had the right of preventing any books of that description from being sold in Scotland when printed elsewhere. Your Lordships find, by the decision of the Court of Scotland, that the exclusive right has been confirmed.

My Lords,—In the discussion of this case at your Lordships' Bar, the prerogative of the Crown to grant such a monopoly in Scotland was almost conceded by the appellants to the respondents; and I observe in their Case that they say, 'It is not necessary to enter into any curious inquiry in regard to the extent or foundation of the royal prerogative in this case. They do not dispute that his Majesty, as King of Scotland, has a prerogative right to confer upon his printers in that country an exclusive right to print all Bibles, New Testaments, and other privileged books, and also to prohibit all other persons from printing the same within Scotland.'

My Lords,—In considering this case since it was argued, which I have had an opportunity of doing, it appears to me that a very important question in this case has not been fully discussed. I apprehend that the prerogative in this country to grant the right of printing Bibles, New Testaments, &c. belongs to the King, as supreme head of the Church, and he only has a right to the publication of the Book of Common Prayer, and the Liturgy of the Church.

Now your Lordships perceive, that this interdict applies not only to Bibles, New Testaments, Psalm Books, and Books of

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Common Prayer, which I apprehend mean books of English communion, but Confessions of Faith, (whether the Scotch Confession of Faith or the 39 Articles does not appear), or larger or smaller Catechism, (what catechisms they are does not appear). With respect to some of those works, it may be that the prerogative of the Crown of Scotland may be larger than the prerogative of the Crown of England. But, my Lords, upon looking into the statute of 1690, by which we all know the church government in Scotland was settled, there is this remarkable passage with respect to the Bible:—Section 8. ‘The Old Testament in Hebrew, (which was the native language of the people of God of old), and the New Testament in Greek, (which, at the time of the writing of it, was most generally known to the nation), being immediately inspired by God, and by his singular care and providence kept pure in all ages, and therefore authentic, so as in all controversies of religion the church is finally to appeal unto them. But because these original tongues are not known to all the people of God who have right unto and interest in the Scriptures, and are commanded in the fear of God to read and search them, therefore they are to be translated into the vulgar language of every nation unto which they come, that the word of God dwelling plentifully in all, they may worship him in an acceptable manner, and, through patience and comfort of the Scriptures, may have hope.’

Now I cannot find, that by any Act of the Crown of Scotland, or the Government of Scotland, there has been any authorized translation of the Bible for the use of the people of Scotland. I have been unable to find such, if any there is. I believe there is none. Then comes the question, Whether, supposing the privilege of the Crown in Scotland was the same as in England, to authorize a translation of the Bible, yet, not having done so, is it competent for the Crown of Scotland to say, you shall not import into Scotland an authorized translation of the Bible by the law of England? With respect to the Book of Common Prayer, if it alludes to the Book of Common Prayer of England, that is no part of the church establishment of Scotland; and has the Crown of Scotland the privilege to say, that that which is the form of the liturgy of the church of England, with which they have nothing to do, shall not be sold in Scotland, unless printed by the King's printer in Scotland? With respect to the Confessions of Faith, there again I say of this Confession of Faith, which I hold in my hand, published in 1690, (which is the Confession of Faith adopted in Scotland, and authorized by the

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Crown, the Crown having, as, was contended, and not denied; the same sort of privilege in Scotland as to the printing Acts of State, and those particular works which are peculiar to the Church of Scotland;—if there be any such, then I say it may have that privilege; but has it the privilege of prohibiting the printing or selling in Scotland the form of prayer of the Church of England, with which form of prayer they themselves say they have nothing to do in Scotland? So, as to the Psalms, there may be Psalm Books in Scotland which are peculiarly used by the Church of Scotland. Whether they have the power of preventing surreptitious copies of them, I know not. Then, as to the larger or smaller Catechism, it is possible they have such works. These questions appear to me important, and perhaps I ought to take blame to myself for not, at the time of the argument, having suggested these difficulties; but they did not then occur to me, for my attention was turned to the prohibitory clause. A good deal of the argument turned upon a case cited at the Bar, which was said by the appellants to be the converse of this. In that case it was decided, that the King's printer in England had a right to prohibit Bibles printed in Scotland from being circulated in England, because it would be an infringement of the prerogative which conferred the right upon a particular individual; and passages were cited from the judgment pronounced by the very able Lord Chancellor of the present day. He was of opinion that the power was reciprocal. He seemed to admit that the Scotch printer could prevent the English printer from selling the English Bibles, or Book of Common Prayer, in Scotland; but the attention of the Lord Chancellor; and the noble Lord who assisted, was not drawn to the rights of the Church of Scotland; nor do I see any thing in the judgment that warranted the conclusion that he had formed a decisive opinion upon that point, but there are passages that are thought to bear that way.

Thinking, as I do, that these points, which have not been discussed, ought to be discussed, I have considered with myself whether, in such a case as this, I ought not to ask your Lordships to remit this case to the Court of Session, in order that these points may be considered; but if I was to do that, I have no doubt your Lordships would have this case again before you. It therefore seems to me, with a view to save expense to the parties, and the delay that would take place, that it would be better for me to ask your Lordships to adjourn the case till the next session of Parliament, and have a farther argument upon

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this question that affects the privilege of the Crown of Scotland, exercised in Scotland over works of this nature. Your Lordships have had an argument directed to the various species of works interdicted by this interlocutor, some of which may, for ought I know, come within the prerogative of the Crown of Scotland, conferring a monopoly upon the printer; but I do not profess to have formed any opinion upon the subject. It is of great importance to consider, whether the prerogative of Scotland can extend to a translation of the Bible, which the Crown of Scotland has never authorized itself. If it has, we shall be informed of it. Is it the translation printed in England? or what translation of the Bible is it which the King's printer in Scotland has the sole privilege of printing? Is it every Bible, or the English translation? I apprehend the principal question in this case will turn mainly upon the printing of the Bible and the New Testament.

Under these circumstances, however reluctant I am, as your Lordships will think I must be, to delay the parties from the judgment they are entitled to at your Lordships' hands, yet, having had time to consider these points, which did not occur to me upon the argument, (my attention being directed to the consideration of the clause upon which the great stress of the argument lay), I should propose not to come to a decision of this case at present, but that the next session of Parliament it should be argued by one Counsel on each side. As it is a question of so much importance, I would not restrict it to that. I should hope, when the discussion takes place, that your Lordships will be assisted by others, who will aid your Lordships in the determination of it, much better than myself. It is a case of great importance to the public, as well as the parties; therefore the result of my recommendation to your Lordships is to delay this judgment till the next session. I do not consider it my duty to ask your Lordships now to come to a determination upon the point till it has been thoroughly discussed at your Lordships' Bar. If I did, it would be the single opinion of the individual addressing you, who has not heard any discussion upon the point. I therefore propose to your Lordships to adjourn this case till the next session.

The case was (29th June 1825) accordingly adjourned. In the mean time, however, the question came under discussion in a similar suspension and interdict presented to the Court of Session by the King's Printers against Buchan and others, mem-

bers of the Edinburgh and Glasgow Bible Societies. The Lord Ordinary in that case, 'in respect of the chargers (Buchan and others) having failed to point out any distinction between the matters at issue in the present process of suspension, and those determined after the fullest discussion and consideration by the First Division of the Court in the case of the King's Printers v. Manners and Miller, and other booksellers in Edinburgh, and that no documents which appear to the Lord Ordinary materially to affect the grounds of that judgment are now founded on which were not before the Court as aforesaid, or that any allegations in point of fact are made by the chargers different from those which were made in the said case before the Court,' suspended the letters simpliciter, continued the interdict, and decerned. The Court, on the case being brought under their review, in consideration of the doubt as to the royal prerogative in Scotland expressed in the House of Lords, appointed intimation to be made to the Officers of State, and allowed them to appear for his Majesty's interest; and thereafter (12th May 1826) adhered, except as to the Book of Common Prayer, as to which they altered the Lord Ordinary's interlocutor, and removed the interdict in hoc statu.\*

Buchan and others appealed, and the King's printers cross appealed in regard to the Book of Common Prayer.

*Appellants (in chief).*—I. The point of controversy here is, Whether Scotch King's printers are entitled by their grant to prevent the appellants, whether they may be members of the Church of Scotland or of the Church of England, or of other Christian associations, from importing, for distribution or circulation in Scotland, Bibles which have been lawfully printed in England? The respondents contend they have a right to a close, unrestrained, unrivalled monopoly, and maintain it against members of both national Churches, and insist that no man shall possess a Bible in Scotland, unless it shall be printed by the Scotch patentees. This is a very singular grant, if a grant to that effect. But, when properly considered, the letters patent do not, by their words or true meaning, vest this monopoly in the respondents. One part of the letters give a right to print the particular books enumerated, and generally every thing else that is to be published by royal authority; but it is merely the privilege of printing in Scotland. No exclusive privilege is given of

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\* 4. Shaw and Dunlop, No. 365.



July 21. 1828. selling and vending. Then comes the prohibition against importing. But what is it? It is against importing 'a quibusvis locis transmarinis,' which clearly cannot apply to importation from England; and this is made clearer, 1st, By looking to the previous history of the licenses, commissions, or patents, which have at different times been granted to King's printers in Scotland, demonstrating, that the letters patent held by the respondents were framed in the terms in which they stand, upon a deliberate purpose and intention of excluding the pretension of monopoly now set up; and, 2d, By the fact that the demand for interdict is in the face of the established practice for a century, during the whole of which time commissions or letters patent were held in the very same terms.

II. The King may, at a very early period, have taken up the arbitrary prerogative as to the printing and sale of books, which had been at first asserted by the Church. But there are no sound or constitutional grounds for this prerogative; and the right has long since ceased to be considered inter regalia. In England, no doubt, there exists in the Crown a prerogative copyright in the Holy Bible. But that depends upon the joint influence of two principles:—1st, As supreme head of the Church, the King has a right to the publication of all liturgies and books of divine service; and, 2d, As having purchased certain works, and compiled or translated them at the expense of the Crown, he has the right of property in them, and among others in the Holy Bible, the translation of which now in common use was prepared in the reign of James I. at the expense of the Crown, and by the Crown enjoined on the Church. But these principles do not apply to Scotland:—1. In no sense of the word is the King the head of the Church in Scotland. That is a point beyond all dispute. He has no prerogative over the Church, or in church matters, and has no power to prescribe any form of religious worship, or any particular books to be made use of in churches. 2. There can be no fact more certain than that the King, as King of Scotland, has no title by copyright in the English translation of the Bible, on the ground of authorship, or on the ground of having taken on himself, or on the part of the Crown, the expense of composing, and the duty of publishing it; nor was the adoption in Scotland of King James's translation dependent any how on this English prerogative, as applicable to Scotland. Neither is the prerogative necessarily inherent in the Crown as head of the state; nor is it established by usage. There, consequently, was no power in the King to grant

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the patent in question, as to works enumerated in it. The prohibition as to the Confession of Faith, Larger and Shorter Catechism, is also manifestly vulnerable, in respect it interferes with the rights and powers of the General Assembly. But whatever may be said by the respondents in support of their patent as to the Bible, &c., they have not a single influential reason for allowing the patent to embrace the Book of Common Prayer. This book does not enter into the ceremonial of the established Church of Scotland.

*Respondents.*—I. The exclusive right of printing the Bible, and other books used in the service of religion, has been vested in the Crown of Scotland ever since the invention of printing, in the same way as in the Crown of England, and for the same reason, viz. that the preservation of the purity of the sacred Scriptures is a matter of too much importance to be intrusted to any authority but that of the executive government. Indeed, anciently, the prerogative of printing books in general appears to have been vested in the Crown of Scotland in the same way as it was vested in the Crown of England, although from the changes that have taken place in society it is now narrowed to the books enumerated in the King's patents. But this prerogative as it now exists does not belong to the Crown in its spiritual, but in its temporal character, as chief civil magistrate of the country. The objection, therefore, that the King is not the head of the Presbyterian Church, is of no force. Neither does this prerogative depend on any purchase made by the Crown. There is no evidence that the Crown of England was at any expense to obtain the present translation. The Crown always exercised the same powers over the other translations of the Bible as over King James's; and there exists no such right at common law as a right of copy either in the Crown or subject.

II. All the books used in the service of religion contained in the respondents' patent have been duly authorized and introduced into public worship in Scotland. Perhaps the right to print the Book of Common Prayer rests upon a footing somewhat different than the right to print the other religious works. But still the principle is the same. Accordingly, all the patentees, from the Revolution to the present time, have enjoyed the exclusive right of printing the Book of Common Prayer.

III. This exclusive right to print and import the Bible, and the other books mentioned in the commission, has been duly and effectually communicated to the respondents. The words of gift are ample and specific, and ought to receive their full force.

July 21. 1828. There is no reason of disfavour to the respondents' claim on the pretended head of monopoly. Any objection of that kind is obviously quite inapplicable. The verbal criticism, that the words 'a quibusvis locis transmarinis' shews that the intention was to withdraw from the patentee the power of prohibiting importation from England, has no foundation if the history of these patents is attended to.\* This privilege has not been lost by non-usage, nor could it. Neither have there been any interference whatever with the power or guardianship of the General Assembly.

The House of Lords, in the appeal by Manners and Miller, ordered and adjudged, 'that the interlocutors complained of be affirmed;' and in that by Buchan and others, and the cross appeal by the King's printers, ordered and adjudged, 'that the said original appeal be, and is hereby dismissed this House, and that the several interlocutors there complained of be, and the same are hereby affirmed: And it is further ordered and adjudged, that the interlocutor of the Lords of Session of the First Division, so far as complained of in the said cross appeal, be, and the same is hereby reversed.'

LORD CHANCELLOR.—My Lords, In the case of Buchan v. Blair, which was argued at the Bar some time since, I would state to your Lordships the grounds on which I think judgment should be given, and the result to which, in my opinion, your Lordships should come. The principal respondents in the case are the King's printers in Scotland. They hold that office under a patent from the Crown. The appellants are members of certain Bible Societies in Scotland, and have been in the habit of importing Bibles from England; and the material question to be decided in this case, is as to whether or not the King's printers in Scotland have, by virtue of their office and their patent, a right to exclude persons from importing Bibles, and the other works which are contained in the patent, from England? My Lords, two important questions were raised in this case:—One, which was raised, and which was argued at great length in the Court below, and argued

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\* The patent granted to a predecessor of the respondents had contained a clause prohibiting importation of Bibles, 'infra quemvis locum vel a quovis loco extra illam partem regni nostri Magnæ Britanniae Scotiæ vocat, aut a locis transmarinis;' and the respondents explained, that doubts having been entertained as to the consistency of these grants with the articles of Union, the next patentee retained the words 'aut a locis,' &c.; but in place of the former, substituted 'cum omnibus perquisitis, emolumentis, immunitatibus, exemptionibus, et privilegiis quibuscunque eidem spectantibus, in quantum consistunt cum articulis Unionis et legibus Magnæ Britanniae nunc in existentia.' These expressions plainly protected the patentee, whilst, if it were not hostile to the articles of Union, (as has since been decided), they carried the privilege of prohibiting importation of Bibles from England.

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very ably at your Lordships' Bar, was as to the right of the Crown to grant a patent, the effect of which shall be to prevent persons in Scotland from importing Bibles, and other works of the description mentioned in the patent, certain religious works, from England; and the second question turned upon the particular construction of the terms of this patent. My Lords, with respect to the first question, it arose out of the case of *Manners and Miller v. Blair*, which was before your Lordships' House two or three sessions ago; and when that case came on for argument, and was argued at your Lordships' Bar, it occurred to the learned Lord who then presided here—Lord Gifford—that there was a doubt as to the validity of the patent, and as to the power of the King to grant a patent of that description. I do not mean for a moment to suggest that the noble and learned Lord expressed any opinion upon that subject, but that he was desirous, before he decided that question, that that point should be argued at your Lordships' Bar; but which was in fact never argued in the particular case, because the case in which I am about to propose that your Lordships should give judgment, was before the Courts below; and being before the Courts below, the point was raised before the Judges of the Court in Scotland, which had not in fact been raised in the case of *Manners and Miller v. Blair*; and that case having come before your Lordships upon appeal, it was considered more convenient and proper that the argument, with respect to the validity of the patent, and with respect to the prerogative of the Crown, should be on that particular case than on the case of *Manners and Miller*; but your Lordships' decision in the one case will be of course governed by the decision in the other. My Lords, in conducting the argument with respect to the prerogative of the Crown, reference was made, and very properly made, to the cases of prerogative in England. For 200 years and more the Kings have, in England, granted patents to their printers here as extensive as the patent we are now considering, and perhaps more extensive, but extensive enough to raise the question we are now considering. In England, the power of the King to grant patents of this description, or to appoint to such an office, has never been seriously questioned. Those patents have from time to time come under the review of our Courts, and the Judges have been called upon to decide upon them. One occurred before Sir Joseph Jekyll so far back as the year 1720, and at different periods, both in the Courts of Equity and also before your Lordships' House during the last century; and I would state it as a point not admitting now of doubt or controversy, that, as far as relates to the office of King's printer in England, the Crown has the prerogative to grant a patent as extensive as that we are now considering,—assuming, for the purpose of argument, that the patent is as extensive as it is contended on the part of the respondents to be. But although the power of the King and his prerogative in England has never been questioned, it has been rested by Judges on different principles. Some Judges are of opinion, that it is to be

July 21. 1828. founded on the circumstance of the translation of the Bible having been actually paid for by King James, and its having become the property of the Crown, and therefore it has been referred to a species of copyright. Other Judges have referred it to the circumstance of the King of England being the supreme head of the Church of England, and that he is vested with the prerogative with reference to that character. Other Judges have been of opinion, and I confess, for my own part, I am disposed to accede to that opinion, that it is to be referred to another consideration, namely, to the character of the duty imposed upon the chief executive officer of the Government, to superintend the publication, in the first place, of the Acts of the Legislature, and acts of state of that description, and also of those works upon which the established doctrines of our religion are founded,—that it is a duty imposed upon the first executive magistrate, carrying with it a corresponding prerogative. That was the opinion of Lord Camden, as expressed in the case, I think, of *Donaldson v. Becket*, in most direct and eloquent terms in your Lordships' House: that was the opinion also expressed by Chief-Baron Skinner, in the case of *Eyre and Strahan v. Carnan*; and I think that may be collected or inferred to be the opinion of a noble and learned Earl, now a member of your Lordships' House, from what fell from that noble and learned Lord in the case of *Richardson v. the Universities of Oxford and Cambridge*. My Lords, if that be so, if that is the true principle upon which this prerogative is to be rested, it appears to me that all difficulty ceases with respect to the prerogative in Scotland. In Scotland, as well as England, patents of this description have been granted without dispute or contest for more than 200 years. These patents have at different periods been made the subject of suits in the Courts of Scotland, and particularly in the case of *Watson v. Baskett* in the year 1716 or the year 1717, which cases came afterwards by appeal to the House of Lords. In another case, that of the *King's Printers v. Bell and Bradfute*, this patent came under the consideration of the Courts of Justice in Scotland; and many other cases may be referred to for the purpose of establishing the same fact: so that we have in Scotland, as well as England, patents granted successively for a period of more than 200 years. These patents have been the subjects of suits. These cases have come to your Lordships' House; and I do not think that, until the doubt was thrown out by the noble and learned Lord to whom I have referred, the late Lord Gifford, the prerogative of the Crown in Scotland was ever called in question. Certainly it never did occur to the very able Counsel who argued the case of *Manners and Miller v. Blair* in the Court below, seriously to consider or to contest that point. My Lords, in the course of this argument it was assumed, as the basis of a part of an argument, that the prerogative in England depended upon the King's character as supreme head of the Church; and it was argued, that that principle did not apply to Scotland, for that although the King was the supreme head of the Church in England, he was not

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the supreme head of the Church in Scotland; and therefore the prerogative might well exist in this part of the island, and yet not exist in Scotland. But, my Lords, I have already stated, that I do not refer the prerogative to the circumstance of the King being, in a spiritual or ecclesiastical sense, the supreme head of the Church in England, but to the kingly character—to his being at the head of the Church and State, and it being his duty to act as guardian and protector of both,—a character he has equally in Scotland and England. And, my Lords, it is perfectly clear, that it is the duty of the King to act this part as the guardian of the Church in Scotland. That is a principle laid down by the authorities in Scotland as much as in England; and by the authority of the statute by which the Reformation was established in Scotland, it is declared to be the duty of the magistrates, and the King as supreme magistrate, to be the protector of the Church; and in the Act of 1690, by which the Presbyterian Church was established, when the Episcopalian Church authority was finally put an end to in Scotland, the same principle is laid down and acknowledged. I think, therefore, this right and prerogative depends upon the King's character as guardian of the Church and guardian of the State, to take care that works of this description are published in a correct and authentic form; and that those arguments upon which the authority rests in this country apply also there. But it was said at the Bar, that in England, as far as relates to the translation of the Holy Bible; we have the translation recognized by public authority, introduced into the service of the Church by public authority; and that the prerogative in England will properly apply to this translation, but that the same principle does not apply there. My Lords, I will say a word on this view of the case with respect to the Bible which was translated in the reign of James the First, and which undisputedly was translated under his sanction and by virtue of his authority. It does not appear that he contributed any thing towards the expense. It does not appear that that translation of the Bible was introduced into the Church by the authority of any Act of Parliament, by the authority of any Act of Convocation, or by proclamation; but undoubtedly it was introduced under the sanction and authority both of the head of the Church, under the sanction of the King of that period,—in what precise way does not appear by evidence. It is probable that, after it was completed, and the heads of the Church were satisfied with it, it was by the authority of the bishops, in their respective dioceses, introduced into general use throughout the kingdom, possibly without any further act for that purpose. But, my Lords, is there any essential difference between the situation of England and Scotland in this respect? I apprehend clearly none; because the same translation has, if not by the actual authority, at least by the sanction of the General Assembly of Scotland, been introduced into their Church, and used there for a period I believe of 150 years; and I understand that use of it in Scotland is as general, and indeed as exclusive and universal, as in England. This translation,

July 21. 1828. therefore, has been sanctioned in the country by the Church of that country, and by the proper ecclesiastical authorities ; and I apprehend that it stands in the same situation, and is guarded by the same privileges, and is in point of law, unless the General Assembly should order otherwise, as compellable to be used in the churches of Scotland as it is in the churches of England. I do not apprehend, therefore, that there is any difficulty in this respect, or that any argument whatever can be founded on the idea, that by some authority in this country that particular translation has been introduced into universal use in our Church, and that no corresponding authority exists in Scotland. I have no doubt there is some authority, at least some implied authority, for the introduction of it in England ; and I apprehend there is the same implied authority, the same sanction for it by ecclesiastical authorities in Scotland. It was in consequence of this circumstance, and some doubts arising out of the particular view of the case, that the noble and learned Lord to whom I have referred, was desirous that in this particular view it should be considered again. It does appear to me, therefore, that, as far as relates to the translation of the Holy Scriptures, the case with respect to Scotland is precisely the same as it is with respect to England. But, my Lords, in this patent there are other works noticed. There is the Confession of Faith. My Lords, I find that the Confession of Faith was ratified by the General Assembly in the year 1649 ; it is therefore a book adopted by the proper ecclesiastical authority in the country. The Larger and the Shorter Catechisms were also ratified by the General Assembly about that same period : and with respect to the metrical version of the Psalms, which is also contained in that patent, that was, as I am informed, prepared by the authority of the General Assembly, and it is used in the churches by authority of that General Assembly. It appears to me, therefore, that these works come within the same principle as the Holy Scriptures, and within the same principle as the Book of Common Prayer in this country.

A question has been raised with respect to the Book of Common Prayer, which is also contained in this patent ; and it is said, that at all events the King could not, in Scotland, confer the exclusive right of printing this work on his printer in Scotland. The Court below entertain some doubt upon this point, and with respect to that in this particular stage of the cause, they have excepted it from the operation of their interdict, without, however, pronouncing any decision upon it. But, my Lords, at one period Episcopacy existed in Scotland. During that time there is no doubt the King's authority applied to the Book of Common Prayer as well as to the other works to which I have referred. It is true that by the Act of Parliament passed in the year 1690 an alteration was made in this respect ; and by the effect of that Act of Parliament in 1690 the Presbyterian form of worship became the established form in Scotland, and the Church in that shape became the established Church of Scotland : but, notwithstanding that, those

persons who were members of the Church of England, who were in her communion, were still entitled to the protection of the Crown; there was nothing in those Acts of Parliament to deprive them of that protection; and if the King possessed the prerogative previous to the passing of the Act in 1690, by which he had the exclusive right, by himself or his officers, in Scotland, to publish the Book of Common Prayer, there is nothing in the Act of 1690 to deprive him of that prerogative he had previously enjoyed. It does not appear to me, therefore, in this view of the case, that there is any essential difference between that part of the patent which relates to the Book of Common Prayer, and that which relates to the other works. I think, therefore, my Lords, that, with respect to this question, which really never was originally mooted in the Court below, which was only afterwards argued, namely, the general question of the validity of the patent, and only afterwards argued in the second case to which I have now adverted, in consequence of the wish intimated by the noble and learned Lord to whom I have adverted, that your Lordships will have no difficulty in coming to the opinion, that in Scotland, as in England, the King possesses this prerogative, and that he has a right to confer it upon his printer.

If that be so, my Lords, the only remaining question to which I propose to call your Lordships' attention is, the construction of the patent. I confess I had considerable doubts at first in determining in my own mind what was the proper construction of this patent; but in looking very attentively at the patent, considering the whole bearing of it, and all the facts of the case, those doubts and difficulties have ceased. Without troubling your Lordships by reading the patent, it is in substance this, that those particular individuals are declared to have the sole and exclusive right of printing in Scotland the particular works which are mentioned in it. They are to have the office, and discharge the duties, with all its perquisites, all its emoluments, and all its privileges, as far as it is consistent with the articles of Union. That, my Lords, is the granting part of the patent, to which I shall at present confine my observations. The expression, 'as far as it is consistent with the articles of Union,' requires some explanation. A short time before the patent was granted to Baskett in the year 1716, which was in the same terms as this, a patent had been granted to a person of the name of Freebairn, in the year 1711. That patent was, in the granting part of it, as general as this which I have stated; but that contained a prohibition against all persons importing, either from England, or any parts beyond the seas, any of the particular works enumerated in the patent. Some doubts were created in the minds of some persons with respect to the validity of that patent, and it was submitted for the consideration of the Lord Advocate of Scotland, Sir James Stewart; and Sir James Stewart was of opinion that it was contrary to the fourth article of the Union between England and Scotland, to prohibit the im-

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But, my Lords, there is a prohibition which follows the granting part of the patent, and it is said the prohibition extends only to parts beyond the seas; and there is a penalty annexed to the prohibition,—all persons are prohibited from importing the specified works from parts beyond the seas, under the penalty of losing those works. But it is no objection to a patent, which conveys a particular power and a particular authority, that there is a prohibition accompanied with a penalty, and that that prohibition accompanied with a penalty is not co-extensive with what is supposed to be the grant. An argument may arise out of the prohibition, for the purpose of construing the grant, and for the purpose of ascertaining what the intention of the granter was; but if the intention of the granter be clear, it does not follow that the grant is at all limited, from the circumstance of there being a prohibition, accompanied with a penalty, which is not co-extensive with the grant.

But, my Lords, no question can arise upon the limitation of the prohibition, because we can understand at once what was the reason of the limited nature of the prohibition. That prohibition arose out of the doubt expressed in the opinion of the Lord Advocate of Scotland. In the granting part of the patent, reference was made to the articles of Union. We grant you all the powers which have been enjoyed by any of your predecessors in this office, as far as they are consistent with

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the articles of the Union, but no further. It was supposed that the prohibition of importation from England was contrary to the fourth article of the Union; and therefore, when the party drawing that patent came to the prohibition to be followed by a penalty, he did not choose to carry that prohibition beyond the point, to which it could be with safety and certainty extended. When we find that it has been decided that the articles of the Union do not bear upon this case, we have at once an interpretation of the whole patent, and see the reason for the limited prohibition, and that these words were not intended to have any effect in limiting the patent, unless the articles of the Union required it should be limited. My opinion is, that it is a grant of the authority of the Crown; that the Crown intended to convey all the authority it possessed, and, as Lord Eldon very properly says, there is a duty incident to the authority. The Crown intended to convey its authority, and the Crown intended to convey that authority with a corresponding duty. I therefore cannot bring myself to entertain any serious doubt with respect to the construction of the patent.

On these grounds, I should humbly recommend to your Lordships, both with respect to the former objection,—that as to the prerogative of the Crown, and also that with respect to the construction of the patent,—to confirm the opinion expressed after very elaborate argument, and expressed in great detail, and with great ability, by the Judges below. I should propose to your Lordships, that in the case of *Buchan v. Blair*, the interlocutors complained of by the original appeal should be affirmed, and those complained of by the cross appeal reversed; and as incident to that, I should propose to your Lordships that the judgment in the case of *Manners and Miller v. Blair* should also be affirmed. The only difference to which it is material to call your Lordships' attention, is that in the case of *Manners and Miller v. Blair*. The interlocutor includes the Book of Common Prayer; but in consequence of some doubts entertained by the learned Judges having been expressed in the interlocutor in this particular case of *Buchan v. Blair*, that is made the subject of exception: I should recommend to your Lordships that these interlocutors be affirmed on all points excepting that, and that that interlocutor be reversed.

Will your Lordships allow me in reference to these cases to say, that the effect of the judgment which has been just pronounced will be, that the King's printer in Scotland will stand on the same footing as the King's printer in England. It has been decided, that the King's printer in England has a right to prevent the importation of all books which come from Scotland. I did not mention that as the foundation of your Lordships' judgment,—that was not a ground on which to proceed to such an adjudication; but, at the same time, your Lordships will not regret that the judgment which has been pronounced is followed with consequences so extremely just and equitable.

July 21. 1828. *Appellants' Authorities.*—Rob. App. Ca. 197.; 1551, c. 27.; 1606, c. 1.; 1669, c. 1.; 1689, c. 3.; 1690, c. 1. 5. and 23.; 1700, c. 2.; 1702, c. 3.; 1703, c. 2.; 1707, c. 6.; 4. Burrow, 2381.; 5. Bac. 599.; 1. Burn, Eccl. Law, 373.; King's Printer, May 22. 1790, (8316.); March 7. 1823, (2. Shaw and Dunlop, No. 254.); Mackenzie's Obs. 153.; 2. Blackstone, 27.; 4. Bank. 22. 14.; 1. Ersk. 5. 6.

*Respondents' Authorities.*—1. Mackenzie's Works, vol. i. p. 257.; Anderson, Jan. 5. 1683, (Fountainhall); Rob. App. Ca. 197.; King's Printer v. Bell and Bradfute, May 22. 1790, (8316.); 1. Burn, 348.; 4. Burrow, 2381.; Hinton, July 27. 1773, (8307.); Becket, Feb. 22. 1774.; 5. Bacon, 599.; 1663, c. 27.; 1701, c. 7.; 14. Rymer, 650. 766.; 2. Blackstone, 410.; Acts of Assembly, 1643. 1647, 1648.

MONCREIFF and WEBSTER—RICHARDSON and CONNELL,—Solicitors.

No. 15. Executrix of JOHN VANS AGNEW, of Sheuchan, Appellant and Respondent.—*Adam—Pyper.*

EARL of STAIR, and Others, Respondents and Appellants.  
*Sol.-Gen. Tindal—A. Bell.*

*Bona Fides—Expenses.*—The House of Lords having, on the 31st of July 1822, found, (reversing a judgment of the Court of Session), That sales made judicially upwards of thirty years previously, under a private statute, of parts of an entailed estate, were null, in respect of certain minor heirs of entail not having been properly brought before the Court; and that one of those heirs, who succeeded to the estate, was entitled to have the lands so sold restored to him; and the Court of Session having found the purchasers were bona fide possessors till the 31st July 1822, and not bound to account for the rents till Martinmas thereafter, and found neither party entitled to expenses;—the House of Lords reversed the judgment to the effect of finding the purchasers accountable for the rents due at Martinmas, without prejudice to any claim they might have for the crops of lands in their own possession reaped prior to that term; and quoad ultra affirmed the judgment.

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2D DIVISION.  
Lord Pitmilley.

THE circumstances out of which the present question arose, are detailed in 1. Shaw's Appeal Cases, No. 50, 51. and 57.

By the judgment of the House of Lords there mentioned, (31st July 1822), it was found, that 'the appellant, (John Vans Agnew), on behalf of himself, and the said several other minor heirs of entail, is entitled to have the sales, made under the several interlocutors aforesaid, reduced, and to have the lands restored to him, without prejudice to any question which may be made in the further proceedings in the Court of Session touching the rents of the entailed estates, and the application thereof, during any period of time.' Having then petitioned the Court of Session to apply the judgment, their Lordships altered the