Andrew Millar, Daniel Midwinter, William Innys, John Knapton, Samuel Birt, Daniel Brown, Thomas Longman, Richard Hett, Charles Hitch, John Shuckburgh, Mary Senex, John Rivington, Francis Gosling, *and the Executors of* Isaac Clarke, John Pemberton, *and* Aaron Ward, *of* London, *Booksellers*, - - - - - - - - - - } Appellants.

Alexander Kincaid, Gavin Hamilton, John Balfour, John Paton, William Drummond, John Traile, William Sands, Gideon Crawfurd, Lauchlan Hunter, Janet Brown, *Relict of* William Brown, *the Executors of* Alexander Symers, Alexander Brymer, William Hamilton, William Millar, Alexander Dunning, John Yare, Andrew Beveridge, *the Executors of* Gavin Drummond, *and* John Aitkin, *Booksellers in* Edinburgh; John Barrie, Andrew Stalker, Alexander Carlisle, *and* Robert Fowlis, *Booksellers in* Glasgow; - - - - - - - - } Respondents.

The CASE of the Respondents.

THE Appellants, who are Seventeen Booksellers in *London*, *jointly* instituted a Suit before the Lords of Council and Session at *Edinburgh*, against the Respondents *jointly*, who are Twenty Booksellers of *Edinburgh*, and Four Booksellers of *Glasgow*, and who are all *separate* Traders; and by their Libel charged,

'That, notwithstanding of the good Laws made, and in Force, for the Encouragement of Learning, 'by vesting of Copies of printed Books in the Authors or Purchasers of such Copies, *during the Times therein mentioned*, 'in an Act made in that behalf in the 8th Year of Queen *Anne*, and another Act made in the 12th Year of his present 'Majesty's Reign, *For the prohibiting the Importation of Books reprinted abroad, and first composed or written, and printed, in* Great-Britain; by the former of which *Statutes*, the *Property* of the Copy of every Book was vested in the 'Author, or his Assignees, *for the Term of Fourteen Years*; during which, if any other Person should print, reprint, 'or import, any such Books, without the Consent of the Proprietors thereof; or, knowing the same to be so printed 'or reprinted, should sell, publish, or expose to Sale, any such Books; that such Offenders should incur the *Forfeitures and Penalties in the Statute specified*; one Moiety thereof to *his Majesty*, and the other Moiety thereof to any 'Person who shall sue for the same.'——'And by the other of the said Statutes it was Enacted, That, from and after 'the 29th Day of *September* 1739 Years, it shall not be lawful for any Person or Persons to import or bring into this 'Kingdom any Book or Books first composed or written, and printed and published, in this Kingdom, and reprinted 'in any other Place or Country whatsoever; or, knowing the same to be so reprinted or imported, to sell, publish, 'or expose to Sale, any such Book or Books; and that under the Penalties and Forfeitures in the said last-mentioned 'Statute specified.'—'And moreover, That, abstracting from the Penalties of the said Statutes, all Persons contravening the Prohibitions thereof, and thereby encroaching on the Property of their Fellow-Subjects, to the great Discouragement of Learning, and Prejudice of the Interest of the Publick, become liable to an ordinary Action in Law or 'Equity, that they may be compelled to render *Damage* to the Party aggrieved, in respect of such Books as they 'should have sold, *contrary to the Prohibitions of the Law*, and to render up such Books or Copies as they might still 'have upon hand, and are not legally intitled to expose the same to Sale, as having been printed, reprinted, or imported, 'contrary to the Law, and to the private Interest of the lawful Proprietors of the Copies of such Books; and are further 'liable to pay full Costs of Suit to such Proprietors.'

'And that the Plaintiff the said *Andrew Millar* is lawfully vested in, and intitled to, the Property of the Copies of 'the following Books, *inter alios*, The History of the Reformation of the Church of *England*. The Second Edition 'corrected. In Three Volumes.'

'An Exposition of the Thirty-nine Articles of the Church of *England*. The Fourth Edition. The above Two 'written by *Gilbert Burnett*, D. D. late Lord Bishop of *Sarum*.'

'*The Economy of Love. The Third Edition.*'

'All the Works of *John Lock*, Esq; with alphabetical Tables. The Fourth Edition. In Three Volumes, 'Folio.'

'*The History of the Adventures of* Joseph Andrews, *and his Friend Mr.* Abraham Adams. Written in Imitation of 'the Manner of *Cervantes*, Author of *Don Quixote*. The Second Edition, revised and corrected by the Author. In 'Two Voulmes in Duodecimo.'

'Sermons on several important Subjects. By *James Foster*. In Two Volumes.'

'And that he the said *Andrew Millar*, and the other Plaintiffs before-named, are the Proprietors of the Copy of a 'Book, intituled, *Cyclopædia, or, An universal Dictionary of Arts and Sciences*. Written by *E. Chalmers*, F. R. S. 'which they had purchased at a very great Price, the Plaintiff *Andrew Millar* having paid no less than 100 *l.* Sterling 'for a 64th Share thereof.'

'And that yet true it was, that the Persons therein after-mentioned; *viz. Alexander Kincaid*, *Gavin Hamilton*, *John 'Balfour*, *John Paton*, *William Drummond*, *John Trail*, *William Sands*, *Gideon Crawfurd*, *Lauchlan Hunter*, 'Relict of *William Brown*, Bookseller, *Alexander Symers*, *Alexander Brymer*, *William Hamilton*, *William Millar*, *Alexander Dunning*, *John Yare*, *Andrew Beveridge*, *Gavin Drummond*, and *John Aitkin*, all Booksellers in *Edinburgh*; '*John Barrie*, *Andrew Stalker*, *Alexander Carlisle*, and *Robert Foulis*, all Booksellers in *Glasgow*; had *all* and *each of* 'them presumed to transgress the Laws before-mentioned, and to injure the Plaintiffs in their Property; *in so far as they*, 'the Persons complained upon, had, contrary to the Form, and true Intent and Meaning, of the said Statutes, *within 'their respective Houses and Shops* in *Edinburgh* and *Glasgow*, within *the Space of Three Months then last past*, or at some 'other Time or Times since the *First Publication* of the Books before-mentioned, taken upon them *to print*, *reprint*, 'or *import*, or cause to be printed, reprinted, or imported, the several Books before-mentioned, *or one or other of 'them*, or some Part of them, without the Consent of the Proprietors obtained in Writing: Or that the Defendants, 'knowing the said Books to be so printed, or reprinted, without Consent of the Proprietors, had taken upon them to '*sell*, *publish*, *or expose to Sale*, or had caused to be sold, published, or exposed to Sale, the Books before-mentioned, 'or some or other of them, without such Consent first had and obtained, as aforesaid.'

'And also, That the said Twenty-four Defendants had taken upon them, at the respective Places aforesaid, and at 'different Times since the 29th of *September* 1739. to *import*, or bring into this Kingdom *for Sale*, the Books before-'mentioned, or some of them: And that all the said Books were first composed or written, and printed and published, '*in* this Kingdom, and were thereafter printed in *Ireland*, *Holland*, or elsewhere *without* this Kingdom; or at least, 'that the Defendants, knowing the same to be so reprinted or imported, contrary to the Statute, had taken upon them 'to sell, publish, or expose to Sale, such Books.'

'And that therefore the Premises *being sufficiently tried and verified* before the Lords of Council and Session, the Defendants ought and should be adjudged to incur, suffer, and pay, the several *Penalties* and *Forfeitures*, which are 'enacted against Offenders in such Case by the above Statutes, which they the above Defendants had contravened, *at*

'least,

'*leaſt*, and *in the Option* of the Plaintiffs, That the *Defendants* ought to be ordained, by the Decree of the Lords, to 'pay *Damages* to the Plaintiffs for every ſurreptitious Copy, whether printed at home or abroad, of the Books, whereof 'the Copies are the Property of the Plaintiffs, that had been then already ſold by the Defendants, or *any of them*; and 'to deliver up all ſuch unlawful or ſurreptitious Copies as then remained in the Poſſeſſion, Power, or Cuſtody, of the 'Defendants, to the Plaintiffs, or their Order, to the end the ſame might be damaſked, deſtroyed, or diſpoſed 'of *at the Plaintiffs Pleaſure*.'

'And, laſtly, That the ſaid Defendants might be decerned and ordained, *jointly* and ſeverally, to pay to the Plaintiffs 'their full Coſts of Suit.'

9 June 1743. The Defendants appeared to this Libel.

To this extraordinary Suit, which the Appellants admit to be *the Firſt of the Kind in* Scotland, the Defendants, on the 9th Day of *June* 1743. appeared, and denied the Relevancy and Suggeſtions of the Libel.

23d June 1743.

The Cauſe being called before the Lord Ordinary, the Plaintiffs Advocate repeated their Libel, and the Acts of Parliament therein ſtated; and declared, That, AT PRESENT, *he did not inſiſt for the Penalties in the Acts of Parliament*, but only upon the common Law; and that, AT PRESENT, *he reſtricted their ſaid Libel* to the Property of the *Two Books*, the *Oeconomy of Love*, and the *Cyclopædia*; and for the *Profits* which the Defendants had made by *Sale* of thoſe Books, and the *Damages* ſuſtained by the Plaintiffs.

In Anſwer to which, the Defendants Counſel inſiſted, That the Defendants could not be ſubjected to the Penalties of the ſaid Statutes, and that the Plaintiffs had produced *no Title to the ſaid Two Books*; and that the Defendants were not liable by Law, in this ſort of Action, for any Damages whatſoever.

The Plaintiffs Counſel, by his Reply, inſiſted on Two Certificates under the Hand of the Clerk of *Stationers-Hall*, *London*, as a Proof, that the above Two Books are there entered as the Property of the Plaintiffs; and further inſiſted, That *ſuch Actions as this* were ſuſtained at Common Law by the Courts in *England*.

The Lord Ordinary took time to conſider of this Debate, and appointed both Parties to give in Memorials in Writing.

The Plaintiffs Memorial given in to the Lord Ordinary.

The Plaintiffs, by their Memorial, inſiſted, That they had brought their Action againſt the Defendants, founded *upon the ſaid Statutes*, for recovering *the Penalties thereby Enacted*, and upon the Common Law for recovering Damages—That, the Proceſs coming of courſe before the Lord Ordinary, the Plaintiffs did, *pro loco et tempore*, reſtrict their Libel to theſe *Two* Articles;—the *Cyclopædia*, or *Chalmers's Univerſal Dictionary*, and the *Oeconomy of Love*; and, *waving all Penalties Enacted by the foreſaid Statutes*, did inſiſt on the other Concluſion of their Libel for Damages; and the Plaintiffs inſiſted the Lord Ordinary would find their Action competent, and oblige the Defendants to diſcover upon Oath what Number of the aforeſaid Books they had upon Hand, and what Number of the ſame they had printed, or reprinted, or imported, or ſold, and at what Prices, and what Profits they made thereby: And, in Anſwer to the Objection made by the Defendants, That the Plaintiffs had produced no *Title* to the Two Books, to which the Libel was reſtricted, the Plaintiffs inſiſted, That they were *not obliged to bring any other Proof thereof*, than the Copies of the Two Entries in the Books of *Stationers-Hall*. The Copies of thoſe Entries are annexed to the Proceſs, and are in the Words following:

'*March* 2d, 1735.

Andrew Millar the Whole.

'Then entered for his Copy the *Oeconomy of Love*, a Poetical Eſſay.'

'*March* 24th, 1740. Then entered for their Copy *Cyclopædia*, or, *An Univerſal Dictionary of Arts and Sciences*, 'containing an Explication of the Terms, and an Account of the Things ſignified thereby, in the ſeveral Arts both 'Liberal and Mechanical; and the ſeveral Sciences Human and Divine: The Figures, Kinds, Properties, Productions, 'Preparations, and Uſes, of Things Natural and Artificial: The Riſe, Progreſs, and State, of Things Eccleſiaſti'cal, Civil, Military, and Commercial; with the ſeveral Syſtems, Sects, Opinions, *&c.* among Philoſophers, Divines, 'Mathematicians, Phyſicians, Antiquaries, Critics, *&c.* The Whole intended as a Courſe of Antient and Modern 'Learning, extracted from the beſt Authors, Dictionaries, Journals, Memoirs, Tranſactions, Ephemerides, *&c.* In 'ſeveral Languages. By *E. Chalmers*, F. R. S. The Fourth Edition, corrected, and amended. With ſome Addi'tions. In Two Volumes.'

	Shares.
Charles Rivington	1
Richard Hett	1
Samuel Birt	1
John Shuckburgh	2
Daniel Browne	2
Iſaac Clarke	2
Charles Hitch	2
Andrew Millar	3
John Pemberton	4
Mary Senex	4
John and Paul Knapton	4
Aaron Ward and Dan. Midwinter	5
Francis Gofling	6
Edward Symon	8
William Innys	8
Thomas Longman	11
Shares	64

The Defendants delivered in an Anſwer to the ſaid Memorial delivered by the Plaintiffs; and thereby, after relying on their foregoing Defences, inſiſted, That it is not *ſo much as libelled, that either of the Two Books in Queſtion were ever entered at* Stationers-Hall; and that the ſaid Certificates of the Entries in *Stationers-Hall* did not mention *the Plaintiffs Title to the Two Books* in Queſtion, or *the Conſent of the Proprietors, as required by the Statutes*; and, with reſpect to the Book called the *Oeconomy of Love*, the Defendants inſiſted the ſame was *firſt publiſhed anonymous*, and the Author thereof was never known; ſo that no Perſon whatſoever could be intitled to the Property of the ſaid Book; and that the only Action warranted by the Statute, was an Action for the Penalties.

28th June 1743. The Defendants Anſwer to the Plaintiffs ſaid Memorial.

The Plaintiffs delivered in a further Memorial to the Lord Ordinary; and, notwithſtanding they had before reſtricted their Libel to the *Two Books* before-mentioned, they, by this laſt Memorial, inſiſted to *reſtrict* the ſame, *pro loco et tempore*, to the *Three Books*, the *Cyclopædia*, the *Oeconomy of Love*, and the *Adventures of Joſeph Andrews*; and annexed thereto certain Inſtruments, which, the Plaintiffs pretended, made out their *Titles* to thoſe Books.

5th Feb. 1744. The Plaintiffs Second Memorial.

And the Plaintiffs further inſiſted, That, ſo far as their Libel was founded upon the Statute of the 12th Year of his preſent Majeſty, it required *no Title of Property* in the Perſons of the Plaintiffs, it being *Actio popularis*, which every Subject is intitled to purſue; and that therefore, as the Plaintiffs have *firſt* brought their Action againſt the Defendants *for recovering theſe Penalties*, they inſiſted there could be no Difficulty as to the *Relevancy* of the Action; and, *for Proof*, they *referred to the Defendants Oaths*, in relation to the ſeveral Facts, which, in Terms of the Statute, are neceſſary to be proved; *viz.*—Firſt, That they did *reprint, and import for Sale* from Foreign Parts, *all* and *each* of the *Three* Books above-mentioned—Secondly, Or that, knowing the ſame to be reprinted and imported, they did *ſell, and expoſe to Sale*, or cauſed the ſaid Books to be ſold, and expoſed to Sale—And, in the laſt place, what Numbers of thoſe Books, or Sheets thereof, were then in the Defendants Cuſtody or Poſſeſſion—And that, theſe *Facts being proved, the Application of the Law was obvious and eaſy*.

2. The Plaintiffs *waving all Penalties*, on the Statutes of the 8th of the Queen, thereby inſiſted againſt the Defendants for Damages at Common Law, or in Equity; the Proof whereof the Plaintiffs thereby inſiſted to refer to the Defendants reſpective Oaths: And further inſiſted, That, as to this Point, they were not obliged to enter into any Queſtion concerning the Entry of thoſe Books in *Stationers-Hall*; it being totally immaterial, whether they were ever entered there or not.

3. The Plaintiffs concluded this laſt Memorial with praying the Lord Ordinary to find the Action *competent* upon both Branches of the Libel; and therefore to ordain,

1. The Defendants to ſet forth upon Oath what Books they had imported, or ſold, *&c.* contrary to the Statute of the 12th of his preſent Majeſty; and that it being proved, That the Defendants have tranſgreſſed in the Terms of the aforeſaid Statute, to ordain ſuch of the aforeſaid Books, and Sheets thereof, as are upon Hand, to be damaſked, and made Waſte-paper of, and to *forfeit the Sum of* 5 l. *and double the Value of every Book ſo imported, ſold, publiſhed, or expoſed to Sale, the one Moiety thereof to his Majeſty, the other to the Plaintiffs.*
2. To ordain the Defendants to ſet forth upon Oath, upon the other Branches of the Libel, touching their having printed, reprinted, or imported, *&c.* any of the aforeſaid Books; as alſo to ſet forth upon Oath, what Numbers of thoſe Copies are upon Hand, what Numbers were by them reſpectively ſold, and at what Prices; and, upon Proof of the Fact, to ordain ſuch of the Books, or Sheets, as are upon Hand, to be delivered up; and to account to the Plaintiffs for the Copies, as they have reſpectively ſold; and, further, to pay Coſts of Suit.

19th Dec. 1744. The Defendants Anſwer to the Plaintiffs Second Memorial.

The Defendants delivered to the Lord Ordinary their Anſwer to this laſt Memorial.

4th July 1746. Final Interlocutor.

The Lord Ordinary having reported the Cauſe to the Lords of Seſſions, they found, 'That there lies no Action 'of Damages in this Caſe, and remitted the Cauſe to the Lord Ordinary to proceed accordingly.'

The

The Plaintiffs preferred their Petition to the Lords againſt this Interlocutor; to which the Defendants having, on the 29th of *July* 1746. put in their Anſwer,

The Cauſe came to be reheard before the Lords, who found, " That an Action of Damages lies at the Plaintiffs ' Inſtance, to the Extent of the Profits made by the Defendants, on ſuch of the Books libelled as have been entered in *Stationers-Hall*, and *reprinted* in *Britain*, and found that the Defendants ought *to diſcover, upon Oath, the Extent of the Profits*; and *with reſpect to the Books reprinted abroad and imported*, the Lords declared they would hear Parties Procurators on the Second *Sederunt* Day of *January* then next, upon this Queſtion, Within *what Length of Time the Penalties enacted by the 12th of King* George *can be ſued for.*'

The Lords found 'That the Claim for the Penalties enacted by the Act of the 12th of the King is limited to Two Years, by the Statutes of the 31ſt of Queen *Elizabeth*; and found, the Defendants muſt *diſcover, upon Oath, the Extent of the Profits on the Books reprinted abroad, and imported*, and ſold by them; and remitted to the Lord Ordinary to proceed accordingly.'

The Defendants petitioned the Lords to vary their Interlocutor of the 24th of *December* 1746; and thereby *inter alia* inſiſted, That the *Cyclopædia* was originally publiſhed by the Author in the Year 1727. and that therefore the Firſt 14 Years expired in 1741. and that Mr. *Chambers* died before that Period; ſo that the Plaintiffs ſole Right of printing that Book expired above Two Years *before* they commenced the preſent Action; and the Petitioners thereby prayed their Lordſhips to review the Interlocutor of the 24th of *December* 1746. and to find according to their former Interlocutor of the 4th of *July* 1746; that no Action for Damages lies in the preſent Caſe, at leaſt to confine their Interlocutor to ſuch of the Books as had been entered in *Stationers-Hall before Publication*, agreeable to the ſaid Statute of Queen *Anne*.

The Plaintiffs put in their Anſwer to the foregoing Petition, and thereby admitted the *Cyclopædia* was firſt printed and publiſhed in 1727. and that the Author died before the Year 1740; but inſiſted, that the Work was greatly altered and improved, with large *Additions*, in the *after* Editions of that Work, and rendered quite a different Work from that firſt publiſhed in the Year 1727. although it ſtill bore the ſame Name and Title, and was afterwards publiſhed under the Name of the Second, Third, and Fourth Editions.

The Cauſe being called before the Lords, was further adjourned to the 10th of *November*; and the Lords allowed Parties Procurators to be heard on the Cauſe, and 'particularly, Whether, *by the Law of* Scotland, *an Action lay at 'the Inſtance of an Author or Proprietor of a Book before the Statute of the 8th of Queen* Anne.'

The Cauſe was further heard and debated before the Lords of Seſſion: Who found,

1. 'That no Action lies on the Statute for Offences againſt the ſame, except when it is brought within Three 'Months of the committing ſuch Offence.

2. 'That no Action lies upon this Statute, except for ſuch Books as have been entered in *Stationers-Hall* in 'Terms of the Statute.

3. 'That no Action of Damages lies upon the Statute, and remitted the Lord Ordinary to proceed accord-'ingly.

The Plaintiffs petitioned the Lords to vary their laſt Interlocutor.

The Defendants having put in their Anſwer to this Petition, the Cauſe came on again before the Lords of Seſſion, on the

When their Lordſhips found, That *no Action of Damages does lie upon, or in Conſequence of, the Statute, but only for the Penalties: And therefore adhered to their former Interlocutor.*

The Plaintiffs *proceeded upon this laſt-mentioned Interlocutor*; and, on the

The Cauſe being brought on before the Lord Ordinary, the Plaintiffs Counſel reſumed the Interlocutors of the 2d *Dec.* 1747. and 7th *June* 1748. finding, 'That no Action lies on the Statute, except for ſuch Books as had been 'entered in *Stationers-Hall* in Terms of the Statute, and remitting to the Lord Ordinary to proceed further in the 'Cauſe;' and repreſented, That it was always objected by the Defendants, from the Beginning of this Cauſe, to the Entries of all the Three Books; *viz. Chalmers*'s *Dictionary*, *The Oeconomy of Love*, and the *Hiſtory of Joſeph Andrews*; and albeit ſatisfying Anſwers were made to theſe Objections, both in the former Pleadings, and in the Petitions and Anſwers, That yet that Point about the Entry of theſe Books in *Stationers-Hall* had hitherto received no Deciſion in the Court; and therefore inſiſted for the Plaintiffs, That the Lord Ordinary would find, That theſe Three Books were duly entered in *Stationers-Hall*, in reſpect of the Three Certificates of ſuch Entries produced in the Proceſs, that ſo the Plaintiffs might proceed in what remained undetermined in the Cauſe.

The Cauſe being again called before the Lord Ordinary, the Plaintiffs Counſel again reſumed the former Interlocutors; and prayed it might be *found*, That the Books before-mentioned *were duly entered in* Stationers-Hall *in Terms of the Statute*; and *inſiſted* againſt the Defendants, *For the Penalties in the Statute*: Whereunto the Defendants Counſel anſwered, That *for the preſent* he would not inſiſt on any Objection to the Evidence, *with reſpect to the Entry* of the Books in *Stationers-Hall*, but agreed to diſpute the Point with reſpect to the *Penalties*, upon the Suppoſition that they were regularly entered.—Whereupon the Lord Ordinary, in reſpect the Defendants Counſel did not *at preſent* object to the Evidence of the Books being regularly entered in *Stationers-Hall*, found no Neceſſity for determining that Point, *but allowed the Proceſs* FOR THE PENALTIES *to proceed, as if the Books were regularly entered.*

After thus proceeding under the ſaid Interlocutors, the Plaintiffs, on the Firſt Day of *December* 1749. interpoſed their Appeal to your Lordſhips from the ſaid Interlocutors of the 4th of *July* 1746. and the Interlocutor of the 24th of *December* 1746. in ſo far as this laſt finds, That the Action of Damages did only lie at the Plaintiffs Inſtance, to the Extent of the Profits made by the Defendants on ſuch of the Books as had been entered in *Stationers-Hall*, and reprinted in *Britain*; and alſo from the Interlocutors of the 2d *December* 1747. and the 7th of *June* 1748: But the Reſpondents humbly hope the Appellants ſaid Appeal ſhall be diſmiſſed, with Coſts, among others, for the following

REASONS:

For that this Action, which is *of the Firſt Impreſſion in* Scotland, appears, from the Libel, to be *complicated.*—One Branch is, for the Recovery of *different* Penalties given by *different* Statutes; one Half to the *Crown*, the other to the *Informer*; and yet the King's Advocate is not a Party, nor do the Plaintiffs ſue *as well for the Crown as themſelves.*—The Second Branch is, an Action upon the Statutes *for Damages*; which is not authorized by the Statutes: And, if it is taken as an Action upon the Caſe, it cannot be joined with an Action for the Penalties.

For that it is brought by Perſons, who ſtate in their Libel *ſeparate* Rights to *ſeveral* Books, on which their Libel is founded againſt the Defendants, who are *Twenty-four ſeparate* Traders, without charging them to be *joint* Offenders.

For that if, in either Light, this Sort of Action could be maintained, the Plaintiffs have not purſued the Requiſites of this Statute, the Plaintiffs Title from the Author not being in any Inſtance *proved* or *entered* as the Act requires; and particularly as to the *Cyclopædia*, the Fourteen Years allowed by the Statute were expired, and the Author was dead long before the Action was brought.

That

Objection. That this is an Action in Nature of a Bill in Equity, for an Account of Profits, waving the Penalties.

Anſwer. This is a Miſtake in Fact; for the Libel is expreſly for *Penalties* and *Damages*, and the Attempt to vary the Nature of the Cauſe was *illegal*, and appears not to have been *really intended*: For, as the Plaintiffs firſt *reſtricted* their Libel to *Two* Books, and *waved* Penalties; and, in the next place, *reſtricted* it to *Three* Books, and *inſiſted* on the Penalties under the Act of the 12th of his preſent Majeſty; ſo in the very laſt Step of the Cauſe they *reſumed*, and inſiſted to proceed *for the Penalties* given by the Statute of Queen *Anne*.

IV. That by the Law of *Scotland*, and the Method of proceeding in the Court of Seſſion, whether as at Law, or *ex nobili officio*, Defendants are not *put to their Oaths* but *after Iſſue joined*, and as the *concluſive Evidence* between the Parties; and even that is not allowed for *Penalties*, or to *aſcertain Damages*.

For which, among other Reaſons to be offered at the Hearing, the Reſpondents humbly hope the Appellants ſaid Appeal ſhall be Diſmiſſed with Coſts; and that this Honourable Houſe will make ſuch other Order in the Premiſes, as ſhall be juſt.

11° February 1750.

A. HUME-CAMPBELL.
C. YORKE.

It is Declard That the Action brought by the Appell.ts in the Court of Seſion in Scotland
improperly & inconsistently brought, by demanding at the same time a Discovery and Accou
the Profits of the Books in Question, and also the Penalties of the Act of Parliam.t which the Appell
have never absolutely waived in the Proceedings below, and also by joyning several Pursuers
claiming distinct and independent Rights in different Books in the same Action, and that there
the points determin'd by the said Interloquitors could not regularly come in Question in the Cau
and therefore Order'd & Adjudg'd That the said several Interloquitors be Reverſ'd without
prejudice to the Determination of any of the said points, when the same shall be properly
brought in Judgment; And it is hereby also Declard, That the Libel in this Cause is
non Relevant, and Order'd That the said Court of Seſion do proceed accordingly.

Millar, *and Others*, Appellants.

Kincaid, *and Others*, Reſpondents.

The CASE of the Reſpondents.

To be Heard at the Bar of the HOUSE OF PEERS, *on the Day of*

175