Sir William Blackstone, Commentaries on the Laws of England, Vol. II (NY: Garland, 1978)

of the land who hath ſown or planted it, whether he be owner of the inheritance, or of a leſs eſtate: which emblements are diſtinct from the real eſtate in the land, and ſubject to many, though not all, the incidents attending perſonal chattels. They were deviſable by teſtament before the ſtatute of wills[m], and at the death of the owner ſhall veſt in his executor and not his heir, they are forfeitable by outlawry in a perſonal action[n]: and by the ſtatute 11 Geo. II. c. 19. though not by the common law[o], they may be diſtreined for rent arrere. The reaſon for admitting the acquiſition of this ſpecial property, by tenants who have temporary intereſts, was formerly given[p]; and it was extended to tenants in fee, principally for the benefit of their creditors: and therefore, though the emblements are aſſets in the hands of the executor, are forfeitable upon outlawry, and diſtreinable for rent, they are not in other reſpects conſidered as perſonal chattels; and particularly, they are not the object of larciny, before they are ſevered from the ground[q].

6. THE doctrine of property ariſing from *acceſſion* is alſo grounded on the right of occupancy. By the Roman law, if any given corporeal ſubſtance received afterwards an acceſſion by natural or by artificial meahs, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the converſion of wood or metal into veſſels and utenſils, the original owner of the thing was entitled by his right of poſſeſſion to the property of it under ſuch it's ſtate of improvement[r]: but if the thing itſelf, by ſuch operation, was changed into a different ſpecies, as by making wine, oil, or bread, out of another's grapes, olives, or wheat, it belonged to the new operator; who was only to make a ſatisfaction to the former proprietor for the materials, which he had ſo converted[s]. And theſe doctrines are implicitly copied and adopted by our Bracton[t], and have ſince been confirmed

[m] Perk. §. 512.
[n] Bro. *abr. tit. emblements.* 22. 5 Rep. 116.
[o] 1 Roll. Abr. 666.
[p] pag. 122. 146.
[q] 3 Inſt. 109.
[r] *Inſt.* 2. 1. 25, 26. 31. *Ff.* 6. 1. 5.
[s] *Inſt.* 2. 1. 25. 34.
[t] *l.* 2. *c.* 2 & 3.

by

by many reſolutions of the courts[u]. It hath even been held, that if one takes away and cloaths another's wife or ſon, and afterwards they return home, the garments ſhall ceaſe to be his property who provided them, being annexed to the perſon of the child or woman[w].

7. BUT in the caſe of *confuſion* of goods, where thoſe of two perſons are ſo intermixed, that the ſeveral portions can be no longer diſtinguiſhed, the Engliſh law partly agrees with, and partly differs from, the civil. If the intermixture be by conſent, I apprehend that in both laws the proprietors have an intereſt in common, in proportion to their reſpective ſhares[x]. But, if one wilfully intermixes his money, corn, or hay, with that of another man, without his approbation or knowlege, or caſts gold in like manner into another's melting pot or crucible, the civil law, though it gives the ſole property of the whole to him who has not interfered in the mixture, yet allows a ſatisfaction to the other for what he has ſo improvidently loſt[y]. But our law, to guard againſt fraud, gives the entire property, without any account, to him whoſe original dominion is invaded, and endeavoured to be rendered uncertain, without his own conſent[z].

8. THERE is ſtill another ſpecies of property, which (if it ſubſiſts by the common law) being grounded on labour and invention, is more properly reducible to the head of occupancy than any other; ſince the right of occupancy itſelf is ſuppoſed by Mr. Locke[a], and many others[b], to be founded on the perſonal labour of the occupant. And this is the right, which an author may be ſuppoſed to have in his own original literary compoſitions: ſo that no other perſon without his leave may publiſh or make profit of the copies. When a man by the exertion of his rational powers has produced an original work, he ſeems to have clearly a right to diſpoſe of that identical work as he pleaſes, and any attempt to vary the

[u] Bro *Abr. tit. propertie.* 23. Moor. 20. Poph. 38.
[w] Moor. 214.
[x] *Inſt.* 2. 1. 27, 28. 2 Vern. 217.
[y] *Inſt.* 2. 1. 28.
[z] Poph. 38. 2 Bulſtr. 325. 2 Hal. P. C. 513. 2 Vern. 516.
[a] on Gov. part 2. ch. 5.
[b] See page 8.

diſpoſition he has made of it, appears to be an invaſion of that right. Now the identity of a literary compoſition conſiſts intirely in the *ſentiment* and the *language*; the ſame conceptions, cloathed in the ſame words, muſt neceſſarily be the ſame compoſition: and whatever method be taken of exhibiting that compoſition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies or at any period of time, it is always the identical work of the author which is ſo exhibited; and no other man (it hath been thought) can have a right to exhibit it; eſpecially for profit, without the author's conſent. This conſent may perhaps be tacitly given to all mankind, when an author ſuffers his work to be publiſhed by another hand, without any claim or reſerve of right, and without ſtamping on it any marks of ownerſhip; it being then a preſent to the public, like building a church or bridge, or laying out a new highway: but, in caſe the author ſells a ſingle book, or totally grants the copyright, it hath been ſuppoſed, in the one caſe, that the buyer hath no more right to multiply copies of that book for ſale, than he hath to imitate for the like purpoſe the ticket which is bought for admiſſion to an opera or a concert; and that, in the other, the whole property, with all it's excluſive rights, is perpetually tranſferred to the grantee. On the other hand it is urged, that though the excluſive property of the manuſcript, and all which it contains, undoubtedly belongs to the author, *before* it is printed or publiſhed; yet from the inſtant of publication, the excluſive right of an author or his aſſigns to the ſole communication of his ideas immediately vaniſhes and evaporates; as being a right of too ſubtile and unſubſtantial a nature to become the ſubject of property at the common law, and only capable of being guarded by poſitive ſtatutes and ſpecial proviſions of the magiſtrate.

THE Roman law adjudged, that if one man wrote any thing on the paper or parchment of another, the writing ſhould belong to the owner of the blank materials[c]: meaning thereby the mechanical operation of writing, for which it directed the ſcribe

[c] *Si in chartis membranisve tuis carmen bujus corporis non Titius ſed tu dominus eſſe videris. Inſt.* 2. 1. 33. See pag. 404.

ſcribe to receive a ſatisfaction; for, in works of genius and invention, as in painting on another man's canvas, the ſame law[d] gave the canvas to the painter. As to any other property in the works of the underſtanding, the law is ſilent; though the ſale of literary copies, for the purpoſes of recital or multiplication, is certainly as antient as the times of Terence[e], Martial[f], and Statius[g]. Neither with us in England hath there been (till very lately) any final[h] determination upon the right of authors at the common law.

BUT whatever inherent copyright might have been ſuppoſed to ſubſiſt by the common law, the ſtatute 8 Anh. c. 19. (amended by ſtatute 15 Geo. III. c. 53.) hath now declared that the author and his aſſigns ſhall have the ſole liberty of printing and reprinting his works for the term of fourteen years, *and no longer*[i]; and hath alſo protected that property by additional penalties and forfeitures: directing farther, that if, at the end of that term, the author himſelf be living, the right ſhall then return to him for another term of the ſame duration:—and a ſimilar privilege is extended to the inventors of prints and engravings, for the term of eight and twenty years, by the ſtatutes 8 Geo. II. c. 13. and 7 Geo. III. c. 38. beſides an action for damages, with double coſts, by ſtatute 17 Geo. III. c. 57. All which parliamentary protections appear to have been ſuggeſted by the exception in the ſtatute of monopolies, 21 Jac. I. c. 3. which allows a royal patent of privilege to be granted for fourteen years to any inventor of a new manufacture, for the ſole working or making of the ſame; by virtue whereof it is held, that a temporary property therein becomes veſted in the king's patentee[k].

[d] *Ibid.* §. 34.

[e] *Prol. in Eunuch.* 20.

[f] *Epigr.* i. 67. iv. 72. xiii. 3. xiv. 194.

[g] *Juv.* vii. 83.

[h] Since this was firſt written, it was determined in the caſe of *Miller v. Taylor* in *B. R. Paſch.* 9. Geo. III. 1769, that an excluſive and permanent copyright in authors ſubſiſted by the common law. But afterwards, in the caſe of *Donaldſon v. Becket*, before the houſe of lords, 22 *Febr.* 1774, it was held that no copyright now ſubſiſts in authors, after the expiration of the ſeveral terms created by the ſtatute of queen Anne.

[i] By ſtatute 15 Geo. III. c. 53. ſome additional privileges in this reſpect are granted to the univerſities, and certain other learned ſocieties.

[k] 1 Vern. 62.