

March 6.

Gyles and Wilcox.

IN July 1736 *The History of the Pleas of the Crown* was published by Gyles and others, who were the Proprietors of that Copy. In the August following Wilcox and Carl contracted with Barlow to pay him 60 l. for making an Abridgment of that Book; accordingly Barlow undertook to do the same, but in executing it it was doubtful whether the Book that he compiled was an Abridgment of the other, or whether it was only the same Book shortened and made less. Several Sheets of this last mentioned Book were printed, and thereupon Gyles and others, who were the Proprietors of the Copy before mentioned, brought their present Bill against Wilcox and Barlow, praying to have an Injunction, to restrain them from printing the Work that was intended as an Abridgment of the other.

Lord Chancellor said, that this Bill is founded upon the Statute of the 8th of Queen Anne; and though it has been said by the Counsel for Wilcox, that this Statute tends to the creating of a Monopoly, yet his Lordship declar'd he could not be of that Opinion. It is an Act made for the Encouragement of Learning, and is useful to that End. This shews that the Act is for the publick Benefit and Advantage, and therefore the Act is not to be construed strictly, but according to the Intention of the Legislature; however that Intention must be formed from the Words of the Statute. The Words in the Statute all along are *any such Book or Books*; and therefore, when Complaints of this Sort have come before the Court, the single Question has constantly been, Whether the second Book has been the same

The Stat. of 8 A. cannot be said to tend to a Monopoly.

The Stat. of 8 A. shall be said to be made for the publick Benefit and Advantage, by reason that it tends to the Advancement of Learning.

This Statute must not be construed

strictly, but according to the Intention of the Legislature.

When Complaints have been made of a Book's being printed contrary to the Statute, the only Question has been, Whether it is the same Book with the former?

same Book with the former? And where the second Book has no otherwise differ'd from the former than by reducing or shortning the Stile, or by leaving out some of the Words of the first Book, the second Book has been construed the same with the former. But where the second Book has been an Abridgment of the former, it has been understood not to be the same Book, and therefore to be out of the Act. Within the former Part of this Distinction the Case fell which has been cited by the Counsel for the Plaintiff, determined on a Motion the 9th of May last; there a Book had been published, containing *The History of the Life of the late Czar of Muscovy*. The second Book that was published no otherwise varied from the first, than by leaving out certain Parts of the former, and only by that Means shortning it, and the Court was of Opinion, that an Injunction ought to be granted to restrain the Printing of that second Book. To make an Abridgment is a Work of Judgment; and the Question in the present Case is, Whether the Book that is now before the Court is an Abridgment or not? It has been rightly said by the Counsel for *Wilcox*, that this Court is now to make the same Construction of the Act, as if *The History of the Pleas of the Crown* were entered in the Book of the *Stationers Company*, and an Action at Law brought for the Penalty for Printing the second Book. Whether the second Book is the same Book with the former is a Matter of Fact, and a Fact of Difficulty to be determined. It is hard to say in what Manner the Court ought to determine this Fact; and his Lordship said he could not see how it could be determined but by reading both the Books over, and that would be hardly proper for him to do. It has been hinted, that as this is a Matter of Fact the Court may send it to be tried before a Jury, but the Court is not confined to send all Matters of Fact to be tried in that Way. Where the Matter indeed consists of a single Fact, or of two or

Where the second Book has no otherwise differed from the former than by reducing or shortning the Stile, or by leaving out some of the Words of the first Book, the 2d Book has been construed to be the same Book with the former; but where the 2d Book has been an Abridgment of the former, it has been understood not to be the same Book. Where one Book shall be said to be an Abridgment of another. Where it is necessary that a Book should be enter'd in the Book of the *Stationers Company*: Whether the 2d Book is the same Book with the former is a Matter of Fact. In what Manner the Court will determine the Question, Whether the 2d Book was the same Book with the former.

5 B

three

Where a Matter indeed consists of a single Fact, or indeed of two or three Facts, the Court does take that Method to determine them by directing an Issue; but where the Facts are of an extensive Nature, as Matters of Accounts are, or the like, the Court does not take that Method to determine them,

Where the Court will send it to a Master to inquire, Whether one Book is a fair Abridgment of another, or only a colourable one.

Where the Court will direct that the Master shall be attended by two Persons of the Profession of the Law, in order to assist him in determining whether one Book is a fair Abridgment of another, or whether it is only a colourable one.

three Facts, the Court does take that Method to determine them, but where the Facts are of an extensive Nature, as Matters of Account, or the like, the Court does not take that Method to determine them, but directs them to be inquired of before the Master. His Lordship said that he did not see what other Method he could take to determine the present Question, than by directing an Inquiry before the Master, to see whether the Book in Question was a fair Abridgment or only a colourable one. And in order that the Master may better determine this Matter, his Lordship said that he did not see but he ought to direct, that the Master should be attended by two Persons skilled in the Profession of the Law, to assist him. And Directions of this Sort have been made in Mathematical and Algebraical Inquiries. But his Lordship said he should choose, that two Persons should be agreed upon by Consent of both Parties to attend the Master in this Matter, rather than that the Court should appoint them; for which Reason his Lordship said, he would direct that the Matter should stand over for a Week, to see whether the Parties in the mean Time might not come into a Consent of this Sort amongst themselves, and if they should not, he would then give a Direction about it himself. And so his Lordship was pleased to order accordingly. *Vide the next Case.*

When a Question relating to a Mathematical Matter has been sent to be inquired into by the Master. Where the Court will direct, that two Persons skill'd in Mathematical Matters shall attend the Master in order to assist him in the Inquiry.

March 13.

Gyles and Wilcox.

Ante 368.

THIS Matter now coming on again the Parties said, that they had each of them fix'd upon one Counsel.

Lord Chancellor said, that the best Way was to leave all Matters in Difference to the Arbitration of those two Counsel, and if they should not be able to make an Award, that then they should have Liberty to choose an Umpire. Accordingly the same was agreed to.