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The argument turns in a circle. "The copy is made "common, because the law does not protect it: and "the law can not protect it, because it is made com-"mon."

The author does not mean to make it common: and if the law says "he ought to have the copy after publica-"tion," it is a several property, easily protected, ascertained, and secured.

THE WHOLE then must finally resolve in this question, "whether it is agreeable to *natural principles*, moral "*justice* and *fitness*, to allow him the copy, *after* pub-"lication, as well as *before*."

The *general consent* of this kingdom, for ages, is on the *affirmative* side. The *legislative* authority has *taken it for granted*; and interposed *penalties* to *protect it for a time*.

The single opinion of such a man as *Milton*, speaking, after much consideration, upon the very point is stronger than any inferences from gathering acorns and seizing a vacant piece of ground; when the writers, so far from thinking of the very point, speak of an imaginary state of nature before the invention of letters.

The *judicial opinions* of those eminent lawyers and great men who *granted* or *continued* INJUNCTIONS, in cases *after* publication, *not within* 8 Queen *Ann*; uncontradicted by any book, judgment, or saying; must weigh in *any* question of law; much more, in a question of mere theory and speculation as to what is agreeable or repugnant to *natural principles*. I look upon *these* injunctions, as *equal* to any final decree.

Whoever has attended the court of chancery, knows that if an injunction in the *nature* of an injunction *to stay waste*, is *granted upon motion*, or *continued after answer*, it is in vain to go to *hearing*. For, such an injunction never is granted upon motion, *unless* the *legal property* of the plaintiff be *made out*; nor continued after answer, *unless* it still *remains clear*, allowing all the defendant has said. In *such* a case, the defendant is always advised, either to *acquiesce*, or *appeal*: for, he never can make a better *defence* than is stated upon his own answer. [6 Ves. 695. 698. 702.]

This case is not sent hither from the Court of Chancery, upon any doubt of theirs. There never was a doubt in the Court of Chancery, till a doubt was raised there from decency, upon a *supposed* doubt in *this* Court, in the case of *Tonson* and *Collins*. There is not an instance of an injunction refused, till it was refused upon the grounds of that doubt. The Court of Chancery *never* grant injunctions in cases of this kind, where there is any *doubt*.

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Therefore they refused it, when they *thought* there was a doubt. That case was argued twice, with solemnity; and after the second argument, it was referred to the Exchequer-Chamber, to be argued before all the judges.

That reference did not arise from any difference of opinion, or difficulty among us. On the contrary, we suspected collusion; and that if we gave judgment for the plaintiff, there certainly would be *no* writ of ERROR. We wished to take the opinion of *all* the judges. We were afterwards clearly informed of the truth of the collusion: and therefore the cause proceeded no further.

But while it hung under this *appearance* of difficulty, there was sufficient ground for the court of chancery to say, "the property was *doubtful*." They did not send it to law: they left the party to follow his *legal* remedy. A *doubtful* legal title must be tried at law, before it can be made the ground of an injunction. Injunctions of *this* kind are rightly and properly refused. In a *doubtful* case, it would be *iniquity* to grant them; because, if it should come out "that the plaintiff has *no* legal title," the defendant is injured by the injunction, and can have no reparation.

IF it is agreeable to natural principles, to allow the copy *after* publication, I am warranted by the admission which allows it *before* publication, to say, "this is *com-* "*mon law*."

There is another *admission* equally conclusive.

[2401]
2d Admission.

It is, and has all along been admitted, "that by the "*common* law, the KING's copy continues *after* publi- "cation; and that the unanimous judgment of this Court, "in the case of *Baskett* and *The University of Cam-* "*bridge* *, is right."

* Mich. 1758. 32 G. 2. V. ante, p. 661.

The *king* has no property in the art of printing. The ridiculous conceit of *Atkins* was exploded at the time.

The *king* has no authority to restrain the press, on account of the subject-matter upon which the author writes, or his manner of treating it.

The *king* can not, by law, grant an exclusive privilege to print any book which does not belong to himself.

Crown-copies are, as in the case of an author, civil property: which is deduced, as in the case of an author, from the king's right of original publication. The *kind* of property in the crown or a patentee from the crown, is just the *same*; incorporeal, incapable of violation but by a civil injury, and only to be vindicated by the same remedy, an action upon the case, or a bill in equity.

There were no questions in *Westminster-Hall, before the restoration*, as to *crown* copies. The *reason* is very obvious: it will occur to every one that hears me. The

fact, however, is so: there were none, before the restoration. 1769.

Upon every patent which has been litigated *since*, the counsel for the patentee, (whatever else might be thrown out, or whatever encouragement they might have, between the restoration and revolution, to throw out notions of power and prerogative,) have tortured their invention, to stand upon PROPERTY. MILLAR v. TAYLOR.

Upon *Rolle's Abridgement*, they argued from the *Year-Books*, which are there abridged, "that the Year-Books "having been compiled at the *King's expence*, were the "King's *property*, and therefore the printing of them "belonged to his patentee."

Upon *Croke's Reports*, they contended, "that the *king* "*paid the judges* who made the decisions: *Ergo*, the "decisions were *his*." The judges of *Westminster-Hall* thought, they belonged to the *author*; that is, to the purchaser from, or the executor of the author: but, so far the controversy turned upon property.

In *Seymour*'s case, 1 *Mod.* 256. (who printed *Gadbury*'s Almanac, without leave of the Stationers Company, who had a patent for the sole printing of Almanacs,) *Pemberton* resorted to *property*. He argued (besides arguing from the prerogative,) "that an Almanac has *no certain author*: "therefore the king has the *property*; and by consequence, "may grant his property." It was far fetched: and it is truly said, "that the consequence did *not* follow." For, if there was no certain author, the property would *not* be the king's, but *common*. *Pemberton* was a very able lawyer; and saw the necessity of getting at *property*, if he could make it out. [2402]

All the decrees in Chancery, and the judgments at common law upon *Almanacs*, are now out of the case, and all the doctrine of prerogative rejected, by what was done in the case of *The Stationers Company* and *Partridge*.

It came on, in the year 1709, before Lord *Cowper*, on continuing the injunction. There is no report of it, I believe, in print: at least, I have not seen any. I have read the bill and answer. The bill puts it upon all the prerogative notions of power; and insists, that the king's patentee had a sole exclusive right of printing Almanacs. The answer insists, that these were extravagant illegal notions; that they were taken up at times when the prerogative ran high, and when the dispensing power was allowed: and it insists, that the question ought, since the revolution, to be argued upon proper principles, consistent with the rights and privileges of the subject. The defendants denied the authority of all the cases stated by

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the bill, as far as they went upon *prerogative* right. Lord *Cowper* continued the injunction till hearing. I have office-copies of all the orders and pleas that were cited: I dare say, I have thirty or forty of them. It appears, that these decrees were all read; and that the judgment of the House of Lords was read and gone through. Lord *Harcourt* afterwards heard the cause. He did not choose, in a case about Almanacs, to decide upon prerogative. He therefore made a case of it, for the opinion of this court; Lord *Parker* being then chief justice. This court, so far as it went, inclined against the right of the crown in Almanacs. But, to this hour, it has never been determined: and the injunction granted by Lord *Cowper* still continues.

I have *Salkeld*'s manuscript report (and have had it many years) of what passed in this Court in the course of the argument of this case of *The Company of Stationers* against *Partridge*. I do not know whether it is got into print: I have not seen it in print. Mr. *York* had a copy of it, when he argued the case of *The University of Cambridge* and *Baskett*. Mr. *Salkeld* argued for the defendant *Partridge*: Sir *Peter King*, for the plaintiffs.

[2403] I will state to you, so far as is material to the argument, how they put it, and the only grounds that they thought tenable.

Mr. *Salkeld*, after positively and expressly denying any prerogative in the crown over the press, or any power to grant any exclusive privilege, says, "I take "the rule, in all these cases, to be, that where the crown "has a *property* or *right of copy*, the King may grant "it. The crown may grant the sole printing of *Bibles* "*in the English Translation*; because it was made at "*the King's charge*. The same reason holds, as to the "*Statutes*, *Year-Books*, and *Common-Prayer-Books*."

Sir *Peter King*, for the plaintiffs, argues thus—(throwing out, at the same time, the things that I have already mentioned; though he don't seem to be very serious in it—) "I argue, that *if* the crown has a right to the "Common-Prayer-Book, it has a right to *every part* of "it. And the Calendar is a part of the Common-Prayer-"Book. And an Almanac is the same thing with the "Calendar, *&c.*

PARKER, Chief Justice, speaks to nothing said at the bar, but only "whether the Calendar is part of the Com-"mon-Prayer-Book." And as to that, he goes back as far as to the council of *Nice*; and doubts whether it is, or rather indeed thinks that it is not part of it: he says, it may be an *index*, but is *no part* of it.

Mr. Justice POWELL says—"you must distinguish

" this from the common cases of monopolies; by shew- 1769.
" ing some *property* in the crown, and bringing it within
" the case of the Common-Prayer-Book." And he MILLAR
rather inclined to think, " that Almanacs might be the v.
" King's;" because there is a *trial by Almanacs*. TAYLOR.

To which, Lord PARKER replied, " that he never
" heard of such a thing as a *trial by Almanac*."

They leave it upon this. It stood over, for another argument, to see if they could make it like the case of the Common-Prayer-Book. I don't know what happened afterwards: but there never was any judgment; and though I have made strict inquiry, I don't find that there was ever any opinion given.

I heard Lord HARDWICKE say what Mr. Justice WILLES has quoted, as to these arguments from property in support of the *King's* right, necessarily inferring an *author's*.

The case of *Baskett* and *the University of Cambridge* [2404]
was *then depending* in this court, when Lord HARDWICKE made use of that expression or argument: it has, since, been determined. We had no idea of any *prerogative* in the crown over the press; or of any power to restrain it by *exclusive* privileges, or of any power to control the subject-matter on which a man might write, or the manner in which he might treat it. We rested upon *property* from the King's *right of original publication*.

Acts of Parliament are the works of the *legislature*: and the publication of them has always belonged to the King, as the *executive* part, and as the *head and sovereign*.

The *art of printing* has *only varied the mode*. And, though printing be *within* legal memory, we thought the *usage* since the invention of printing, very material.

Whoever looks into Mr. *Yorke's* argument, upon which the opinion of the court in that case in a great measure went, (I do not say *throughout*, but in a *great measure*,) will see the great pains he takes to shew the original property in the crown.

Though the King may grant a *concurrent* right; (for, in that case the grant was of a concurrent right, and he might grant it to ten thousand; he might grant it to every member of the Stationers Company; he might grant it to every bookseller;) we had no idea " that the
" first edition of Acts of Parliament made the copy *com-*
" *mon*." And yet any man may transcribe an Act of Parliament, or a record: and any person may make laborious searches and abstracts from records, and have a right to print them.

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Lord HARDWICKE had before reasoned in the same way, in the case of *Manby and others* against *Owen and others*, on 8th *April* 1755, relating to the Sessions-Paper. The plaintiffs had bought the Sessions-Paper of my Lord Mayor, and had (I think) given him an hundred guineas for it. And upon an affidavit "that the Lord "Mayor had always appointed the printers of that pa- "per; and that it was usual for the Lord Mayor to take "a sum of money for it; and that the defendant had "pirated it;" Lord HARDWICKE considered the grant as property in the copy, and granted the injunction upon the foot of *property;* and never dreamt "that the first edition of it made it *common*." This was acquiesced under: and the defendants were not advised to proceed further. Nothing is more manifest, than that the injunction proceeded upon the infringement of the plaintiff's property: for, *as a contempt of the court* of the *Old Baily*, the Court of *Chancery* would not have interfered. But they were of opinion "that the *copy* was *transferred* "to the plaintiff, and that it was *not made common* by "the first publication."

[2405]

If the Common Law be so in *these* cases, it must also be so in the case of an *author*. All the reasoning "that "subsequent editions should be *correct*," holds equally to an *author*. His *name* ought not to be used, against his will. It is an *injury*, by a faulty, ignorant and incorrect edition, to disgrace his work and mislead the reader.

The copy of the *Hebrew* Bible, the *Greek* Testament, or the *Septuagint* does not belong to the King: It is *common*. But the *English* translation he *bought:* therefore it has been concluded to be *his property*. If any man should turn the Psalms, or the writings of *Solomon*, or *Job*, into verse, the King could not stop the printing or sale of such a work: it is the author's work. The King has no power or control over the subject-matter: his power rests in *property*. His whole right rests upon the foundation of *property in the copy* by the *Common Law*. What *other* ground can there be for the King's having a property in the *Latin Grammar*, (which is one of his ancientest copies,) than that it was originally composed at *his expence?* Whatever the *Common Law* says of *property* in the KING's case, *from analogy to the case of authors*, must hold *conclusively*, in my apprehension, *with regard to* AUTHORS.

* 8 Ann. c. 19.

I always thought the objection from the * Act of Parliament, the most *plausible*. It has generally struck, at *first view*. But, upon *consideration*, it is, I think, impossible to *imply* this act into an *abolition* of the Common-

Law right, if it *did* exist; or into a declaration "that "*no* such right *ever existed.*"

The BILL was brought in, upon the petition of the proprietors, to *secure* their property *for ever*, by *penalties;* the only way in which *they thought* it *could* be secured; having had *no experience of any other;* there being no example of an action at law tried, or any idea "that a bill would lie for an injunction and relief in "equity."

An alteration was made in the committee, to *restrain* the *perpetual* into a *temporary* security.

The argument drawn from the clause to regulate the * *price* of books, cannot hold. That clause goes to *all* books; is *perpetual;* and follows the Act of *H.* 8.†

‡ The words "*no longer*" § add nothing to the *sense;* which is exactly the same, whether these words are added, or not.

The word "*vesting,*" ‖ in the title, cannot be argued from, as declaratory "that there was *no* property *be-* "*fore.*" The *title* is but once read; and is no part of the Act. In the *body*, the word "*secured*" is made use of.

Had there been the least intention to *take* or *declare* away every pretence of right at the *Common* Law, it would have been *expressly* enacted; and there must have been a *new preamble*, totally different from that which now stands.

But the legislature has *not* left their meaning to be found out by *loose conjectures.* The *preamble* certainly proceeds upon the ground of a *right of property*, having been *violated;* and might be argued from, as an *allowance* or *confirmation* of such a right at the *Common Law.* The remedy enacted against the violation of it being *only temporary*, might be argued from, as *implying* "there *existed* no right *but* what was secured by the "Act." *Therefore* an *express saving* is added, "that "nothing in this Act contained shall extend or be con- "strued to extend to *prejudice* or *confirm* any right, *&c.*" "*Any* right" is, manifestly, any *other* right than the *term* secured by the Act. The Act speaks of *no* right whatsoever, *but* that of *authors*, or *derived* from *them.* No *other* right could possibly be *prejudiced* or *confirmed* by any expression in the Act. The *words* of the *saving* are adapted to this right: "*book or copy* already printed, "or *hereafter* to be printed—." They are not applicable to *prerogative* copies. *If* letters patent to an author or his assigns could give any right, they might come under the generality of the saving. But, so little was such a right in the *contemplation* of the legislature, that

* Sect. 4. now repealed (by 12 G. 2. c. 36. § 3.)

† 25 H. 8. c. 15. § 4.

[‡2406]

§ V. sect. 1.

‖ V. Title— "by vesting" &c.

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there is not a word about *patents* in the *whole* Act. *Could* they have given any right, it was not *worth* saving; because it never exceeded fourteen years.

It was strongly urged, "that a Common Law right "could not exist; because there was *no* time from which "it could be said to *attach* or *begin*:" whereas the *statute*-property was ascertained by and commenced from the *entry*.

Undoubtedly, the previous entry is a *condition* upon which all the security given by the *Statute* depends: and *if* every man was intitled to print, without the author's consent, *before* this Act, no body can be questioned for so printing *since* the Act, before an entry. Nay, the

[2407]

offence being *newly created*, it can only be prosecuted by the *remedies prescribed*, and *within the limited time* of three months.

But the Court of *Chancery* has uniformly proceeded upon a *contrary* construction. They considered the act, *not* as creating a *new* offence, but as giving an *additional security* to a *proprietor grieved;* and gave relief, *without regard* to any of the provisions in the act, or whether the term was or was not expired. *No injunction* can be obtained, *till* the Court is satisfied "that the plaintiff "has a *clear legal right*." And where, for the sake of the relief, the Court of Chancery proceeds upon a ground of *common* or *statute* law, their judgments are precedents of high authority in *all* the Courts of *Westminster-Hall*.

His Lordship adopted and referred to *other* observations made upon the act by the two judges who spoke first:—and then concluded thus——

I desire to be understood, that it is upon *this* special verdict, I give my opinion. *Every remark* which has been made, as to what *is* and what is *not found*, I consider as *material*. The *variation* of any *one* of the circumstances *may* change the merits of the question: the variation of *some*, certainly *would*. Every case, where such variation arises, will stand upon its *own particular ground;* and will *not* be concluded by *this* judgment.

The subject *at large* is exhausted: and therefore I have not gone into it. I have had frequent opportunities to consider of it. I have travelled in it for many years. I was counsel in most of the cases which have been cited from chancery: I have copies of all, from the register-book. The first case of *Milton*'s Paradise Lost was upon my motion. I argued the second: which was solemnly argued, by one on each side. I argued the case of *Millar* against *Kincaid*, in the House of Lords. Many of the precedents were tried by my ad-

vice. The accurate and elaborate investigation of the matter, in *this* cause, and in the former case of *Tonson* and *Collins*, has *confirmed* me in what I always inclined to think, "that the Court of Chancery did *right*, in "giving relief upon the foundation of a LEGAL *property* "*in authors;* independent of the entry, the term for "years, and all the other provisions annexed to the se- "curity given by the act." 1769. MILLAR v. TAYLOR.

THEREFORE my opinion is—"That JUDGMENT be "for the PLAINTIFF." And it must be * *entered* as on the day of the last argument of this case at the Bar. * Vide ante, p. 2303.

A writ of error was afterwards brought: but the plaintiff in error, after assigning errors, suffered himself to be *nonpros'd*. And the Lords Commissioners, after *Trinity* Term 1770, granted an injunction. [2408]

In the case of *Donaldsons* against *Beckct and others*, the matter came before the House of Lords, upon an appeal from a decree of the Court of Chancery, founded upon this judgment: and what appears from the minutes is as follows— [7 Durn. 622.]

Die Mercurii, 9 *Februarii* 1774. *Donaldsons* against *Becket and others.*

ORDERED, that the judges be directed to deliver their opinions upon the following questions (*viz.*)

1. Whether at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent?
2. If the author had such right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author?
3. If such action would have lain at common law, is it taken away by the Statute of 8th *Ann?* And is an author, by the said statute precluded from every remedy, except on the foundation of the said statute and on the terms and conditions prescribed thereby?

(1908) 1 Ch. 567
" 2 Ch. 445
28 T L R. 206
(1935) 1 Ch. 286.

ORDERED, that the judges do deliver their opinions upon the following questions (*viz.*)

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Whether the author of any literary composition and his assigns, had the sole right of printing and publishing the same in perpetuity, by the common law?

Whether this right is any way impeached restrained or taken away by the Statute 8th *Ann?*

Whereupon, the judges desiring that some time might be allowed them for that purpose,

[2409] ORDERED, that the further consideration of this cause be adjourned till *Tuesday* next; and that the judges do then attend, to deliver their opinions upon the said questions.

Die Martis, 15 *Februarii* 1774.

The Lord Chancellor acquainted the house, that the judges differed in their opinions upon the said questions.

ORDERED, that the judges present do deliver their opinions upon the said questions, *seriatim*, with their reasons.

Accordingly,

Mr. Baron Eyre.

Mr. Baron EYRE was heard upon the said question—And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had not the sole right of first printing and publishing the same for sale; and could not bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that if the author had such sole right of first printing, the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such right is taken away by the Statute of 8 *Ann;* and that an author by the said statute is precluded from every remedy except on the foundation of the said statute: but that there may be a remedy in equity upon the foundation of the statute, independent of the terms and conditions prescribed by the statute, in respect of penalties enacted thereby.—And gave his reasons.

[7 Durn. [624.]

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had not the sole right of printing and publishing the same in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that the right is impeached restrained and taken away by the Statute 8th *Ann.*—And gave his reasons.

Then Mr. Justice NARES was heard upon the said question.—And

Mr. Justice Nares.

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against the person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is taken away by the statute 8 *Ann;* and that an author by the said statute is precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is impeached restrained and taken away by the Statute 8 *Ann.*—And gave his reasons.

Then Mr. Justice ASHURST was heard upon the said questions.—And

Mr. Justice Ashurst.

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing

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and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author. —And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of 8th *Ann*; and that an author by the said statute is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute of 8th *Ann*.—And gave his reasons.

Mr. Justice Blackstone.

Then Mr. Justice ASHURST delivered the opinion of Mr. Justice BLACKSTONE (who was absent, being confined to his room with the gout,) upon the said questions. —And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—

that such action at common law is not taken away by the Statute of 8th *Ann*; and that an author, by the said statute, is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby. —And gave his reasons.

4. Upon the fourth question, delivered his opinion— that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons. [2412]

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute 8th *Ann*.—And gave his reasons.

Ordered, that the further consideration of this cause, and hearing the opinion of the rest of the judges upon the said questions, be adjourned till *Thursday* next; and that the judges do then attend.

Die Jovis, 17 *Februarii* 1774.

Mr. Justice Willes.

Mr. Justice Willes was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion— that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.— And gave his reasons.

3. Upon the third question, delivered his opinion— that such action at common law is not taken away by the Statute of the 8th *Ann;* and that an author by the said statute is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby. —And gave his reasons.

4. Upon the fourth question, delivered his opinion— that the author of any literary composition and his assigns had the sole right of printing and publishing

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the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute of 8th *Ann.*—And gave his reasons.

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Mr. Justice Aston.

Then Mr. Justice ASTON was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—That at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—and gave his reasons.

3. Upon the third question, delivered his opinion—That such action at common law is not taken away by the Statute of the 8th *Ann*; and that an author by the said Statute is not precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons (*a*).

(*a*) Multum postea de impulsoribus suis, præcipue de Regulo, questus est, qui se in sententia, quam ipse dictaverat, deseruisset. Est alioquin Regulo tam mobile ingenium, ut plurimum audeat, plurimum timeat. *Plinii. Epis. Lib.* 2, *Epis.* 11. p. 131.

Regulus being in great favor with Domitian, was highly flattered by Martial, though the character given of him by *Pliny*, not only in the passage quoted but in many other of his Epistles is infamous; and particularly so in *Lib.* 1. *Epis.* 5. on which Mr. Melmoth observes, that

5. Upon the fifth question, delivered his opinion—That this right is not any way impeached restrained or taken away by the Statute of 8th *Ann.*—And gave his reasons.

Then Mr. Baron PERROTT was heard upon the said questions.—And

Mr. Baron Perrott.

1. Upon the first question, delivered his opinion—That at common law an author of any book or literary composition had the sole right of first printing and publishing the same; but conld not bring an action against any person who printed published and sold the same, unless such person obtained the copy by fraud or violence.—And gave his reasons.

2. Upon the second question, delivered his opinion—That the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author. —And gave his reasons.

3. Upon the third question, delivered his opinion—That such right is taken away by the Statute of 8th *Ann*; and that an author, by the said Statute, is precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—That the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—That the right is impeached restrained and taken away by the Statute of 8th *Ann.*—And gave his reasons.

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poets especially when needy, are generally not the most faithful painters in that way, and adds, if antiquity had delivered down more of those drawings of the same persons by different hands, the truth of characters might be easier ascertained, and many now viewed with rapture would perhaps greatly sink; and he adds even *Horace* himself we find giving a very different air to his Lollius from that in which he is represented by Paterculus.

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Then Mr. Justice GOULD was heard upon the said questions.—And

Mr. Justice Gould.

1. Upon the first question, delivered his opinion—That at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—That the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—That such action at common law is taken away by the Statute of 8th *Ann*; and that an author, by the said Statute, is precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—That the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

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5. Upon the fifth question, delivered his opinion—That this right is impeached restrained and taken away by the Statute of 8th *Ann*.—And gave his reasons.

Mr. Baron Adams.

Then Mr. Baron ADAMS was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—That at common law, an author of any book or literary composition had the sole right of first printing and publishing the same; but could not bring an action against any person who printed published and sold the same, unless such person obtained the copy by fraud or violence.—And gave his reasons.

2. Upon the second question, delivered his opinion—That the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterwards re-

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print and sell, for his own benefit, such book or literary composition against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—That such right is taken away by the Statute of 8th *Ann;* and that an anthor, by the said Statute, is precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—That the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—That the right is impeached restrained and taken away by the Statute of 8th *Ann.*—And gave his reasons.

Ordered, That the further consideration of the said cause be adjourned to *Monday* next; and that the judges do then attend, to deliver their opinions *seriatim*, with their reasons, upon said questions.

Die Lunæ, 21 *Februarii* 1774. [2416]

Lord Chief Baron.

The Lord Chief Baron of the Court of Exchequer was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—That at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—That the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—That such action at common law is not taken away by the Statute of 8th *Ann*; and that an author, by the said Statute, is not precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

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4. Upon the fourth question, delivered his opinion—That the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opionion—That this right is not any way impeached restrained and taken away by the Statute of 8th *Ann*.—And gave his reasons.

Lord Chief Justice.

Then the Lord Chief Justice of the Court of Common Pleas was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—That at common law an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

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2. Upon the second question, delivered his opinion—That the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—That such action at common law is taken away by the Statute of 8th *Ann*; and that an author by the said Statute is precluded from every remedy except on the foundation of the said Statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—That the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—That this right is impeached, restrained and taken away by the Statute of 8th *Ann*.—And gave his reasons.

SO that of the eleven judges, there were eight to three, upon the first question; seven to four, upon the second; and five to six, upon the third.

It was notorious, that Lord MANSFIELD adhered to his opinion; and therefore concurred with the eight, upon the first question; with the seven, upon the second; and

with the five, upon the third. But it being very unusual, (from reasons of delicacy,) for a PEER to support his own judgment, upon an appeal to the House of Lords, he did not speak.

And the lord chancellor seconding Lord CAMDEN's motion "to reverse; the decree was REVERSED."

The argument upon the third question turned greatly upon the meaning of the proviso in the 8th of Queen *Ann*, which saves the rights of the Universities. It is the 9th clause, and runs in these words—"PROVIDED "that nothing in this Act contained shall extend or be "construed to extend, *either to prejudice or confirm any* "*right* that the said universities or any of them, or any "person or persons, have or claim to have, to the "printing or reprinting any book or copy already print-"ed, or hereafter to be printed."

THE UNIVERSITIES, alarmed at the consequences of this determination, applied for and obtained an * Act of parliament establishing, in perpetüity, their right to all the copies given them heretofore, or which might hereafter be given to or acquired by them.

MEMORANDUM—

In a former account of this case, which (at the request of several of my most learned and respectable friends) I communicated to the public, some time ago, in a detached piece, I inserted a marginal note upon Lord *Mansfield*'s mentioning "that "*printing was introduced* in the reign of *Edw.* 4th. or *Hen.* 6." which marginal note was not only unnecessary and improper, but grossly erroneous and false in fact. I have never been able to recollect or discover what led me into such an egregious blunder. The only method that occurs to me of making compensation for it, is to endeavour to fix with some degree of accuracy and precision, by this present note, the real and true times and persons, when and by whom the art of printing was originally *discovered*; and when and how it was afterwards first introduced into *this* country.

Very great honour is certainly due to the ingenious *inventors* of this most noble and useful art: and even the cities where it was first attempted to be put in practice claim some share of reputation, from having given birth or residence to the first discoverors.

HAERLEM, MENTZ and STRASBURGH seem to have the best pretensions of this sort, with regard to the *original invention*. VENICE has a better claim to the *improvement*, than to the first rudiments. For *Nicolas Jenson*, who is generally supposed to have first taught the art of printing to the *Venetians*, did not begin printing there till the year 1470: and if *John de Spira*'s claim should be al-

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lowed, who says "that HE was the *first* who had ever "printed in that city," yet his pretensions go only a year or two further backward. And even admitting that another book was printed at *Venice* before *John de Spira's* "*Cicero's Epistles ad Familiares*," in 1469; (namely, "*Fr. Maturantii de Componendis Versibus Hexametro et* "*Pentametro*, by *Ranolt*, *Venet.* 1468;") yet that would carry it back but one year more, in support of the *Venetian* claim. Whereas the first rudiments of the art, the first rough specimens, the first essay with *separate wooden* types, if not elsewhere, yet, at least at *Haerlem*, was about thirty years anterior to those dates. There is indeed some difficulty in ascertaining the claim to the first invention of arts which though entirely owing to the

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sagacity of the inventor, are scarce perfect and complete whilst in embryo, and kept secret; but when once discovered to the world, soon receive improvement from other ingenious men to whom the original idea of the invention never did or ever would have presented itself. So, in the art of printing, *Haerlem* and *Mentz* both claim the honour of being the place where it was first known and practised. Dr. *Middleton* goes so far as to say, "that it is certain, beyond all doubt, that printing was "first invented and propagated from *Mentz*." Others ascribe it to *Haerlem*. And it is true of each, in a qualified sense; if printing on fusile separate types be considered as the invention of printing. In this sense, the improvement is the title to the merit of the invention: but the original thought and first attempt belongs to another person, and probably would never have occurred to the improver. At *Haerlem*, it was first thought of, by *Laurentius*, about 1430; and practised by him there, with *separate wooden* types: it was afterwards practised at *Mentz*, with *metal* types, first *cut*, and then *cast*; invented there, by one of the two brothers of the name of *Geinsfleich*; probably by the elder *John Geinsfleich*, about the year 1442. when he published his first essays on wooden types, which had not answered his expectations. However, both the brothers have been called *protocharagmatici*: this invention of printing with metal types was called "*Ars characterizandi.*" The cut metal types were further improved by *John Fust*, of *Mentz*, who, in 1452, completed the art, by the help of his servant *Peter Schoeffer*, whom he adopted for his son, and to whom he gave his daughter in marriage, *pro dignis laborum multarumque ad inventionum remuneratione.* So that the original *foundation* of the art of printing, in general, seems to have been laid at *Haerlem*; and the *improvements* made at *Mentz*. As to *Strasburgh*, it can

have no pretensions nearly equal to either *Haerlem* or *Mentz*. *Gutenberg* endeavoured to attain the art whilst he resided in that city: and his first attempts were made in 1436, with wooden types. But he and his partners were never able to bring the art to perfection. He quitted *Strasburgh* in 1444 or 1445; greatly involved in debt, and obliged to sell all that he had.

THE TRUE ORIGINAL INVENTOR of printing seems to have been LAURENTIUS of *Haerlem*, son of *John*, who was son of another *Laurence*. This *Laurence*, the grandson, was born at *Haerlem* about 1370; and died in 1440. He was *Aedituus* or *Custos*, of the cathedral of *Haerlem*; and was called *Coster*, from his office, not from his family-name: his descent is said to have been from an illegitimate branch of the *Gens Brederodia*. He was a man of large property; and his office was both respectable and lucrative. *Hadrian Junius* gives a full narrative of the accident which led *Laurentius* into the happy train of this useful invention: (See his *Batavia*, *Ed. Ludg. Bat.* 1588. *p.* 253.) This *Laurentius* being a man of ingenuity and judgment, he proceeded step by step, by inventing a more glutinous ink, and then forming whole pages of wood with letters cut upon them; pasting the backsides of the pages together, lest they should betray their nakedness. Then he changed his original beechen letters, for leaden ones; and those again for a mixture of tin and lead, as a less flexible and more solid and durable substance. His first works, in one of which (the "*Speculum Salutis*") he introduced pictures on wooden blocks, were printed on *separate moveable wooden* types, fastened together by threads. He did not live to see the art brought to perfection. He died in 1440, aged 70; and was succeeded, either by his son-in-law *Thomas Peter*, who married his only daughter *Lucia*; or by their immediate descendants *Peter*, *Andrew*, and *Thomas*; who seem to have been industrious, and printed neatly, with separate wooden types. Their last known work was printed at *Haerlem* in 1472: soon after which, they disposed of all their materials, and probably quitted their employment. *Laurentius*'s types were stolen, soon after his death. The thief was one of his workmen; and his name was *John*; and there is little doubt of his being a native of *Mentz*; to which place he conveyed them, and settled there: but it is not so certain, what was his surname. *John Fust* or *Faust* has been suspected: but it seems to be an unjust charge upon him. So also, upon *John Gutenberg*; whose residence was at *Strasburgh*, from 1436 to 1444, endeavouring with fruitless labour and expence to attain the art. Neither does it seem just to suspect *John Meiden-*

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bachius, an assistant to the first *Mentz*-printers; nor *John Petersheimius*, sometime a servant to *Fust* and *Schoeffer*, and who set up a printing-house at *Frankfort* in 1459. It is most probable, (all things being fully considered,) that this dishonest and unfaithful servant was JOHN GEINSFLEICH, *Senior*, elder brother of *Gutenberg*; who was born at *Mentz*, but had resided in other places. As he stole the types from *Haerlem* with a view to set up for himself elsewhere, it was natural for him to make choice of *Mentz*, his native city.—Accordingly, he took the shortest route, through *Amsterdam* and *Cologne*, to *Mentz*; where he fixed his residence, in the year 1441, and in 1442 published two small works. It is said, in a *Lambeth* Record which will be hereafter taken notice of, *p. 3.* "that *Mentz* gained the art, by the brother of one "of the workmen of *Haerlem*, who learnt it at home of "his brother, who afterwards set up for himself at "*Mentz*." But *Gutenberg*, the younger brother, never was a servant to *Laurentius*. It was the elder brother, who having learnt the art by being servant to the first inventor, stole his types, and carried them to *Mentz* his native country: and it must be this elder brother who instructed his younger brother *Gutenberg* in the art; which younger brother first applied himself to the business at *Strasburgh*, and not succeeding there (as has been before mentioned) quitted *Strasburgh*, and joined his elder brother who had in the mean time settled at *Mentz*.

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As to the imagination of *Specklinus*, and the other chronologer of *Strasburgh*, "that *Strasburgh* was the *place* "of the invention, and *Mentelius* the *person* who was the "inventor, and from whom the types were stolen," it is quite erroneous. *Mentelius* certainly did not begin to print till 1444; probably, not before 1447. *Gutenberg* was an earlier printer than *Mentelius:* much more so were *Laurentius*, at *Haerlem;* and *John Geinsfleich*, Senior, at *Mentz*. *Ulric Zell*, in his *Chronicon Coloniæ*, 1499, attributes the invention, or at least the completion of the art, to *Gutenberg* at *Mentz;* though he admits that some books had been published in *Holland* earlier than in that city; and from *Mentz*, he says, it was first communicated to *Cologne*; next, to *Strasburgh;* then, to *Venice*. There is no certain proof of any book having been printed at *Strasburgh*, till after 1462; after which period, printing made a rapid progress in *Europe*. In 1490, it reached *Constantinople;* in the middle of the next century, it advanced into *Africa* and *America;* and about 1560, was introduced into *Russia*. After this, it was even carried into *Iceland*, the farthest north (as Mr. *Bryant* observes) of any place where arts and sciences

have ever resided. This very learned and ingenious gentleman has in his own possession a book written in *Latin* by *Arngrim Jonas*, in his own country of *Iceland*, and printed "*Typis Hollensibus in Islandia Boreali, Anno* "1612." This curious little treatise is intitled "*Ana-* "*tome Blefkiniana.*" Mr. *Bryant* notes "that *Hola* "is, in some maps, placed within the arctic circle; and "certainly is not far removed from it."

THIS may suffice, I should hope, to satisfy the curiosity of the reader, with respect to the *original invention* of printing, and its earliest advances in *foreign* countries.

IT IS now time to examine how, when, and by whom, it was first introduced into *our own*.

Concerning this matter, there are different accounts.

It was formerly the general opinion and belief, and seemed to be agreed by all our historians, that the art of printing was introduced and first practised in *England* by Mr. *William Caxton*, a citizen of *London*, who had been bred a mercer, having served an apprenticeship to *Robert Large* in that branch of business: which *Robert Large* died in 1441, after having been Sheriff and Lord Mayor of *London*; and left a legacy to *Caxton*, in testimony of his good character and integrity. From the time of his master's death, Mr. *Caxton* spent the following thirty years (from 1441 to 1471) beyond sea, in the business of merchandize. In 1464, he was employed by King *Edward* the Fourth in a public and honourable negotiation, to transact and conclude a treaty of commerce between that King and his brother-in-law, the Duke of *Burgundy*. —By his long residence in *Holland*, *Flanders*, and *Germany*, he had opportunity of being informed of the whole method and process of this art: and returning to *England*, and meeting with encouragement from great persons, and particularly from the then Abbot of *Westminster*, he first set up a press in that Abbey, (in the *Almonry* or *Ambry*,) and began to print books soon after the year 1471, and is said to have pursued his business there with extraordinary diligence till the year 1494; in which year Dr. *Middleton* says he died; "not in the year following, as "all who write of him affirm." But Mr. *Ames* says, if not proves, that it was no longer than the year 1491. He was probably upwards of fourscore years of age, when he died. The "Recuyel of the Historyes of *Troye*," is supposed to have been the first book that he printed in *England*. Dr. *Middleton* is a very strenuous advocate for *Caxton*; and professes a desire "to do justice to his "memory, and not suffer him to be robbed of the glory "so clearly due to him, of having first imported into "this kingdom, an art of great use and benefit to man-

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" kind; a kind of merit that, in the sense of all nations, " gives the best title to true praise, and the best claim to " be commemorated with honour to posterity." The doctor states the positive evidence in proof of his assertion, as well as the negative and circumstantial: and he observes " that all our writers before the Restoration, " who mention the introduction of the art amongst us, " give *Caxton* the credit of it, without any contradiction " or variation." He cites *Stowe*, *Trussell*, Sir *Richard Baker*, *Leland*, and *Howell*, and the more modern authorities of Mr. *Henry Wharton* and *M. Du Pin;* all strong in favour of his opinion.

In opposition, however, to all these great and seemingly invincible testimonies and authorities on behalf of Mr. *Caxton*, a book which had been scarce observed before the Restoration, was soon after that time taken notice of, and looked upon as a strong argument, if not a full and clear proof, " that the art of printing had been exercised
[2415] " in the University of *Oxford, before Caxton exercised* " *it at Westminster, in* 1471." This book bears for its title, " *Expositio Sancti Jeronimi in Simbolum Apostolo-* " *rum ad Papam Laurentium;*" and at the end—" *Ex-* " *plicit. Expositio, &c. Impressa Oxonie, & finita Anno* " *Domini* M.CCCC.LXVIII. xvii *die Decembris.*" Yet history was quite silent about this very remarkable fact of a printing in *England* prior to *Caxton*'s; nor was there any memorial to be found in the University, of a circumstance so honourable to them, and so beneficial to literature. It has been urged, that notwithstanding this long silence concerning such a very extraordinary event, the matter is now cleared up, by the discovery of a record which had long lain obscure and unknown at *Lambeth Palace*, in the Register of the See of *Canterbury;* which record contains a *narrative* of the whole transaction, drawn up at the very time. An account of this record was first published by *Richard Atkyns*, Esq. in the beginning of 1664, in his " original and growth of printing, " collected out of history and the records of this king- " dom." It sets forth, " that *Thomas Bouchier*, Arch- " bishop of *Canterbury*, moved King *Henry* the Sixth " to use all possible means for procuring a printing " mould to be brought into this kingdom. The king " readily hearkened to the motion; and, taking private " advice how to effect his design, concluded that it could " not be brought about without great secresy and a con- " siderable sum of money given to such person or persons " as would draw off some of the workmen of *Harleim* in " *Holland*, where *John Cuthenberg* had newly invented " it, and was himself personally at work. It is resolved,

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" that less than one thousand marks would not produce " the desired effect: towards which sum, the said Arch- " bishop presented the king three hundred marks. The " management of the design was committed to Mr. *Ro-* " *bert Turnour*, of the robes to the king, and much in " favour with him. Mr. *Turnour* took to his assistance " Mr. *Caxton*, a citizen of good abilities; who, trading " much into *Holland*, might be a credible pretence as " well for his going, as stay in the *low countries*. Mr. " *Turnour* was in disguise, (his beard and hair shaven " quite off:) but Mr. *Caxton* appeared known and pub- " lic.—They went first to *Amsterdam*, then to *Leyden*, " not daring to enter *Harleim* itself; for, the town was " very jealous, and had apprehended and imprisoned " divers persons who had come from other parts for the " same purpose. They stayed till they had spent the " whole thousand marks, in gifts and expences: so as " the king was fain to send five hundred marks more. " Mr. *Turnour* had written to the king, that he had al- " most done his work; a bargain being struck betwixt " him and two *Hollanders*, for bringing off one of the " under workmen, whose name was FREDERICK COR- " SELLS (or rather CORSELLIS;) who, late one night, " stole from his fellows, in disguise, into a vessel prepa- " red for that purpose, and got safe to *London*. It was " not thought prudent, to set him on work at *London*: " but by the Archbishop's means, (who had been first " Vice-Chancellor, and afterwards Chancellor of the " University of *Oxon*,) *Corsellis* was carried with a guard " to *Oxon*; which guard constantly watched this *Cor-* " *sellis*, to prevent him from any possible escape, till he " had made good his promise, in *teaching them how to* " *print*. So that *at* OXFORD printing was *first set up in* " *England*: which was before there was any printing- " press or printer in *France*, *Spain*, *Italy*, or *Germany* " except the city of *Mentz*, which claims seniority as to " printing, even of *Harleim* itself; calling her city *Ur-* " *bem Moguntinam artis typographicæ inventricem pri-* " *mam*; though it is known to be otherwise, that city " gaining that art by the brother of one of the workmen " of *Harleim*, who had learnt it at home of his brother, " and after set up for himself at *Mentz*. This press at " *Oxford*, was afterwards found inconvenient to be the " sole printing place of *England*; as being too far from " *London* and the sea: wherefore the king set up a press " at *St. Alban*'s, and another in the city of *Westminster*, " where they printed several books of divinity and phy- " sic. For, the king, (for reasons best known to himself " and council) permitted then *no law books* to be printed;

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" nor did any printer exercise that art, but only such as " were the king's sworn servants; the king himself ha- " ving the price and emolument for printing books."

Upon the authority of this record, all our later writers have declared Corsellis to have been the *first* printer in *England*. This is admitted by Dr. *Middleton*: and he specifies *Antony Wood* and Mr. *Mattaire*, and *Palmer*, and *Bagford*, by name, as persons who were clear in that opinion. But he says, " it is strange that a piece so fa- " bulous, and carrying such evident marks of *forgery*, " could impose upon men so knowing and inquisitive." He asserts, " that as it was never heard of before the pub- " lication of *Atkyns*'s book, so it has never since been " seen or produced by any man." He cites *Palmer* himself as owning, " that it is not to be found there *now*:" and he thinks it clear, that Archbishop *Parker* must have very carefully examined the registers of *Canterbury*, and that it was not there in *his* time. In fine, he declares in express terms, " that we may pronounce this record to be a forgery."

But though he seems to exult in having cleared his hands of this *record*, yet he admits " that the book itself " stands firm as a monument of the exercise of printing " in *Oxford* six years older than any book of *Caxton* " with *date*."* He acknowledges the fact to be strong, and, " what in *ordinary* cases passes for certain evidence " of the age of books:" but he says, " that in *this*, there " are such contrary facts to balance it, and such circum- " stances to turn the scale, that he takes the date in ques- " tion to have been falsified originally by the printer, " either by design or mistake, and an X to have been " dropt or omitted in the age of its impression." And he argues with his usual sagacity and acuteness, to shew not only the possibility of his conjecture, but the probability of it, and (as he says) " to make it even certain."

* The first work that is known to have a date to it, was the Psalter published at Mentz, in 1457.

Mr. *Bowyer*, whose general learning and particular knowledge in his profession seem to qualify him for being at least as good a judge of this dispute as any man that ever lived, does by no means agree with Dr. *Middleton* in this point of *Caxton*'s priority to the *Oxford*-Book, or in the arguments adduced by the Doctor in support of his opinion; any more than he does in the former point, of the place where the art was first invented and practised abroad.—He is of opinion, that the *Oxford*-Press was prior to *Caxton*'s; and thinks that those who have called Mr. *Caxton* the " first printer in *England*," and *Leland* in particular, meant that he was the first who " practised " the art with *fusile* types, and consequently first brought " it to *perfection*:" which is not inconsistent with *Cor-*

sellis's having printed earlier at *Oxford* with *separate cut types in wood*, which was the only method he had learnt at *Harleim*. The speaking of Mr. *Caxton* as the first printer in *England*, in *this* sense of the expression, is not irreconcileable with the story of *Corsellis*. 1769. MILLAR v. TAYLOR.

THESE facts and opinions being thus laid before the reader, he will judge for himself, concerning their truth or probability. The disputants on both sides have agreed in one position, which will be easily assented to; namely, "that it is very unsafe to trust to common history; and "necessary to recur to original testimonies, if we would "know the state of facts with exactness."

CANNING *versus* DAVIS.

Tuesday 27th April, 1769.

If proof be taken out qui tam, plaintiff cannot declare in his own name alone. [See 1 Vin. 209. pl. 6. 6 Durn. 1 Bos. 383.]

MR. *Dunning* (Solicitor General) shewed cause against a rule which had been applied for by Mr. *Ashurst*, "to set aside the proceedings for a *variance* between the "declaration and the process." The process was "to "answer the plaintiff *qui tam pro Domino Rege* quam "pro se ipso sequitur:" The declaration was in his *own* name only; omitting the *qui tam* part.

THE COURT held the variance to be fatal.

PROCEEDINGS SET ASIDE.

Note—Master *Benton* thought, and the Court seemed to agree, that the *converse* would have been otherwise; namely, that if the process had been "to "answer the plaintiff, *singly*," he might, in *that* case, have declared tam pro se ipso, *quam pro Domino Rege*. [2418]

BRAND and WIFE *ver.* ROBERTS and WIFE.

Prohibition for calling whore in London.

THE COURT made absolute a rule for a *prohibition* to the Spiritual Court, to stay their proceedings against the defendants below, for calling a woman "whore," in *London;* where, by the custom, the words are actionable. They said, this matter had been long settled. (Lord MANSFIELD was not in Court.)

Vide ante, 2032. *Theyer* v. *Eastwick:* Also see 1 Sir *John Strange*, p. 187. *Argyle* v. *Hunt*, and p. 471. *Vicars* v. *Worth*, and p. 545. *Hodgkins et Ux.* v. *Corbet et Ux.* and p. 555. *Cook* v. *Wingfield*.