

“ miffes, with Remainders over in default of the Heirs of her
“ Body.”

27th of *May* 1775.

W. DE GREY.

H. GOULD.

W. BLACKSTONE.

G. NARES.

*Grant of the Crown.
Almanacks.
Calendar.*

Stationer's Company *against* Carnan.

The Crown
hath not a
Prerogative
or Power to
grant Print-
ing of Alma-
nacks to the
Company of
Stationers ex-
clusive of any
other.

A Case stated out of *Chancery* for the Opinion of the Court
of *Common Pleas*.

On the 8th of *March* 13 *Jac.* 1. *A. D.* 1615. The King by
Letters Patent, (reciting other Letters Patent of the 29th of
October 1603. *A. R.* 1. whereby he had granted to the Compa-
ny of Stationers and their Successors for ever, full Power, Pri-
vilege and Authority to print or cause to be printed, All Man-
ner of Almanacks and Prognostications whatsoever in the *En-
glish* Tongue, and all Manner of Books and Pamphlets tending
to the same Purpose, being allowed by the Archbishop of *Can-
terbury* and Bishop of *London* or one of them, with strict Com-
mandment and Prohibition to all other Printers, &c. not to
print, buy, sell or utter any other than should be printed by
the said Company, which last mentioned Letters were then sur-
rendered to and accepted by the King) Gives and Grants full
Power, Authority, Privilege and Licence to the said Company
and their Successors for ever (*inter alia*) to print or cause to be
printed, “ All Manner of Almanacks and Prognostications what-
“ soever in the *English* Tongue, and all manner of Books and
“ Pamphlets tending to the same Purpose, and which are not
“ to be taken and construed other than Almanacks or Prognos-
“ tications, being allowed by the Archbishop of *Canterbury* and
“ Bishop of *London*, or one of them for the Time being,” by
what Names or Titles soever the same may be called, as shall
be printed within the Realm of *England*. With Clauses, pro-
hibiting all other Persons to print, buy, vend or utter the same,
under Forfeitures and Penalties therein mentioned.

The Defendant in *November* 1773 printed an Almanack or
Prognostication, intituled a *Diary for the Year of our Lord* 1774-

and uttered and sold many Copies of the same. Whereupon the Plaintiffs filed their Bill in *Chancery* against him, waiving all Penalties, and praying an Account of the Profits of the several Copies sold, and to have the rest delivered up; and for an Injunction, which was granted of course, till Answer and further Order.

The Defendant put in his Answer, insisting that the Plaintiffs have no such exclusive Right as claimed by the Bill; and on shewing Cause why the Injunction should not be dissolved, this Case was stated by Consent, with two Questions.

1st. Whether the Grant made to the Plaintiffs the Stationers Company be general, or restrained to such Almanacks and Prognostications as should be licenced or allowed by the Archbishop of *Canterbury* and the Bishop of *London*, or either of them for the Time being?

2d. Whether the Crown has a Prerogative and Power to grant the same to the Plaintiffs, exclusive of any others, or other?

This Case was twice argued, in *Hilary* and the present Term, by *Hill* and *Glyn* for the Plaintiffs; and by *Grose* and *Davy* for the Defendant.

For the Plaintiffs, it was admitted, that the Grant was not general, but restrained to such Almanacks as were allowed by the Archbishop, &c. So there was no Argument on the first Question.

Upon the second Question, it was insisted, that this was a Trust inherent in the Crown, and delegated by the Crown to the Company. That it stands upon the same Footing as the Right of printing Acts of Parliament. That it relates to the Religion of the Country, as all Festivals and Fasts are regulated by the Almanack. That when Monopolies were censured and restrained by the Statute of *Jac. 1.* this was not thought worthy Reprehension: On the contrary, a Saving was made in it's Favour by the Act itself. That all Abuses of the Patent are out of the present Question: If the Grant is abused, the Crown

has it's Remedy by *Sci. fa.* to repeal the Patents. Consider the Right, 1st. Upon Principles of Law. 2d. Upon adjudged Cases.

1st. Upon Principles. The Regulation of Time is in all Countries a Matter of State. And the Calendar, whether regulated by *Julius Cæsar*, or *Pope Gregory*, has been received by the general Usage of the Kingdom, and cannot be altered but by Act of Parliament. Witness the Act for the new Stile in 1752.

The Power of promulgating Laws and providing for their due Execution, resides in the Crown, which is the sole executive Power. Hence arose the Prerogative of printing Acts of Parliament, which succeeded to the Proclamations by the Sheriff. *3 Inst. 41.* and is recognized in *Baskett* and *the University of Cambridge*.

24.
See Vol. I.
fol. 110.

Almanacks are Parts of an Act of Parliament. They are nothing else but an Application to a particular Year of the *general* Calendar prefixed to the Common Prayer Book. And ever since the Acts of Uniformity, which establish the Liturgy, the Calendar has been annexed to and considered as Part of those Statutes. The first of these was the Statute 2 & 3 *Edw. 6. c. 1.* revived by the Acts of *Eliz.* and *Charles* the second after its Suspension by the Statutes of *Qu. Mary*, during which Interval the Exercise of an exclusive Right might possibly be an Usurpation.

Afterwards *Queen Elizabeth* issued Commissions for regulating the Calendar, grounded on the Statutes. *Strype's History of the Reformation*, cited by *Gibson, Cod. 271.* note g.

The Stamp Act 9 *Ann. c. 23. sec. 53.* excepts from the Stamp Duty all Calendars or perpetual Almanacks, in any Bible or Common Prayer Book.

The Trial by Almanack is a known Mode of Trial at Common Law. And the Almanack printed by Authority is the only one the Court could refer to. *Cro. Eliz. 227. Dyer 182. Sid.*

Sid. 300. 1 *Leon.* 242. 1 *Roll. Abr.* 524, 5, 6. *Salk.* 626.
6 *Mod.* 41. 196. *Stra.* 387. *Ld. Raym.* 1557.

2d. Adjudged Cases in point in favour of the Company's Right are,

Stationers Company and Seymour. In the *Common Pleas*, 29 *Car.* 2. 1 *Mod.* 256. *Stationers Company and Leigh and another*, in the *King's Bench* 34 & 35 *Car.* 2 *Show.* 258. 2 *Ch. Caf.* 66. *Stationers Company and Marlow*, 32 *Car.* 2. *Lilly's Entr.* 63. 2 *Show.* 261.

The same Doctrine is alluded to or recognized in other Cases not adjudged in the point; as,

Stationers Company and Parker, in the *King's Bench* 1 *Jac.* 2. *Skinn.* 233. *Seymour's Case* allowed, though unwillingly, by the Court. *Stationers Company and Partridge*, in the *King's Bench.* 9 *Ann.* 10 *Mod.* 105. Before the Reformation the printed Calendar was of no Authority. [N. B. in 9 *H.* 7. 14 *b.* though the anonymous printed Calendars were of no Authority, yet the *Mertlage* (i. e. *Martyrologe come semble*) kept by the Church in Manuscript was held to be of great Authority.] *Basket and the University of Cambridge*, in the *King's Bench.* 2 *Burr.* 661.

In *Miller and Taylor*, *Yates* Justice, who argued against Copyright in general, allowed the King's Prerogative over Almanacks. And when nautical Almanacks were established by Statute 5 *Geo.* 3. c. 20. and 14 *Geo.* 3. c. 66. it was seen that an exclusive Right of publishing was necessary to preserve their Authenticity, and is therefore provided for by those Statutes.

For the Defendant it was argued,

That none of the true Grounds, on which a Prerogative Copyright can be founded, appear in the present Case. Codes of Religion and of Law ought to be under the Inspection of the executive Power, to stamp an Authenticity upon them. Therefore Bibles, Common Prayer Books, and Statutes are proper Objects

Objects of exclusive Patents. But Almanacks are not of this Kind. Neither is the Crown at the Expence of making the Calendar, as it was of translating the Bible.

Almanacks are no part of the Liturgy, nor even the Calendar prefixed to it. The Acts of Uniformity are prefixed to, but not therefore Part of, the Common Prayer Book. Almanacks are as antient as Time itself. They subsisted long before the Liturgy. But the Compilers of the Liturgy took in the Almanack (leaving out the Prognostications) and turned it into a Table for reading the Lessons. Almanacks are therefore prior to the Calendar, and not the Calendar to the Almanack. But, allowing for a Moment that they are Part of the Common Prayer Book, then the sole Right of printing them would have passed to the King's Printers under that Patent; and, besides, Common Prayer Books are expressly excepted out of the present Grant.

No Right of exclusive Printing is set up antecedent to the Statutes of *Edw. 6.* But Almanacks subsisted long before, (in *Henry the VIIth's* Time according to the Year-book) and how then was the Common Law Right of printing them taken away?

Next as to their Authenticity.

None of the Cases shew, that the Court is bound by the Almanack, in case it be erroneous. But, if authentic, it does not follow that the King has a Power to limit the Right of printing them. The *London Gazette* is authentic, but does that prevent other Printers from printing other Newspapers?

Their whole Authority depends on their Correctness. The Way to make them correct, is to permit an Emulation and Rivalship. Those printed by the Company are shamefully incorrect. For instance, in *Rider's* Almanack for this Year, *Plow-Monday* is said to happen on *Saturday* the 7th of *January*. The Advertisement prefixed to *Poor Robin* is exceedingly immodest and indecent, and could never have passed under the Revision of the Reverend Prelates named in the Patent.

All the Cases cited as to Almanacks depend upon *Seymour's* Case, which was determined in the Days of high Prerogative, soon after the licensing Act. No solid Ground of true Prerogative stated in that Case.

The Case of *Partridge* stood over, to see if the Company could make it like the Case of the Common Prayer Book (according to Lord *Mansfield* in *Miller and Taylor*) and it was never determined.

The Case of the *Law Patent* was determined by the House of Peers, without the Opinion of the Judges.

If there is no solid Ground of Prerogative in the Case of Almanacks, there is still less Ground for any Pretence of Copyright; and, had there been any, Copyright is now exploded by the late Determination of the House of Peers.

After the second Argument the Court certified their Opinion as follows. "Having heard Counsel on both Sides, and considered the Case, We are of Opinion,

"1. That the Grant made to the Plaintiffs, the Stationer's Company, was restrained to such Almanacks and Prognostications as should be licensed or allowed by the Archbishop of *Canterbury*, the Bishop of *London*, or either of them, for the Time being. 2. We are of Opinion, that the Crown had not a Prerogative or Power to make such Grant to the Plaintiffs exclusive of any other or others."

W. DE GREY.

H. GOULD.

W. BLACKSTONE.

G. NARES.

Bellis against Mitford.

CAPIAS, indorsed for 60 *l.* Bail, was returnable upon *Tres. Pasch.* the 7th of *May*, and a Bail-bond given thereon. On the 8th of *May* the same Bail were put in *above*, and

Bail Bond.

Bail-bond cannot be put in Suit till after four Days from the Appearance. Day of the Return of the Writ.