

BARBEYRAC, in his notes on PUFENDORF, says, that though we may presume an abandonment in respect to those things which remain such as nature has produced them, yet as for other things which are the fruits of human industry, and which are done with great labor and contrivance, it cannot be doubted but every one would preserve his right to them till he makes an OPEN RENUNCIATION.

Now there is no *open* renunciation of literary property, but a *constructive* one only, deduced barely from the act of publication. Whether there be a "renunciation" or not, is a *fact* which ought not to be presumed; wherever it exists, it should be distinctly proved. It is always capable of proof, where the abandonment has really taken place, and when it cannot be proved, the legal inference, as in all other kinds of property, ought to be in favor of the original owner.

But then it is contended, "if a man buys a book, it becomes his own."

What! is there no difference (exclaimed Mr. Justice ASTON) betwixt selling the property in the work, and only one of the copies? To say, "selling the book conveys all the right," begs the question. For if the law protects the book, the sale does not convey away the right from the nature of the thing, any more than the sale conveys it where the statute protects the book.

The proprietor's consent is not to be carried beyond his manifest intent. Would not such a construction extend the partial disposition of the true owner beyond his plain intent and meaning? Can it be conceived that in purchasing a literary composition at a shop, the purchaser ever thought he bought the right to be the printer and seller of that specific work? The improvement, knowledge, or amusement which he can derive from the performance, is all his own; but the right to the work, the copyright, remains in him whose industry composed it. The buyer might as truly claim the merit of the composition by his purchase, as to the right of multiplying the copies and reaping the profits.

The invasion of this sort of property is as much against every man's sense of it, as it is against natural reason and moral rectitude. It is against the conviction of every man's own breast who attempts it. He knows it not to be his own—he knows he injures another, and he does not do it for the sake of the public, but *mala fide et animo lucrandi*.<sup>(1)</sup>

(1) 4 Burr. 2343.



## SECTION III.

*Of the recognition by the State and Parliament of Copyright in perpetuity, and the evidence of Ancient Customs.*

It is only *since the invention of printing*, that any question of the extent or duration of copyright could be expected to occur in the courts of justice. To take an author's manuscript without his consent, was, of course, either actionable for the trespass or trover, or indictable in proportion to the amount of the offence, according as the circumstances might constitute a fraud or theft. A single copy was then of much more value than after printing had multiplied the number of copies. The great manual labor necessarily bestowed on each copy, and the few readers at that time, rendered the *publication* of insignificant importance, compared with what it has since become.

From the time of this splendid discovery, down to the year 1556, a period exceeding a century, we have no evidence of the recognition, in any public form, of the copyright of authors, or of the remedies by which its infraction might be redressed. This silence, however, may be very rationally explained. The exact period of its introduction to England has been the subject of much discussion. According to some authorities, it was introduced at Oxford in the year 1468; the sounder opinion assigns the period of 1471 or 1472. But whatever was the precise time, it is obvious that several years would naturally elapse, after its first establishment, before the invention could become generally adopted<sup>(1)</sup>.

Its process was impeded by many difficulties and restraints. It was imported during one of the most stormy periods of our history, amidst contests for the crown and domestic war. The revival of letters was then in its commencement. Books were comparatively few in number, and but little sought for. The establishment of printing presses therefore took place by slow degrees; and it was not until the signal advantages of the art became known, and literature extended itself, that the property, or copyright, in books became an object of importance.

No sooner, however, did the press display the great purposes to which it might be applied, than the works which issued from it naturally became the immediate subject of state regulation.

(1) The art of printing was first discovered at Mentz in 1438. It was introduced into England in 1471; into Scotland in 1508; into Ireland in 1551.



The earliest evidence which occurs on the subject is to be found in the charter of the Stationers' Company, and the decrees of the Star Chamber.

The evidence thus to be adduced, appears the more satisfactory, and the less liable to suspicion, inasmuch as it was indifferent to the views of the Government whether the copy of an innocent book, when licenced, was open or private property. It was certainly against the power of the crown to allow it as a private right, without being protected by any royal privilege. It could be done only on principles of private justice, moral fitness, and public convenience; which, when applied to a new subject, make *common law* without a precedent; much more when received and approved of by usage<sup>(1)</sup>.

*Recognition of the Right by Acts of the State.*

1556.---The original charter of the Stationers' Company was granted by Philip and Mary, in the year 1556.

It was the declared object of the Sovereign at that time to prevent the propagation of the Protestant Reformation; and it seems to have been thought, that the most effectual means to do so, was to impose the severest restrictions on the press.

The charter recites, that several seditious and heretical books, both in rhymes and tracts, were daily printed, renewing and spreading great and detestable heresies against the catholic doctrine of the Holy Mother Church.

For the suppression of this evil, it constitutes ninety-seven persons (whom it names) an incorporated society of the art of a stationer; and it orders that no person in England shall practise the art of printing unless he be one of this society.

And the master and wardens of this society were authorized to search, seize, and burn all prohibited books, and to imprison any one that should exercise the art of printing contrary to this direction<sup>(2)</sup>.

From this charter we proceed to the decrees of the Star Chamber, the authority of which we are quite willing should be estimated as low as possible; but in adducing the authorities which support the right in question, we are justified in pointing out, that even that arbitrary tribunal respected the rights of authors, and prohibited the printing of works without the consent of their owners.

In 1556, by a decree of the Star Chamber, it was forbidden to print against the force and meaning of any ordinance, &c. in any of the statutes or *laws* of the realm.

By another decree in 1585, every book, &c. is to be *licenced* :

(1) 4 Burr. 2312.

(2) This charter was confirmed by Elizabeth.



“nor shall any one print any book, &c. against the form or meaning of any restraint contained in any statute or *laws* of the realm \* \* \*, or contrary to any *allowed* ordinance set down for the good government of the Stationers' Company.”

In 1623, by a proclamation reciting the above decree, and that the same had been evaded “by *printing beyond sea* such *allowed* books, &c. as have been imprinted within the realm by such to whom the *sole printing thereof*, by letters patent, or lawful ordinance or *authority*, doth appertain:” and then the proclamation enforces the decree.

Again in 1637, by another decree, no person is to *print* or *import* any book or copy which the Company of Stationers, or *any other person*, hath or shall by any letters patent, order or entrance in their register book, or *otherwise*, have the right, privilege, authority, or allowance *SOLELY* to *print*.

This decree evidently supposes a copyright to exist, “otherwise” than by patent, &c. which could be clearly by no other authority than the common law.

These appear to be all the acts of state relative to the matter. Most of the judicial proceedings of the Star Chamber being lost or destroyed, no case of prosecution for printing without licence, or pirating another man's copy, has been found. But it is certain that down to the year 1640, copies were protected and secured from piracy by a much speedier, and more effectual, remedy than actions at law, or bills in equity. No licence could be obtained “to print another man's copy.” Not from any prohibition, but because the thing was immoral, dishonest, and unjust; and he who printed without a licence, was liable to great penalties<sup>(1)</sup>.

#### *Recognition of the Right in Acts of Parliament.*

1641.---After the abolition of the Star Chamber, all regulations of the press, by proclamation or decrees, were deemed illegal. The alleged licentiousness of the press, however, induced the two Houses to make an ordinance<sup>(2)</sup>, which prohibited printing, unless the book was first licenced, and entered in the register of the Stationers' Company. Copyrights, in their opinion, then, could only stand upon the common law—both Houses took it for granted. The ordinance, therefore, prohibits printing *without consent of the owner*, or importing (if printed abroad), upon pain of forfeiting the same to *the owner or owners* of the copies of the said books, &c. This provision necessarily supposes the property to exist---it is nugatory if there was no owner, and an owner could not at that time exist, but by the common law.

(1) 4 Burr. 2313.

(2) 29th of June, 1641.



According to the authority of Carte, the historian<sup>(1)</sup>, if ever there was a danger of the invasion of copyright, it was in 1641, when the licentiousness of the press was carried to the greatest height.

It appears, however, that several divines who were the favorites of the prevailing party, signed a declaration strongly in favor of authors, and on the justice of allowing them solely to print their copies; alleging that otherwise, scholars would be utterly deprived of any recompence for their studies or labor, and urging that if books were imported to the prejudice of those who bore the charge of impressions, the authors and buyers would be abused by vicious impressions, to the great discouragement of learned men, and extreme damage of all kinds of good learning.

1643.---These and other reasons had so much weight, that it appears both Houses of Parliament, on June 14, 1643, joined in an ORDINANCE, declaring,

“ That no book, pamphlet, nor paper, nor part of such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched, or put to sale by any person or persons whatsoever, unless the same be entered in the Register Book of the Company of Stationers, according to ancient custom; and that no person or persons shall hereafter print, or cause to be reprinted, any book or books, or part of book or books, entered in the register of the said Company for any particular member thereof, without the licence and consent of the owner and owners thereof; nor yet import any such book or books, or part of book or books, formerly printed here, from beyond the seas, upon pain of forfeiting the same to the respective owner or owners of the said copies, and such further punishment as shall be thought fit<sup>(2)</sup>.”

1647.—There was also an ordinance of Parliament made the 28th of September, 1647<sup>(3)</sup>, relating to unlicenced printing.

1649.---And by another ordinance in September, 1649, cap. 60, it was enacted, that

No person whatever should *compose, write, print, publish, sell, or utter, or cause to be made, written, printed, or uttered, any book or pamphlet, treatise, sheet or sheets of news, whatsoever, unless licenced, as thereafter mentioned.*

And the same ordinance prohibited the use of any printing or rolling press, except in London and the two Universities, and also York and Finsbury.

It then enacts, that no person or persons whatsoever in this

(1) Carte's Letters, published 1735. Sir E. Brydges' "Reasons for further Amendment."

(2) In 1644, Milton published his famous speech for the liberty of unlicenced printing, against this ordinance; and among the glosses which he says were used to color this ordinance, and make it pass, he mentions "the just retaining of each man his several copy; which," said he, "God forbid should be gain-said."

(3) Scobel's Collection of Acts and Ordinances, p. 134.



Commonwealth shall hereafter print or reprint any book or books, or part of any book or books, legally granted to the said Company of Stationers for their maintenance of their poor, without the licence and consent of the Master, Wardens, and Assistants of the said Company; nor any book or books, or part of book or books, now entered in the register book for any *particular member* of the said Company, without the like consent of the *owner or owners* thereof; nor counterfeit the name, mark, or title of any book or books belonging to the said Company or particular persons; nor shall any person bind, stitch, or put to sale any such book or books, upon pain of forfeiting six shillings and eight pence for every book.

1662.---The Licencing Act of 13 and 14 Charles II. cap. 33, was framed chiefly to control the liberty of the press. But its object was disguised by blending it with a renewal of the general ordinances for the regulation of printing.

It enacts, that no person shall, within this kingdom or elsewhere, imprint, nor shall import from or out of any other of His Majesty's dominions, nor from any other parts beyond the seas, any copies or books printed beyond the seas, or elsewhere, which *any person* by force or virtue of any entry thereof duly made, or to be made in the Register Book of the Company of Stationers, have or shall have the *right, privilege, authority, or allowance, solely to print, without the consent of the owner or owners of such book or books, copy or copies*—nor shall bind, stitch, or put to sale, any such book or books, or part of any book or books, without the like consent, upon pain of loss or forfeiture of the same, and of being proceeded against as an offender against this present act,---(the penalty whereof was, for the first offence, a disability for three years, and for the second offence a disability for ever, to exercise the art of printing, besides bodily punishment at the Judges' pleasure,) “and upon the further penalty and forfeiture of six shillings and eight pence for every such book or books, or part of such book or books, copy or copies, so imprinted, imported, bound, stitched, or put to sale,” &c.

The act, therefore, supposes an ownership at common law; and the *right* itself is particularly recognized in the latter part of the third section of the act, where the Universities are forbid to meddle with “any book or books, the *right* appointing whereof doth *solely and properly belong to any particular person or persons.*”

The sole property of the owner is here acknowledged in express words, as a common law right; and the legislature who passed that act could never have entertained the most distant idea “that the productions of the brain were not a subject matter of property.” To support an action on this statute, ownership must be proved, or the plaintiff could not recover, because the action is to be brought by the “owner,” who is to have a moiety of the penalty.



The various provisions of this act effectually prevented piracies, without the necessity of actions at law, or bills in equity, by owners.

The Licencing Act of Charles II. was continued by several Acts of Parliament, but expired in 1679. It was revived by 1 James II. c. 7; and continued by 4 William and Mary, c. 24; and finally expired in 1694.

Such is the state of the evidence as deduced from the Acts of Government and the Legislature in the most despotic and unsettled times; and the inference is obviously strong, that if at those periods the rights of literature were respected when (if ever) they were liable to abuse, how much more ought those rights to be regarded and protected in an age like the present, which owes its improvement to the diffusion of knowledge.

We have next to turn to the only other source from which any public testimonials can be derived of the ancient usages and regulations which bear on the question, viz. the charters and registry books of the Stationers' Company.

#### *Evidence of Ancient Customs.*

It appears that it was usual from the earliest times for authors to sell their copyright in perpetuity, and that the copies were made the subject of family settlements for the provision of wives and children. In the case of *Millar v. Taylor*, tried in 1769, this ancient custom was proved to the satisfaction of the jury, and by their special verdict they found as follows:

“That before the reign of her late Majesty, Queen Anne, it was usual to purchase from authors the perpetual copyright of their books, and to assign them from hand to hand for valuable considerations, and to make the same the subject of family settlements for the provision of wives and children.”

The historian CARTE, after speaking of the exclusive property which ever existed in all books printed in England, observes,

“That for the *making of it known*, the better to prevent all invasion thereof, when the Stationers were incorporated<sup>(1)</sup>, all authors, and the proprietors to whom they sold their copies, constantly entered them in the register of that Company, as their property. The like method was taken with regard to foreign books, to which no subject of England could pretend an original right. To prevent the inconveniences of different persons engaging (perhaps unknown to one another) in printing of the same work (which might prove the ruin of both), the person who first resolved on it, and entered his

(1) In 1556.



design in that register, became thereby the legal proprietor of such work, and had the sole right of printing it: so that there has scarce ever been a book published in England, but it belonged to some author or proprietor, exclusive of all other persons. This is evident to every one that hath ever viewed the Stationers' Register, from the erection of that company, down to the year 1710, when the Act 8 *Annæ* was passed, which refers to this as an usual practice. It was indeed so customary, that I hardly think there ever was a book (unless of a seditious nature) printed till within *forty years* last past<sup>(1)</sup>, but, however inconsiderable it was for size or value, the property thereof was ascertained, and the sole right of printing it secured to the proprietor by such an entry. I was surprised on carefully examining one of the registers in Queen Elizabeth's time, from 1576 to 1595, to find, even in the infancy of English printing, above *two thousand copies of books* entered as the property of particular persons, either in the whole, or in shares; and mentioned from time to time to descend, be sold, and be conveyed to others; and the whole tenor of these registers is a clear proof of authors and proprietors having always enjoyed a sole and exclusive right of printing copies, and that no other person whatever was allowed to invade their right."

The following is a brief account of some of the early entries contained in these registry books.

In 1558, and down from that time, there are entries of copies for particular persons.

In 1559, and subsequently, there are persons *fined* for printing *other men's copies*.

In 1573, there are entries which take notice of the *sale of the copy*, and the *price*.

In 1582, there are entries with an express proviso, "that if it be found *any other* has right to any of the copies, then the licence, touching such of the copies *so belonging to another*, shall be void."

1684.---Charles II. in the year 1684 confirmed the former charters, and extended them by new provisions. The new charter recited—

That divers brethren and members of the Company have great part of their estates in books and copies, and that for upwards of a century before, they had a public register kept in their common hall for the entry and description of books and copies.

It proceeds as follows:

"We, willing and desiring to confirm and establish every member in their just rights and properties, do well approve of the aforesaid register;" and declare, "that every member of the Company who should be the proprietor of any book, should have and enjoy the *sole right*, power, privilege, and authority of printing such book or copy, as in that case has been *usual* heretofore.

There is then added a prohibition against piracies.

(1) That is, from the year 1695.



A few years anterior to this second charter, the Stationers' Company made a by-law, in which it is stated, that divers members of the Company had great part of their estates in copies; and that by the ancient usage of that Company, when any books or copies were entered in their register to any of the members of that Company, such persons were always reputed the proprietors of them, and ought to have the sole printing of them.

In another by-law in 1694, it is stated, that copies were constantly bargained and sold amongst the members of the Company as their property, and devised to their children and others for legacies, and to their widows for maintenance; and it was ordained, that if any member should, without consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve pence<sup>(1)</sup>.

(1) The following comprises a complete statement of these by-laws, which were proved in evidence on the trial of the cause "Millar v. Taylor."

And the said jurors upon their oath further say, that the Stationers' Company, to secure the enjoyment of the said copyright as far as in them lay, made several by-laws, particularly the two following.

"At an assembly of the Masters and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London, held at their Common Hall, the 17th day of August, anno domini, 1681, for the well governing the members of this Company, the several laws and ordinances hereafter mentioned were then made, enacted, and ordained, &c.

And whereas several members of this Company have great part of their estates in copies, and by ancient usage of this Company, when any copy or book is registered to any member or members of this Company, such person to whom such entry is made, is, and always hath been, reputed and taken to be *proprietor* of such book or copy, and ought to have the sole printing thereof; which privilege and *interest is now of late often violated and abused*(a); it is, therefore, ordained, that where any entry or entries is or are, or hereafter shall be, duly made of any book or copy in the said register book of this Company, that in such case if any member or members of this Company shall then after, without the licence or consent of such member or members of this Company for whom such entry is duly made in the register book of this Company, or his or their assignee or assigns, print, or cause to be printed, import, or cause to be imported, from beyond the seas or elsewhere, any such copy or copies, book or books, or any part of any such copy or copies, book or books, or shall sell, bind, stitch, or expose the same, or any part or parts thereof, to sale, that then such member or members so offending shall forfeit to the Master and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London, the sum of *twelve pence*(b) for every such copy or copies, book or books, or any part of such copy or copies, book or books, so imprinted, imported, sold, bound, stitched, and exposed to sale, contrary hereunto."

"At an assembly of the Masters, Keepers or Wardens, and Commonalty of the mystery or art of Stationers of the City of London, held the 14th day of May, 1694, the several laws, ordinances, and oath hereafter following, were then made, enacted, and ordained.

Whereas divers members of this Company have great part of their estates in copies duly entered in the register book of this Company, which, by the ancient usage of this

(a) In substance, this is the same language as that which is used in the 8 Anne.

(b) It is evident that the intention of the Act of Anne was to make the penalty *general*, which is here necessarily limited to the members of the Stationers' Company.



There are several cases reported in the time of Charles II. which arose out of disputed property in printed books. Some of them were between different *patentees* of the crown; some whether the right belonged to the *author* from his invention and labor, or to the *king* from the subject matter.

The first case (in the 18th Charles II.) was between the law patentee and some members of the Stationers' Company. It was argued on the footing of a prerogative copyright in the crown. It was urged that the king pays the judges who pronounced the law. The House of Lords determined "that the king had the right, and had granted it to the patentees<sup>(1)</sup>."

The next case (in 24 Charles II.) was also that of a law patentee, in which it was decided, "that the plaintiff, by purchase from the executors of the author, was *owner of the property at common law*<sup>(2)</sup>."

There is another case (in 29 Charles II.) in which the grantees of the crown of an almanac were the parties, and in which the court thought that almanacs might be prerogative copies; and it was held that the additions of prognostications did not alter the case, "no more than if a man should claim a property in *another man's copy* by reason of some inconsiderable additions of his own<sup>(3)</sup>."

In the 31 Charles II. an action on the case was brought<sup>(4)</sup> for printing the *Pilgrim's Progress*, of which it was averred, the plaintiff was "the true proprietor, whereby he lost the profit and benefit of his copy;" but it does not appear that the action was proceeded in.

Company, is, are, or always hath and have been used, reputed, and taken to be the right and property of such person and persons (members of this Company) for whom or whose benefit such copy and copies are so duly entered in the register book of this Company, and constantly bargained and sold amongst the members of this Company as their property, and devised to children and others for legacies, and to their widows for their maintenance; and that he and they to whom such copy and copies are so duly entered, purchased, or devised ought to have the sole printing thereof;

Wherefore, for the better preservation of the said ancient usage from being *invaded by evil-minded men, and to prevent the abuse of trade by violating the same*(a), it is ordained, that after any entry or entries is or are, or shall be, duly made of any copy or copies, book or books, in the register book of this Company, by or from any member or members of this Company, if any other member or members of this Company shall, without the licence or consent of such member or members of this Company for or by whom such entry is duly made, or of his assignee or assigns, print or cause to be printed, import or cause to be imported, from beyond the seas or elsewhere, any such copy or copies, book or books, or part of any such copy or copies, book or books, whereof such due entry hath been made in the register book of this Company to or for such other member of this Company, or shall sell, bind, stitch, or expose the same, or any part or parts thereof, to sale, without such licence,—that then such member and members so offending shall forfeit and pay to the Master and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London the sum of *twelve pence* for every such several copy or copies, book or books, part or parts of every such copy or copies, book or books, imprinted, imported, sold, bound, stitched, or exposed to sale, without such licence or consent as aforesaid."

(1) Carter, 89. 4 Burr. 2315.

(2) Skinner, 234. 1 Mod. 257. 4 Burr. 2316.

(3) 1 Mod. 256. 4 Burr. 2317.

(4) Lilly's Entries, Hil. Term. Ponder v. Bradyl, 4 Burr. 2317.

(a) This is expressed in very nearly the exact terms of the preamble of 8 Anne.



In these times the King's prerogative ran high; but still these cases prove that the *copyright* was at that time a *well-known claim*, though the overgrown rights of the crown were in some instances allowed and adjudged to over-rule them.

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## CHAP. II.

FROM THE STATUTE OF ANNE IN 1710, TO THE YEAR 1814.

SECT. 1.—*Of the origin and purport of the Act of Anne, and the intention of the Legislature.*

It appears that after the art of printing had been generally adopted, the taste for literary works very rapidly increased, and the demand for them naturally stimulated the exertions of the booksellers and publishers.

Some of the fraternity, however, did not confine themselves to their own productions; but, to supply the wants of the public, committed depredations on the literary property of their contemporaries. The greater part, if not all, of these dishonorable transactions, were committed by the lowest class of publishers, who were incompetent to pay the damages that might be recovered against them in an ordinary action. The proof of the extent of the damage was also difficult; and it was therefore desirable that penalties and forfeitures should be inflicted to protect the growing importance of literary property.

Hence it appears that the proprietors of copies frequently applied to Parliament to assist them in maintaining their rights. In the years 1703, 1706, and 1709, they petitioned for a bill to protect their copyrights, which had thus been invaded, and "to secure their properties." They had so long been secured by penalties under the acts for licencing books, that they thought an action at law an inadequate remedy, and had no idea that a bill in equity could be entertained except on letters patent.

In one of the cases given to the members in 1709 in support of their application for a bill, the last reason or paragraph is as follows:

"The liberty now set on foot of breaking through this ancient and reasonable usage, is no way to be effectually restrained but by an Act of Parliament. For, by common law a bookseller can recover no more costs than he can prove damage; but it is impossible for him to prove the tenth, nay, perhaps the hundredth part of the damage he



suffers, because a thousand counterfeit copies may be dispersed into as many different hands all over the kingdom, and he not able to prove the sale of ten. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench or Fleet, and there he will continue the evil practice with impunity. We therefore pray, that confiscation of counterfeit copies be one of the penalties inflicted on offenders<sup>(1)</sup>."

On the 11th of January, 1709, pursuant to an order made on the booksellers' petition, a bill was brought in for securing the property of copies of books to the *rightful owners, &c.*

On the 16th of February, 1709, the bill was referred to a committee of the whole House, and reported, with amendments, on the 21st of February, 1709.

It is evident from the preamble of the act, which was passed in 1710<sup>(2)</sup>, that it was not introduced on the part of

(1) 4 Burr. 2318.

(2) 8 Anne, cap. 19, *An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.*

"Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, *without the consent of the authors or proprietors of such books and writings*, to their very great detriment, and too often to the ruin of them and their families :” for preventing, therefore, such practices for the future, and for the *encouragement of learned men to compose and write useful books*, may it please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer ;

And that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer ;

And that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times granted and limited by this act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses ; or knowing the same to be so printed or reprinted without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid ; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste-paper of them : and farther, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act ; the one moiety



the public to restrain the duration of copyright. The imaginary evil of its perpetuity (which will be afterwards investigated) was not then suggested. It is, indeed, quite manifest on the face of the act, that it originated with the aggrieved authors and publishers, and the Journals of the House of Commons (vol. xvi. p. 240) place this point beyond all doubt.

thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same; to be recovered in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

II.---“ And whereas many persons may through ignorance offend against this act, unless some provision be made, whereby the property in every such book as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;” be it therefore further enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published, *shall, before such publication, be entered in the register book of the Company of Stationers, in such manner as hath been usual(a)*; which register book shall at all times be kept at the hall of the said Company; and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid; for every of which several entries sixpence shall be paid, and no more; which said register book may at all seasonable and convenient times be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee, not exceeding sixpence.

III.---Provided nevertheless, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the Gazette, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

IV.---Provided nevertheless, and it is hereby further enacted by the authority aforesaid, that if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of March, one thousand seven hundred and ten, set a price upon, or sell or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too *high and unreasonable*; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of Canterbury for the time being; the Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain, for the time being; the Lord Bishop of London for the time being; the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, for the time being; the Vice-Chancellors of the two Universities for the time being, in that part of Great Britain called England; the Lord President of the Sessions for the time being; the Lord Justice General for the time being; the Rector of the College of Edinburgh for the time being, in that part of Great Britain called Scotland; who, or any one of them,

(a) An action may be maintained for damages by piracy without any entry at Stationers' Hall. 7 Term Rep. 620.



The act recites, that printers, booksellers, and other persons had of late frequently *taken the liberty* of printing, *re-printing*, and publishing books and other writings, *without the consent of the authors or proprietors*, to their very great detriment, and too often to the ruin of them and their families. For *preventing*, therefore, such *practices* for the future, and for

shall and have hereby full power and authority from time to time to send for, summon, or call before him or them, such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if, upon such enquiry and examination, it shall be found that the price of such book or books is enhanced or anywise too high or unreasonable, then, and in such case, the said Archbishop of Canterbury, Lord Chancellor or Lord Keeper, Bishop of London, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities in that part of Great Britain called England; and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint, and of the causing such rate or price to be so limited or settled; all which shall be done by the said Archbishop of Canterbury, Lord Chancellor or Lord Keeper, Bishop of London, two Chief Justices, Chief Baron, Vice-Chancellors of the two Universities in that part of Great Britain called England, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the Gazette; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell or expose to sale any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid, then, and in every such case, such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered, with costs of suit, in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

V.---The fifth section, which relates to the delivery of nine copies of each book to the public libraries, will be inserted in the second part of the Historical View.

VI.---Provided always, and be it further enacted, that if any person or persons incur the penalties contained in this act, in that part of Great Britain called Scotland, they shall be recoverable by any action before the Court of Session there.

VII.---Provided, that nothing in this act contained do extend, or shall be construed to extend, or to prohibit, the importation, vending, or selling of any books in Greek, Latin, or any other foreign language, printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

VIII.---And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.



the *encouragement of learned men* to compose and write useful books, it was enacted, that the authors of books *already printed*, who had not transferred their rights, and the booksellers or other persons who had purchased or acquired the copy of any book, in order to print or reprint the same, should have the sole right and liberty of printing them for a term of *twenty-one years*, from the 10th of April, 1710, *and no longer*.

And the authors of books already composed, but not printed, or that should thereafter be composed, and their assigns, should have the sole liberty of printing and reprinting such books for *fourteen years*, to commence from the first publishing the same, *and no longer*.

It then enacted the forfeiture of all books printed, reprinted, imported, or sold, without consent in writing of the proprietor, signed in the presence of two witnesses, and inflicted the penalties of confiscation of the pirated books, and one penny for every sheet; half the penalty to the owner, and the other to the informer.

And that persons might not through ignorance offend against the act, the forfeitures and penalties do not attach unless the title to the copy of the book be entered in the register book of the Stationers' Company, in such manner as had been usual.

The act authorizes the Archbishop of Canterbury and other dignitaries to settle the prices of books, upon complaint made that they were unreasonable.

It was also provided, that the act should not extend either to *prejudice or confirm* any right that the Universities, or any person, had, or claimed to have, to the printing or reprinting any book or copy already printed, or thereafter to be printed.

And the last clause directed that the sole right of printing or disposing of copies after the expiration of the first term of fourteen years, should *return* to the authors thereof, if they were then living, for another term of fourteen years.

IX.---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 printed, or hereafter to be printed.

X.---Provided nevertheless, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced within three months next after such offence committed, or else the same shall be void and of none effect.

XI.---Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.



In addition to this brief summary of the purport of the act, it has been deemed necessary to quote it fully in the notes; and we now proceed to the *intention of the Legislature*, deduced from the preamble of the act, and the language of its several clauses.

It is observable that the preamble of the act adopts a language which condemns the *liberty* then of late frequently taken, of printing books and writings without the consent of the author or proprietor, and treats it as an *abuse of a right*, not as an act done in assertion of any common law right, to which the statute intended to put only a temporary restraint, for the act declares it to be done "to the detriment of the *proprietors*, and the ruin of their families."

When the Legislature speak of a "liberty taken," it is obvious they could not mean a claim founded on any right. If such had been the intention, they would have so expressed themselves; and probably the preamble would have run thus: "Whereas booksellers and divers other persons have of late *claimed the right* of printing and reprinting," &c.

The word "reprinting," is also observable. For if the first printing a publication was a gift of the work to the public, it could be no injury to reprint a second edition without consent. But without consent of *whom*? The author or proprietor (in the *disjunctive*); thereby clearly pointing out the persons entitled to this property, namely, the original author or his assignee. And by the words, "to the ruin of them and their *families*," the Parliament probably alluded to the dispositions of their works made by authors at their decease for the benefit of their families.

Again, in the enacting clause, "for preventing, therefore, the like practices in future," the Legislature, by the word *practices*, did not mean to describe the exercise of a legal right; but to point out acts committed in *fraud* and violation of private rights, which this act was made to prevent. The word "practices" is properly applied to the doing of *illegal* acts; but is improperly and incongruously made use of to describe the exercise of right, either strictly legal, or even doubtful.

It is also worthy of notice, that the enacting clause adopts precisely the identical expressions anciently used in the decrees, ordinances, and statutes, alike speaking of the rights of authors as a known, subsisting, and transferable property. "The copy of the book," "the title to the copy," in the words of the act, form a technical recognition of the right.



The bill on which the act was founded, went to the committee as a bill to *secure* the undoubted property of copies *for ever*. It seems that objections arose in the committee to the *generality* of the proposition; and that the debate ended in securing the property in copies for a term---without prejudice to either side of the question upon the general claim as to the *right*. By the law and usage of Parliament, a *new* bill cannot be made in a committee; a bill to *secure* the property of authors, could not be turned into a bill to *take it away*. What the act gives with a sanction of penalties, is for a *term*: the words, "and no longer," add nothing to the sense, any more than they would in a will, if a testator gave an estate for years<sup>(1)</sup>.

The preamble of the statute, as it was originally brought in and went to the committee, was the fullest assertion of the legal property and undoubted right of authors at common law, that could be, and there was no saving clause at all in the act. When that florid introduction was abridged, it is most probable, as the fact appears, that a saving clause was guardedly inserted.

The Universities had considerable copyrights. Lord Clarendon's History was but lately published by the University of Oxford. The third volume did not come out until 1707. They came out at different times. The proviso, however, is general:---"That nothing in this act contained shall 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 printed, or hereafter to be printed.

If there were not a common law right previous to this statute, what is this clause to save? Not a right of publishing, to throw it into universal communion as soon as it comes out. That was no more worth while than the purchasing of a copy seems to be, if it be left unprotected by the law, and open to every piratical practice.

This proviso seems to be the effect of extraordinary caution that the rights of authors at common law might not be affected; for if it had not been inserted, they would not have been taken away by construction, but the right and the remedy would still remain unaffected by the statute<sup>(2)</sup>.

The common law right, indeed, is admitted and recognized by providing a *remedy* for the injury; although at common law it has been said, that there is *no injury* whatever. The statute professed to "encourage learning," and to prevent "the printing of books without the consent of the authors or proprietors, to their detriment," &c. Its object was avowedly not to limit the right, but to facilitate the remedy. In giving an additional protection to literary property by inflicting a

(1) 4 Burr. 2333.

(2) Ibid. 2352.



penalty, there might be some reason for limiting that species of punishment to a definite period. The penalty is not reserved to the author, but given to any one who may sue for it; and it is obvious, therefore, that it was designed as an act of *public justice*, independently of the *private* right to compensation at common law.

It should be recollected also, that it was a remedial statute, and ought to have been construed liberally: the contrary principle would assume, that the object of the act, as well as justice and policy, required the *suppression* of literature, rather than its "encouragement."

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## SECTION II.

### *Of the construction of the Statute before the year 1775.*

The great question which has been discussed in the courts of justice regarding the limits of literary property, depended on the construction of the 8 Anne. Before adverting to the interpretation which was subsequently put upon it, we deem it appropriate, in the order of time, to notice the decisions in the courts of law and equity which took place from the passing of the act in question, down to the year 1774, when, contrary to all the previous decisions, it was determined by the House of Lords that the common law right was merged in the statute.

#### 1. *Of the decisions in Equity.*

The earliest decisions on the general question of literary property occurred in the *courts of equity*, which were resorted to as affording a more speedy remedy against invasions of copyright by an immediate injunction, than could be obtained by an action at law for damages. Numerous decisions took place, founded upon the principles of the common law, and on the supposition that a *perpetual* copyright belonged to authors and their assignees. It is remarkable, that if the statute of Anne was intended to abridge the common law right, none of the lawyers who were engaged in the various cases which occurred after that act, should have advanced the argument. From the passing of the act in the year 1710, until 1775, when the question came before the House of Lords, there were numerous cases argued, yet in none of them was the point even in the slightest degree adverted to.

The question upon the common law right to old copies of works, could not arise until twenty-one years from the



10th of April, 1710 ; consequently, the soonest it could arise was in 1731.

In 1735, an injunction was granted by Sir Joseph Jekyll to restrain the printing of the *Whole Duty of Man*, the first assignment of which had been made seventy-eight years before that time.

In the same year, Lord Talbot restrained the printing of *Pope's* and *Swift's* Miscellanies, though many of the pieces were originally published prior to the act, namely, in 1701-2-8.

In 1736, Sir J. Jekyll granted another injunction for printing *Nelson's Festivals and Fasts*, though printed in 1703, in the life time of the author, and he died in 1714.

In 1739, an injunction was ordered by Lord Hardwicke against printing *Milton's Paradise Lost*, the title to which was derived by an assignment from the author seventy-two years antecedently.

And in 1752, another injunction issued in favor of *Milton's Paradise Lost*, with his *Life* by Fenton, and the *Notes* of all the former editions. It was an injunction to the *whole*, so that printing the *Poem*, or the *Life*, or the *Notes*, would have been a breach of the order.

The Court of Chancery, from the passing of the act of Anne, have been in error in all these decisions, if the whole right of an author in his copy depends upon this positive act, as introductive of a new law. For it is clear, the property of no book was intended to be secured by this act, unless it should be entered. No one offended against the act, unless the book was entered. Consequently, the sole copyright was not given by the act, unless the book was entered. Yet it was held unnecessary to the relief in Chancery that the book should be entered.

There is also an express proviso in the act, that all actions and suits for any offence against the act, should be brought within three months, or be of no effect. Now if all copies were open and free before, pirating is merely an offence against the statute, and can only be questioned in any court of justice as an offence against it. Yet it is not necessary that the bill in Chancery should be filed within three months.

Again, if the right vested, and the offence prohibited, by the act, be new, no remedy or mode of prosecution could be pursued, besides those prescribed by the act. But a bill in Chancery was not given, and consequently could not be brought upon the act. There is no ground upon which this jurisdiction has been exercised, or can be supported, except the antecedent property, confirmed and secured for a limited term by this act. In this light the entry of the book is a condition in respect of the statutory penalty only ; so like-



wise the three months is a limitation in respect of the statutory penalty only. But the remedy by an action upon the case, or a bill in Chancery, is a consequence of the common law right; and is not affected by the statutory condition or limitation<sup>(1)</sup>.

It has been urged in objection, that these injunction cases were only *preliminary* decisions, and that none of the suits were brought to a final hearing.

Great caution, however, has been always exercised in granting injunctions at the commencement of a suit, because if on further investigation it should be found erroneous, the loss of a defendant does not admit of reparation. The judgment, therefore, has been invariably given with great deliberation.

LORD MANSFIELD said he looked at the injunction which had been granted, or continued, before hearing, as equal to any final decree, for such injunction never is granted upon motion, unless the legal property is made out; nor continued after answer, unless it remains clear. The Court of Chancery never grants injunctions in cases of this kind where there is any doubt<sup>(2)</sup>.

LORD ELDON, referring to the view taken by Lord Mansfield, also said, that in these cases a court of equity takes upon itself to determine, as well as it can, the rights in this period, and with a conviction that if then the cause was hearing, they would act upon the same rule. The court takes upon itself that which may involve it in mistake to determine the legal question. It is the decision of a judge sitting in equity upon a legal question, and therefore not having all the authority of a decision of a court of law, but giving an opinion, and pledged to maintain it, unless there should be occasion to alter it<sup>(3)</sup>.

So in the case respecting the publication of Lord Melville's Trial, LORD ERSKINE observed, that he was so much convinced by the arguments for the defendant as to the effect of an injunction, that unless he had a strong impression that at the hearing he should continue of the same opinion, and should grant a perpetual injunction, he would

(1) The statute of Anne is a *penal* statute, which prescribes the remedy for the party aggrieved, and the mode of prosecution to be commenced within three months. Upon such an act, if the offence, and consequently the right which arises from the prohibition, be *new*, no remedy or mode of prosecution can be pursued, except what is directed by the act.

If a conditional right is created by an Act of Parliament, the condition cannot be dispensed with. If the same act which creates the right, limits the time within which prosecutions for violation of it shall be commenced, that limitation cannot be dispensed with.

Therefore the whole jurisdiction by the Court of Chancery since 1710 against pirates of copies, is an authority that authors had a *property antecedent*, to which the act gives a *temporary additional security*; it can stand upon no other foundation<sup>(a)</sup>.

(2) 4 Burr. 2303.

(3) 8 Vesey, 224.

(a) 4 Burr. 2323.



not grant the injunction then, which he only did as there was no probability that new facts would appear by the answer<sup>(1)</sup>.

Injunctions to stay printing, or the sale of books printed, it may be further observed, are in the nature of injunctions to stay *waste*---they never are granted but upon a *clear right*. If moved for upon filing the bill, the right must appear clearly by affidavit; if continued after the answer has been put in, the right must be clearly admitted by the answer, or at all events not denied.

Where the plaintiff's right is questioned and *doubtful*, an injunction is improper, because no reparation can be made to the defendant for the damage he sustains from the injunction.

There are several cases reported upon questions regarding infringements of copyright *within* the period protected by statutes: to these, of course, it is unnecessary in this place to advert, as the general principle was not in any way included in the determination; and we refer them to the chapter on *pirating copyright*.

## 2. Of the Decisions at Law.

The general question was first argued in a *court of law* in the case of *Tonson v. Collins*, in the year 1760, relative to the copyright in the *Spectator*. It appears from the best authority, that so far as the Court had formed an opinion, they all inclined to the plaintiff, and they were prepared to give judgment accordingly. But having received information that although the argument was conducted *bona fide* by the counsel, it was a collusive proceeding between the parties for the purpose of obtaining a judgment which might be set up as a precedent, they refused to pronounce any decision<sup>(2)</sup>.

In the year 1769, the subject was discussed at great length with respect to *Thomson's Seasons*, in the celebrated case of *Millar v. Taylor*<sup>(3)</sup>.

The counsel for the plaintiff insisted "that there was a real *property* remaining in authors *after publication* of their works; and that *they only*, or those who claim under them, have a right to *multiply* the copies of such, their literary property, at their pleasure for sale." And they likewise insisted, "that this right is a *common law right*, which *always* has existed, and does still exist, independent of, and not taken away by, the statute of Anne."

On the other side, the counsel for the defendant denied that any such property remained in the author after the publication of his

(1) 13 Vesey, 505.

(2) 1 Blac Rep. 301, 321; 4 Burr. 2327.

(3) 4 Burr. 2303.



work, and they treated the pretensions of a common law right to it as mere fancy and imagination, void of any ground or foundation.

They insisted that if an original author publishes his work, he sells it to the public ; and the purchaser of every book or copy has a right to make what use of it he pleases, and may multiply each book or copy to what quantity he pleases.

They also contended that the act of Anne vests the copies of printed books in the authors or purchasers of such copies during the times therein limited, but only during that *limited time*, and under the *terms* prescribed by the act.

There was a difference of opinion in the Court. Lord MANSFIELD and Judges ASTON and WILLES were in favor of the plaintiff's copyright, and Judge YATES was alone against it. Judgment was of course given according to the opinion of the majority.

Some years after this decision the question came before the HOUSE OF LORDS, upon an appeal from a decree of the Court of Chancery, founded on the judgment given in the Court of King's Bench in *Millar v. Taylor*, and it was ordered by the House, on the 9th of February, 1774, that the judges be directed to deliver their opinions upon the following questions :

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 ?

Of eleven judges, there were eight to three in favor of the right at common law.

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 afterwards reprint and sell for his own benefit such book or literary composition, against the will of the author ?

There were seven to four of the judges who held that the printing and publishing did not deprive the author of the right.

3. If such action would have lain at common law, is it taken away by the statute of 8th Anne ? 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 ?

On this question there were only five judges who were of opinion that the action at common law was not taken away by the statute, and there were six of the opposite opinion.

It was well known 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 (which in the latter case would have made the votes equal). 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.

It was finally decided, that an action could not be maintained for pirating a copyright after the expiration of the time mentioned in the statute<sup>(1)</sup>.

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SECTION III.

*Of the Statutes 12 Geo. II. and 15 and 41 Geo. III.*

The first of these statutes<sup>(2)</sup> was, “ an act for prohibiting the importation of books reprinted abroad, and first composed

(1) Donaldson v. Becket, 4 Burr. 2408.

(2) By the 12 Geo. II. cap. 36, it was enacted, That from and after the 29th of September, 1739, it shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale any book or books first composed or written and printed and published in this kingdom, and reprinted in any other place or country whatsoever ; and if any person or persons shall import or bring into this kingdom for sale any printed book or books so first composed or written and printed in this kingdom, and reprinted in any other place or country as aforesaid ; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books ; then every such person or persons so doing or so offending shall forfeit the said book or books, and all and every sheet or sheets thereof, and the same shall be forthwith damasked and made waste paper : and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act ; the one moiety thereof to the King’s most excellent Majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same ; to be recovered, with costs of suit, in any of His Majesty’s courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoine, or protection, or more than one imparlance, shall be allowed : and if the offence be committed in Scotland, to be recovered before the Court of Session there by summary action :

Provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty-one years before the same shall be imported.

II.---Provided always, that nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, to be sold therewith in any collection, where the greater part of such collection shall have been first composed or written and printed abroad ; any thing in this act contained to the contrary notwithstanding.

III.---The third section recites the 4th clause in 8 Anne, c. 19, by which the price of books is subject to regulation, and repeals every part of that clause. And then proceeds :

IV.---And be it further enacted, That this act (except so much thereof as repeals the before-mentioned clause in the said act of the eighth year of the reign of the late Queen Anne relating to the price of books) shall continue and be in force from the said 29th day of September, 1739, and from thence to the end of the then next Session of Parliament, and no longer.

This act was further continued by 27 Geo. II. cap. 18, and 33 Geo. II. cap. 16.



or written and printed in *Great Britain*; and for repealing so much of an act made in the 8th year of the reign of her late Majesty, Queen Anne, as empowers the limiting the prices of books.

It recites in the preamble, that the duties on paper imported into this kingdom to be made use of in printing, greatly exceed those payable on the importation of printed books, whereby foreigners and others are encouraged to bring in great numbers of books originally printed and published in this kingdom, and reprinted abroad, to the diminution of His Majesty's revenue, and the discouragement of the trade and manufactures of the kingdom; and, therefore, it prohibits the importation of books written and printed in *this*, and reprinted in another country, on pain of forfeiture of the books, and double their value, and five pounds for every offence.

But the act does not extend to books that have not been printed in this kingdom within twenty years, nor to their insertion among other books or tracts, where the greatest part have been composed and printed abroad.

The act then repeals the 4th section of the statute of Anne, relating to the limitation of the price of books.

*15 Geo. III. cap. 53.*

It is evident that the several Universities were as little prepared as any individual author or publisher, for the decision of the House of Lords, which overthrew the exercise of unlimited copyright, although it had prevailed, not only in all the time antecedent to the 8th Anne, but for sixty-five years subsequently. The Universities hastened immediately to Parliament, and in the same year, 1775, obtained an act "for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in *perpetuity* their copyright in books given or bequeathed to the said Universities and Colleges, for the advancement of useful learning, and other purposes of education<sup>(1)</sup>."

(1) 15 Geo. III. c. 53. Whereas authors have heretofore bequeathed or given, and may hereafter bequeath or give, the copies of books composed by them, to or in trust for one of the two Universities in that part of Great Britain called England, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four Universities in Scotland, or to or in trust for the several colleges of Eton, Westminster, and Winchester, and in and by their several wills or other instruments of donation, have directed, or may direct, that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education within the said Universities and colleges aforesaid: And whereas such *useful purposes will frequently be frustrated*, unless the *sole printing and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said Universities, colleges, and houses*



It was enacted, that these Universities and Colleges should have *for ever* the sole liberty of printing and reprinting such books as had been, or should be, bequeathed to them, or in trust for them, unless the same had been, or should be, given for a limited time.

But it was provided, that the act should not extend to of learning respectively *in perpetuity*; may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said Universities and colleges respectively shall, at their respective presses, have, *for ever*, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be, bequeathed or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said Universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four Universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in anywise notwithstanding.

II.---And it is hereby further enacted, that if any bookseller, printer, or other person whatsoever, from and after the 24th day of June, one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the University, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, or more than one imparlance, shall be allowed.

III.---Provided nevertheless, that nothing in this act shall extend to grant any exclusive right otherwise than so long as the books or copies belong to the said Universities or colleges are printed only at their own printing presses within the said Universities or colleges respectively, and for their sole benefit and advantage; and that if any University or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void, and of no effect, in the same manner as if this act had not been made; but the said Universities and colleges, as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of Her Majesty Queen Anne.

IV.---And whereas many persons may through ignorance offend against this act, unless some provision be made whereby the property of every such book as is intended by this act to be secured to the said Universities, colleges, and houses of learning within the same, and to the said Universities in Scotland, and to the respective colleges of Eton, Westminster, and Winchester, may be ascertained and known, be it therefore enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books



grant any exclusive right in such books longer than they were printed at the presses of the Universities or Colleges respectively. Yet they might sell their copyrights in the same manner as any individual author.

The provisions of the act are enforced by penalties and forfeitures; but no person is subject to them on account of books *then already bequeathed*, unless they be entered in the register book of the Stationers' Company before the 24th of June, 1775; and all books which should be *thereafter* bequeathed, must be entered within two months after such bequest shall be known.

After making provision for enforcing the due entry in the register book, the act recites the statute of Anne, relating to the delivery of the copies to the public libraries, and enacts, that no person shall be subject to the penalties in

which has or have been already bequeathed or given to any of the said Universities or colleges aforesaid, be entered in the register book of the Company of Stationers kept for that purpose, in such manner as hath been usual, on or before the 24th day of June, one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the Vice-Chancellors of the said Universities, or heads of houses and colleges of learning, or of the principal of any of the said four Universities respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid, and no more; which said register book shall and may, at all seasonable and convenient times, be referred to and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

V.---And be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said Universities or colleges aforesaid, lawfully authorized for that purpose, then either of the said Universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by an advertisement in the Gazette), shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copyright, to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, protection, or more than one imparlance, shall be allowed.

VI.---The next section, which relates to the delivery of the copies of books to the public libraries, will be found in the *second part*.

VII.---And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in Scotland, a judgment be given for the defendant, or the plaintiff become nonsuited, and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

VIII.---And be it further enacted by the authority aforesaid, that this act shall be adjudged, deemed, and taken to be a public act; and shall be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same.



that act for printing any book, unless the title to the copy of *the whole* of such book be entered, and the copies of the whole delivered for the use of the several libraries.

41 *Geo. III. cap. 107.*

Immediately after the *Union with Ireland*, an act was introduced<sup>(1)</sup> “ for the further encouragement of learning in

(1) After the recital which is stated in the text, the statute 41 *Geo. III. cap. 107*, proceeds as follows :

That it be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the author of any book or books already composed, and not printed or published, and the author of any book or books which shall hereafter be composed, and the assignee or assigns of such authors respectively, shall have the sole liberty of printing and reprinting such book and books, for the term of fourteen years, to commence from the day of first publishing the same, and no longer ; and that if any other bookseller, printer, or other person whosoever, in any part of the said United Kingdom, or in any part of the British dominions in Europe, shall, from and after the passing of this act, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or knowing the same to be so printed, reprinted, or imported, without such consent of such proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act ; and every such proprietor and proprietors shall and may, by and in such special action upon the case to be so brought against such offender or offenders in any Court of Record in that part of the said United Kingdom, or of the British dominions in Europe, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a Writ of Enquiry thereon, shall give or assess, together with double costs of suit ; in which action no wager of law, essoine, privilege or protection, nor more than one imparlance, shall be allowed ; and all and every such offender or offenders shall also forfeit such book or books, and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record in which any action or suit in law or equity shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court ; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books, and sheet or sheets respectively ; and all and every such offender or offenders shall also forfeit the sum of *three pence* for every sheet which shall be found in his or their custody, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed : provided always, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

II.---Provided also, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to any book or books heretofore composed, and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever, from or against any penalties or actions, to which he, she,



the United Kingdom of Great Britain and *Ireland*, by securing the copies and copyright of printed books to the authors of such books, or their assigns, for the time therein mentioned.”

It was passed on the 2nd of July, 1801, and recites in the preamble, that it is expedient that further protection should be afforded to the authors of books, and the purchasers

or they shall or may have become, or shall or may hereafter be liable, for or on account of the unlawfully printing, reprinting, or importing such book or books, or the selling, publishing, or exposing the same to sale, or the having the same in his or their possession for sale, contrary to the laws and statutes in force respecting the same, at the time of the passing an act in the Session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, *An act for the union of Great Britain and Ireland*.

III.---And whereas authors have heretofore bequeathed, given, or assigned, and may hereafter bequeath, give, or assign, the copies or copyrights of and in books composed by them, to or in trust for the college of the Holy Trinity of Dublin; and in and by their several wills or other instruments have directed or may direct, that the profits arising from the printing and reprinting such books, shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books, the copies of which shall have been or shall be so bequeathed, given, or assigned as aforesaid, be preserved and secured to the said college in perpetuity; be it therefore further enacted, that the said college shall, at their own printing press, within the said college, have for ever the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given or assigned by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed, given, or assigned, or shall hereafter be bequeathed, given or assigned, for any term of years, or any other limited term; any law or usage to the contrary thereof in anywise notwithstanding; and that if any printer, bookseller, or other person whosoever, shall from and after the passing of this act unlawfully print, reprint, or import, or cause to be printed, reprinted, or imported, or knowing the same to be so unlawfully printed, reprinted, or imported, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his or their possession for sale, any such last mentioned book or books, such offender and offenders shall be subject and liable to the like actions, penalties, and forfeitures as are herein before mentioned and contained with respect to offenders against the copyrights of authors and their assigns: provided, nevertheless, that nothing in this act shall extend to grant any exclusive right to the said college of the Holy Trinity of Dublin, otherwise than so long as the books or copies belonging to the said college are and shall be printed only at the printing press of the said college, within the said college, and for the sole benefit and advantage of the said college; and that if the said college shall delegate, grant, lease, or sell the copyrights or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, then the privilege hereby granted shall become void and of no effect, in the same manner as if this act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors can or may lawfully do under the provisions of this act, or any other act now in force.

IV.---Provided also, and be it further enacted, that no bookseller, printer, or other person whosoever, shall be liable to the said penalty of three pence per sheet, for or by reason of the printing, reprinting, importing, or selling of any such book or books, or the having the same in his or their custody for sale, without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication



of the copies and copyright of the same, in the United Kingdom of Great Britain and Ireland.

It enacts, that authors of books then already composed, and not printed or published, and of books to be thereafter composed, and the assigns of such authors, shall have the sole right of printing such books for fourteen years, from the day of first publishing the same, and no longer.

of such book or books by the proprietor or proprietors thereof (other than the said college), the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in London, in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in Great Britain; nor if the consent of such proprietor or proprietors for the printing, reprinting, importing, or selling such book or books, shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed, given, or assigned to the said college, be entered in the said register book before the 29th day of September, one thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed, given, or assigned as aforesaid, be entered in the said register book within the space of two months after any such bequest, gift, or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries sixpence shall be paid, and no more; which said register book shall at all times be kept at the hall of the said Company, and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also, without fee or reward, within fifteen days next after the 31st day of December, and the 30th day of June, in each and every year, make or cause to be made, for the use of the said college, a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said 31st day of December, and the 30th day of June respectively, and shall upon demand deliver the said lists, or cause the same to be delivered, to any person or persons duly authorized to receive the same for and on behalf of the said college.

V.---Provided also, and be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate or certificates, being thereunto respectively required by the author or authors, proprietor or proprietors, of such copies or copyrights, or by the person or persons to whom such consent shall be given, or by some person on his or their behalf, in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the London Gazette, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for any such offence, forfeit to the author or proprietor of such copy or copies, or to the person or persons to whom such consent shall be given, the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid, or to deliver the same to any person duly authorized to demand the same on behalf of the said college, the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of His Majesty's Courts of Record in the said United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed.

VI.---The sixth section relates to the additional copies for the Irish libraries, and will be stated in the next part.

VII.---And be it further enacted, that from and after the passing of this act, it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of Great Britain and Ireland for sale, any printed book or books, first composed, written, or printed, and published in any part of the said United Kingdom, and reprinted in any other country or place whatsoever; and if any person or



And that any bookseller or other person, in any part of the United Kingdom, or British Dominions in Europe, who shall print, reprint, or import any such book, without the consent of the proprietor of the copyright, shall be liable to an action for damages, and double costs, and shall also forfeit the books to the proprietor, and *three pence* per sheet, one moiety to the king, and the other to the informer.

The act also provides, that after the expiration of the fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

It also enacts, that Trinity College, Dublin, shall *for ever* have the sole right of printing books given or bequeathed to them, unless they were given for a limited time only. And that if any printer, bookseller, or other person should unlawfully print such books, such offender should be subject to the like penalties as before mentioned.

The act, however, extends only to books printed at the

persons shall import or bring, or cause to be imported or brought for sale, any such printed book or books into any part of the said United Kingdom, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale, or have in his or their possession for sale, any such book or books, then every such book or books shall be forfeited, and shall and may be seized by any officer or officers of Customs or Excise, and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also, for every such offence, forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she, or they shall so import or bring, or cause to be so imported or brought, into any part of the said United Kingdom, or shall knowingly sell, publish, or expose to sale, or shall cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, contrary to the true intent and meaning of this act; and the commissioners of Customs in England, Scotland, and Ireland respectively (in case the same shall be seized by any officer or officers of Customs), and the commissioners of Excise in England, Scotland, and Ireland respectively (in case the same shall be seized by any officer or officers of Excise), shall also reward the officer or officers who shall seize any books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of customs and excise: provided that no person or persons shall be liable to any of the last mentioned penalties or forfeitures, for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom, within twenty years next before the same shall be imported, or of any book or books reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection, where the greatest part of such collection shall have been first composed or written abroad.

VIII.---And be it further enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this act, shall be brought, sued, and commenced within six months next after such offence committed, or else the same shall be void and of none effect.