all printing, not only of *public* books containing ordinances, religious or civil, but *every species of publication* whatsoever, was regulated by the King's proclamations, prohibitions, charters of privilege, and, finally, by the decrees of the Star Chamber.

"After the demolition of that odious jurisdiction, the Long Parliament, on its rupture with Charles the First, assumed the same power which had before been in the crown; and after the Restoration, the same restrictions were re-enacted, and re-annexed to the prerogative by the statute of the 13th and 14th Charles II., and continued down by subsequent acts till after the revolution."

"The expiration of these disgraceful statutes (in 1694), by the refusal of Parliament to continue them any longer, formed the *great æra of the liberty of the press in this country*, and stripped the crown of every prerogative over it, except that which, upon just and rational principles of Government, must ever belong to the executive magistrate, namely, the exclusive right to publish religious or civil constitutions; in a word, to promulgate every ordinance which contains the rules of action by which the subject is to live and to be governed(1)."

Amongst the works formerly claimed as exclusively belonging to the crown, or its patentees, were law books, almanacs, and the Latin grammar.

From the time of 26th Henry VIII. down to the 12th Anne, various patents were granted to different persons, giving them full power to print and re-print prerogative copies, in exclusion of all other persons.

The King's printer in England enjoys the benefit to be derived from printing the Acts of Parliament, and other documents of the state; and the King's printers for Scotland and Ireland possess similar patents.

The Universities of Oxford and Cambridge, in common with the King's printer, claim a right to print all Bibles to be circulated in England; and the Company of Stationers *formerly* exercised, in conjunction with the Universities, an exclusive power of printing almanacs.

We shall proceed to consider in their order the several works which were thus anciently monopolized under the charters and patents granted by the crown.

1*st*. *Of Law Books.*

The following were the reasons on which the monopoly

(1) Ridgway's Coll. 1st. vol.

in law books was attempted to be upheld, namely—that this privilege had been always allowed, which was a strong argument in its favor; although it could not be said to amount to a prescription, as printing was introduced within time of memory;—that it concerned the state, and was matter of public care;—that it was in nature of a proclamation, which none but the King could make;—that the King had the making of judges, serjeants, and officers of the law;—that though it could not be extended to a book containing a quotation of law, it applied to those in which the principal design was to treat on that subject(1).

The King's prerogative in law publications is now, however, treated as perfectly ridiculous(2). Nothing, indeed, could be more preposterous than the argument, that because the King appointed the judges, he had a monopoly in the publication of their decisions! It was urged, also, that as he paid for the composition of the year books, he was entitled to them on the ground of purchase. Mr. Justice YATES, however, in the cause of Millar v. Taylor(3) observed, that the expence of printing prerogative books was, "in fact, no private disbursement of the King, but done at the public charge, and formed part of the expences of Government."

It could hardly, he said, be contended, that the produce of expences of a public sort, were the private property of the King, when purchased with the public money. He could not sell or dispose of one of those compositions. How, then, could they be his private property, like private property claimed by an author in his own compositions?

Besides, the purchase by the King could only comprise the right of an individual author. He did not compose the works personally, and could only acquire such right as a subject was able to dispose of. It has never been contended that the mere act of purchasing a work, conferred on the purchaser of the manuscript a copyright beyond the interest

(1) *Roper* and *Streater*, 4 Bac. Ab. Art. "Prerogative."—In this case, Roper bought of the executors of Justice *Croke*, the 3rd part of his Reports, which he printed. Colonel Streater had a grant for years from the crown for printing all law books, and printed upon Roper, on which Roper brought an action on the statute 13th and 14th Car. II. c. 33. Streater pleaded the King's grant.

On demurrer, it was adjudged in B. R. for the plaintiff, against the validity of the patent; on these reasons, that this patent tended to a monopoly—that it was of a large extent—that printing was a handicraft trade, and no more to be restrained than other trades—that it was difficult to ascertain what should be called a law book—that the words in the patent, *touching or concerning the common or statute law*, were loose and uncertain—that if this were to be considered as an office, the grant for years could not be good, as it would go to executors and administrators, and that there was no adequate remedy in the way of redress in case of abuses by unskilfulness, selling dear, printing ill, &c.

But this judgment was reversed on a writ of error in Parliament.

(2) 4 Burr. 2315. 3 Pere Williams, 255. (3) 4 Burr. 2384.

possessed by the author. The duration or extent of the right can in no degree depend on the purchaser: if it did so, it would follow, that under the present Acts of Paliament the copyright in a book would continue for the life of the assignee, and not for the life time of the author; and a copyright might thus easily be perpetuated, by the author selling his interest to two or more persons, and on the death of one of them, the survivors might transfer the copy to others, and so on for ever.

2nd. *Of Almanacs.*

A patent was granted by James I. for the exclusive printing of almanacs, and the right continued to be insisted upon by the Universities and Stationers' Company as matter of prerogative, after the final decision of the general question of literary property in 1774.

The origin of the prerogative claim in these publications, is put upon the following curious reasons:—

1st. Because derelict.

2nd. Because almanacs regulate the feasts of the church(1).

In the year 1778, Mr. Carnan having made several improvements in the nature of the work, and published it on his own account, the Universities and the Stationers' Company filed a bill in Chancery to restrain the publication.

The court having doubted the legality of the patent, directed a case to the Common Pleas; the judges of which court, after two arguments, decided that the patent was void(2).

A bill was then brought in "to revest the monopoly in almanacs, which had fallen to the ground by the above-mentioned judgments in the King's Courts."

Mr. ERSKINE was heard against the bill at the bar of the House of Commons, and it was rejected by a majority of forty-five votes(3).

(1) Mod. 256. (2) 2 Blac. Rep. 1004.

(3) Vol. 37, *Journals*, 388. It is from the splendid speech on this occasion that we have made the extract at the commencement of this section.

In contrast to the title of the bill given to it by its proposer, Mr. Erskine facetiously adduced the following, as more truly characterizing its nature:—

"Whereas the Stationers' Company and the two Universities, for above a century last past, *contrary to law*, usurped the right of printing almanacs, in exclusion of the rest of His Majesty's faithful people, and have from time to time harassed and vexed divers good subjects of our Lord the King for printing the same, till checked by a late decision of the Courts of Law:

Be it therefore enacted, that this usurpation be made legal, and be confined to them in future."

"This would have been a curiosity indeed, and would have made some noise in the House, yet it is nothing but the plain and simple truth; the bill could not pass without making a sort of bolus of the preamble to swallow it in."

3rd. *Of the Latin Grammar.*

The claim to a prerogative copyright in the old Latin grammar, was grounded on the allegation that the work had been originally written and composed at the King's expence(1).

But this pretension, like that in favour of law books, is now considered as wholly untenable(2).

The late Sir W. D. Evans, in discussing the prerogative of the crown, well observes, that although it may be rather a matter of curiosity than one of practical utility, the examination of the nature and foundation of the right will certainly lead to the conclusion, that such right could have had no legitimate origin upon any principles of the common law at present acknowledged. It seems, indeed, that the only occasion on which the validity of any of these patents was fully considered in a court of law as between the public and the crown, it was decided against them.

SECTION II.

Of the Prerogative Copyright in Acts of State.

The works in which a prerogative copyright is still retained, (though with regard to some of them most inconsistently) are the following:—

1st. Acts relating to the *state*, namely, the statutes, the King's proclamations, the orders of Council.

2nd. Acts relating to the *church*, namely, the liturgical and other divine service, and the *English* translation of the Bible.

In some of these the crown maintains, by its own printer, a *sole* copyright; and in others it is exercised *conjointly* with the Universities, under their respective charters.

1st. *Of the Statutes.*

On grounds of political and public convenience, it is said, that the King, as executive magistrate, has the right of promulgating to the people all acts of state and government(3).

Mr. Justice Yates. "The right of the crown to the sole and exclusive printing of what is called prerogative copies, is founded on reasons of religion or state. The only consequences to which they lead are of a natural and public concern, respecting the established religion or government of the kingdom.

(1) 4 Burr. 2329, 2401. (2) Ib. 2315. 3 Pere Williams, 255.
(3) 2 Blac. Com. 410.

Lord MANSFIELD considered the existence of prerogative copies as merely a modification of the general and common right of literary property.

He discussed at length the position that crown copies were founded solely on *property*, and said, that in Basket's case(1) they had no notion of the prerogative of the crown over the press, or of any power to restrain it by exclusive privileges, or of any power to control the subject matter upon which a man might write, or the manner in which he might treat of it. They rested upon property from the King's right of original publication. The copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does not belong to the King—it is common; but the English translation he bought, and therefore it has been concluded to be his property. His power rests in property. His sole right rests on the foundation of property in the copy by the Common Law. What other ground (said he) can there be for the King's having a property in the Latin grammar, (which is one of his most ancient copies) than that it was originally composed at his expence?

The exclusive right of printing Acts of Parliament and other matters of state, has been looked upon more favorably than the other branches of the prerogative in question.

Lord CLARE, in the case of Grierson v. Jackson(2), said he could very well conceive that the King should have a power to grant a patent to print the Statute Books, because it was necessary that there should be a responsibility for correct printing, and because copy can only be had from the Rolls of Parliament, which are within the authority of the crown.

Sir William D. Evans observes, that the legal right in this monopoly of the statutes, considered with relation to its origin, rests upon no juster principles than the exploded rights respecting the Latin grammar and almanacs. Previous to the invention of printing, the usual course was to send the statutes to be proclaimed by the Sheriffs. Then, as now, every subject was bound to have taken notice of the contents of them at his peril; and there is not the slightest trace of authority for a restriction of the employment of making manuscript copies, which, to the lawyers and judges of that day, must have been essentially necessary, although in case of any question arising judicially with respect to the contents of a statute, the original record, or some duly authenticated copy, would of course be resorted to; and the learned Annotator adds, that he cannot discern any legal principle upon which a discovery, that had the effect of facilitating the multiplication of copies, could limit and restrain that common right of producing such copies which previously existed. In fact (says he), this authority, originally claimed by the crown, had no particular

(1) 1 Bl. 105. 2 Burr. 661. (2) Ridgway's Reports, 304.

relation to the benefit of affording to the public more accurate information upon the ordinances of Parliament, than could otherwise have been obtained; but was merely one amongst many other instances of the application of that general overwhelming system of monopoly, which is now reduced to very circumscribed limits, and supported only upon grounds and principles that in former times were never thought of.

We conclude this part of the subject by referring to the case of *Baskett* v. *The University of Cambridge*, which is always quoted in support of the prerogative copyright; but it is observable that the parties in this litigation were equally interested in upholding the *general* prerogative, though they had quarreled about its exercise in that *particular instance*.

In that case the plaintiffs, who were the King's printers, brought a bill into the Court of Chancery to restrain the defendants from printing or selling a book entitled, "An exact Abridgment of all the Acts of Parliament relating to the Excise on Beer, &c." It was sent into the King's Bench for the opinion of the court upon the Acts of Parliament and Patents.

Several letters patent were insisted on by the plaintiffs, the last bore date in the 12th year of Queen Anne, by which the *sole* power of printing all, and all sorts of abridgments of all and singular statutes and Acts of Parliament, was given to the grantees, with a *prohibition* against all others.

On the other hand, the defendants contended that by a patent granted in the 26th year of Henry VIII. they might lawfully print, within the University, all manner of books approved by the Chancellor and Vice-Chancellor, and three doctors, and might put them to sale wherever they pleased; and that by a patent dated 3 Car. I. the King confirmed that right to the University, *notwithstanding* any grant or prohibition contained in the subsequent letters patent, or any of them.

The case was argued four times during the space of six years, and the following certificate was made by Lord Mansfield and the other judges.

"Having heard counsel on both sides, and considered of this case, we are of opinion that during the term granted by the letters patent, dated the 13th of *October*, in the 12th year of the reign of Queen *Anne*, the plaintiffs are entitled to the right of printing Acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the crown.

"But we think that by virtue of the letters patent, bearing date the 20th day of *July*, in the 26th year of the reign of King *Henry* VIII., and the letters patent bearing date the 6th of February, in the 3rd year of the reign of King *Charles* I. the Chancellor, Masters, and scholars of

the University of *Cambridge* are entrusted with a *concurrent authority* to print Acts of Parliament, and abridgments of Acts of Parliament, within the said University, upon the terms in the said letters patent(1).

Of the Statutes published with Notes and Selections of the Statutes.

It seems to have been agreed that the privileged copies may be printed by others than those having the patent right, *if accompanied by bona fide notes.*

In the case of Baskett v. Cunningham(2), the defendant, in conjunction with several booksellers, was publishing in weekly numbers A Digest of the Statute Law methodized under alphabetical heads, with large notes from Lord Coke, and other writers on the law. He had contracted with Strahan and Woodfall, the proprietors of the patent for printing law books, to print this work, and it was printed at their press. Baskett, the King's printer (whose patent extended to all statutes), filed a bill for an injunction. It was urged that the book was not within the meaning of the letters patent, being a work of labor and industry, and the method entirely new.

The LORD CHANCELLOR, however, was of opinion, that the work was within the patent of the King's printer, and that the notes were merely collusive. But he would not interfere between the two contending patents in the summary method of injunction, but left them to adjust their respective rights in the course of law. He, therefore, ordered an injunction to issue to restrain the proprietors from printing at any other than at a patent press; which, as Woodfall and Strahan were strictly in league with Baskett, and were at that time jointly concerned in a new edition of the Statutes, was equivalent to a total injunction, the law printers finding means to elude their contract with Cunningham.

2nd. Of Proclamations and Orders in Council.

Though it was decided in the case of Baskett v. The University of Cambridge(3), that the University had, under letters patent, a concurrent authority with the Crown to print Acts of Parliament, and abridgments of Acts of Parliament, within the University, it seems this authority has not been extended to the King's Proclamations, Orders in Council, and other State Papers. These latter Acts of State would, therefore, appear vested in the king's printer solely.

(1) Baskett v. University of Cambridge, 1 Bla. Rep. 105. 2 Burr. 660.
(2) 1 Bl. Rep. 370. 2 Eden, 137. 2 Evans's Stat. 622.
(3) 2 Burr. 661. 1 Blac. Rep. 105, cited page 105 *ante.*

SECTION III.

Of the Copyright of the KING *as head of the* CHURCH.

1st. *Of the English Translation of the Bible.*

The King's prerogative in the exclusive printing of the Bible, is confined to the *English translation;* which, it is said, he *bought*, and, *therefore*, it has been concluded to be his property(1).

Mr. Justice BLACKSTONE rests the claim of the King on the ground as well of his being the Head of the Church, as of original purchase. "On these two principles *combined* (he says), the exclusive right of printing the translation of the Bible is founded(2)."

The assumption of the private purchase, however, being now altogether abandoned, and the claim depending entirely on the exercise of the prerogative, during a period insufficient to constitute a prescriptive right, it seems by no means clear that the patent could be sustained in a court of law.

There are conflicting authorities on the subject; and the only instances in which the prerogative has been apparently upheld, were on occasions of disputed title between rival patentees, neither of whom were competent to moot the general question upon the footing of the public interest.

Upon an application for an injunction against printing an edition of the Bible in numbers, with prints and notes, Lord CLARE, the Chancellor of Ireland, asked if the validity of the patent had ever been established at law? and said, he did not know that the Crown had a right to grant a monopoly of that kind.

In the course of the discussion he made the following observations. "I can conceive that the King, as the Head of the Church, may say that there shall be but one man who shall print Bibles and Books of Common Prayer for the use of churches and other particular purposes; but I cannot conceive that the King has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in the revealed religion; if he had, it would be in the power of the patentee to put what price he pleased upon the book, and thus prevent the instruction of men in the Christian religion." "If ever there was a time which called aloud for the dissemination of religious knowledge, it is this; and, therefore, I should with great reluctance decide in favor of such a monopoly as this, which must necessarily confine the circulation of the book." "As to very particular purposes, I have no doubt that the patentee has an exclusive right to print Bibles and Prayer Books; but unless I am bound down very strictly, I will not determine upon

(1) 4 Burr. 2405. (2) 2 Comm. 410.

motion that no man but the King's printer has a right to print such works as these."

"In giving judgment he said, that the case which had been mentioned seemed to intimate that it never had been solemnly decided how far the prerogative extends to give a sole and exclusive right of printing Bibles. Many of the old cases upon the subject were determined upon the principle of the Licencing Act;" and the motion was refused(1).

A contrary decision, however, was pronounced some years afterwards in the case of the Universities of Oxford and Cambridge v. Richardson(2), in which an injunction against the King's printer in Scotland (who had a patent for the sale of Bibles) was granted, restraining him from printing or selling them in *England*.

This took place on an interlocutory motion before the hearing of the cause, on the ground that possession, under color of title, was sufficient to warrant the injunction, until it was proved at law that there was no real title. In the course of the case it appeared that in the year 1718, Sir Joseph Jekyll, as Master of the Rolls, had granted an injunction in a similar case, which was supported upon appeal before the Lord Chancellor; and also that a decree of the Court of Session had, in the year 1717, been reversed by the House of Lords in favor of the King's printer in England, confining the right of the Scotch printer to Scotland.

In this case, also, it is evident that the general principle could not be investigated between patentees who derived their title, if valid, from the same source.

Of the Bible in the Original Languages, and portions of the English Translation.

Neither the Hebrew Bible, the Greek Testament, nor the Septuagint, belong to the King. Lord MANSFIELD (as before referred to) pronounced them to be unquestionably in common; and added, that if any man should turn the Psalms, or the writings of Solomon or Job, into verse, the King could not stop the printing or the sale of such a work. It would be the author's work. "The King has no power or control over the subject matter—his power rests in property."

Neither has any attempt ever been made to prevent any person from publishing a translation of one book, or of a *part* of the Bible, from the original text, and enjoying a copyright in his production(3).

(1) Grierson v. Jackson, Ridgway's Rep. 304. 2 Evans's Stat. 620.
(2) 6 Vesey, 689.
(3) Godson on Copyright, 325.

2nd. *Of the Common Prayer Book, &c.*

Upon the same principle as Head of the Church, the King has a right to the exclusive publication of Liturgical and other books of divine service.

In *Eyre* and *Strahan v. Carnan,* which was decided in the Court of Exchequer, a bill was filed to restrain the defendant from publishing a *form of prayer*, which had been ordered by His Majesty to be read in all churches.

The plaintiffs were the King's printers. The grant which was read, imported to be a grant of the office of printer to His Majesty, and his successors, of (amongst other things) all Bibles and Testaments in the English language; and of all Books of Common Prayer, and Administrations of the Sacraments, and other Rites and Ceremonies of the Church of England; in all volumes whatsoever heretofore printed by the King's printer, or to be printed by his command; and of all other books which he, his heirs or successors, should order to be used for the service of God in the Church of England.

The bill stated, that in December, 1779, a form of prayer was ordered by His Majesty to be used in all Churches and Chapels throughout England and Wales, upon the 4th of February, 1780; that it was printed by the plaintiffs, and a sufficient number thereof circulated for sale at sixpence each, which was a reasonable price, and at which they had been formerly sold; that the defendant had printed and sold a great number of them.

The court held that the grant was founded on public convenience, was supported by long usage, and the injunction was accordingly continued(1).

SECTION IV.

Of publishing Proceedings in Parliament and Courts of Justice.

1st. *Of Parliamentary Proceedings.*

Both Houses of Parliament consider a publication of their proceedings as a breach of privilege. By sufferance, however, the reports of the debates are allowed to appear in the diurnal and other periodical works. Not only the speeches of the members, but copies of documents, printed at the direction of either House, are thus circulated for the information of the

(1) E. T. 1781. 5 Bac. Ab. 597.

public; and it seems that the Courts of Justice will not interfere to restrain such publications, even when the matter comprised in them is libellous, provided it be a true account of the proceedings(1).

Thus the same reasons which justify the publication of judicial proceedings, were held to warrant those of the senate.

It is, said Mr. Justice LAWRENCE, of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated; and they would be deprived of that advantage if no person could publish the proceedings without being punished as a libeller. Though the defendant in the case before the court was not authorized by the House of Commons to publish the report in question, yet as he only published a true copy of it, the rule for a criminal information was discharged(2).

2nd. *Of Judicial Proceedings.*

The House of Lords, in its judicial capacity, exercises an exclusive privilege in publishing its own proceedings as the supreme court of judicature. The course usually adopted by the House is to direct the Lord Chancellor to cause the publication of the proceedings, and to prohibit all other persons.

Lord BATHURST, in a case of Bathurst v. Kearsley, granted an injunction in favor of the printer under his authority, of the trial of the Duchess of Kingston(3).

Lord ERSKINE, upon the precedent of the last decision, ordered an injunction, until the hearing in the case of Gurney v. Longman, with respect to the trial of Lord Melville, at the same time intimating, 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 not then grant an injunction(4).

But on the day of his quitting office as Lord Chancellor, he desired that he should be understood that he had not delivered any judgment, further than by granting the injunction until the hearing upon the precedent of the former case of Bathurst v. Kearsley, and should therefore consider the question as open in any future stage. A demurrer was afterwards put in, but was never argued, a compromise taking place.

In the Court of Common Pleas, in the time of C. J. EYRE, an action was brought by *Currie* against *Walter*, the proprietor of "The Times," for publishing a supposed libel, which consisted in merely stating a speech made by a counsel on a motion for leave to file a criminal information.

The CHIEF JUSTICE, who tried the cause, ruled, that this was not a libel, nor the subject of an action, it being a true account of what had passed in court; and in this opinion the Court of Common Pleas

(1) 8 T. R. 296-7. Godson, 253, 341. But see 7 East, 503.
(2) 8 T. R. 298. (3) Cited 13 Vesey, 493. (4) 13 Vesey, 493.

afterwards, on a motion for a new trial, all concurred, though some of the judges doubted whether or not the defendant could avail himself of that defence on the general issue.

In a subsequent case in the Court of King's Bench, Mr. Justice LAWRENCE entered somewhat fully into the question, and said, the proceedings of courts of justice are daily published, some of which highly reflect on individuals. Many of these proceedings contain no point of law, and are not published under the authority or the sanction of the courts, but they are printed for the information of the public.

Though the publication of such proceedings (he continued) may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings(1).

In a later case, Lord ELLENBOROUGH and Mr. Justice GROSE observed, that it must not be taken for granted that the publication of every matter which passes in a Court of Justice, however truly represented, is, under all circumstances, and with whatever motive published, justifiable; but that doctrine must be taken with grains of allowance.

It often happens, said Lord ELLENBOROUGH, that circumstances necessary for the sake of public justice to be disclosed by a witness in a judicial inquiry, are very distressing to the feelings of individuals on whom they reflect: and if such circumstances were afterwards wantonly published, I should hesitate to say that such unnecessary publication was not libellous, merely because the matter had been given in evidence in a Court of Justice(2).

It seems at all events clear, that the several Courts of Justice possess the power of restraining the publication of a trial *during its progress*.

Thus in the case of *The King* against *Clement*(3), it was held, that a court of general gaol delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience of such order by fine.

The facts were as follows: on the 17th of April, 1820, Arthur Thistlewood was put upon his trial at the Old Bailey, upon an indictment for high treason.

Lord Chief Justice ABBOTT, one of the justices, stated publically before the commencement of the trial, that as there were several persons charged with the offence of high treason by the same indictment, whose trials were likely to be

(1) 8 Term Rep. 298. (2) 7 East, 503. (3) 4 Barn. and Ald, 218.

taken one after another, he thought it necessary strictly to prohibit the publishing of any proceedings of that or any other day, until the whole trial should be brought to a conclusion, and that it was expected all persons would attend to the admonition.

This order was infringed by the *Observer* Newspaper, and the proprietor was fined £500 for a contempt of Court.

An appeal was subsequently made to the King's Bench, and a rule nisi obtained to remove the case by certiorari into that court. On the argument for a rule absolute, the following judgment was pronounced by the remaining judges of the court---the Chief Justice and Mr. Justice BEST (before whom the order was made) having briefly stated their adherence to their former opinions.

BAYLEY, J. As to the validity of the order, it was contended in argument, first, that the court had no power to make an order prohibiting the publication of these trials pending the proceedings. Now, in order to judge of that, it becomes necessary to consider what the nature of the proceedings was. An indictment had been found against a number of individuals for the crime of high treason, and they were then about to be tried. The whole trial of all these individuals constituted one entire proceeding; for if they had not severed in their challenges, the prisoners would have been tried all at once. In point of fact, however, they did sever in their challenges, and were tried seriatim. It could not, therefore, be said, that the whole proceedings was terminated until the last of those prisoners had taken his trial. Now the court before whom the trial was about to take place, was a court of general gaol delivery, and had authority to make any order which they might judge to be necessary, in order to preserve the purity of the administration of justice, in the course of the proceedings then depending before them, and to prohibit any publication which might have a tendency to prevent the fair and impartial consideration of the case. On the present occasion it occurred to the court that it would be of great importance, with a view both to the interest of the prisoners and that of the public, that a publication like the present should be prohibited until after the termination of all the trials; and if upon the first trial one or more of the witnesses had been of doubtful character, it might have been of the utmost importance to keep them apart from the rest, and to examine carefully whether upon each successive trial they continued to give the same account which they did upon the first. Now all this would be prevented if by a publication like the present such persons were enabled to see a printed account of the trial, and to read over not only their own evidence, but also that of the other witnesses who had been examined. This would give them an opportunity of explaining those parts of their statement which might be at variance with the other facts proved in the case. But it is argued, that if the court have this power of prohibiting publication, there is no limit to it, and that they may prohibit altogether any

publication of the trial. I think that does not follow. All that has been done in this case is very different; for the prohibition here has only been until the whole trial was completed.

Holroyd, J. This was an order made in a proceeding over which the court had judicial cognizance: the subject matter respecting which it was made, was then in the course of judicature before them. The object for which it was made was clearly, as it appears to me, one within their jurisdiction, viz. the furtherance of justice in proceedings then pending before the court; and it was made to remain in force so long, and so long only, as those proceedings should be pending before them. Now I take it to be clear that a Court of Record has a right to make orders for regulating their proceedings, and for the furtherance of justice in the proceedings before them, which are to continue in force during the time that such proceedings are pending. It appears to me that the arguments as to a further power of continuing such orders in force for a longer period, do not apply. It is sufficient for the present case that the court have that power during the *pendency of the proceedings*. This order was made to delay publication only so long as it was necessary for the purposes of justice, *leaving every person at liberty to publish the report of the proceedings subsequently to their termination*. I am, therefore, of opinion that this was an order which the court had power to make.

SECOND PART.

OF THE LIBRARY TAX,

AND

REGISTRY AT STATIONERS' HALL.

CHAP. I.——ANALYSIS OF THE STATUTE 54 GEO. III. CAP. 156.

SECT. I.——*Of the Tax on Original Works.*

The first section of the act commences by reciting the statute of Anne, so far as relates to the delivery of nine copies of each book, on the best paper, for the use of the several libraries therein mentioned; and after also reciting the 41st Geo. III. cap. 107, in regard to the additional two copies for Ireland, it is then stated, that it is expedient that future copies of books should be delivered to the libraries therein mentioned, with the modifications provided by the act.

It then proceeds to repeal so much of the acts of Anne, and 41st Geo. III. as required the delivery of the copies.

The following is the preamble of the statute, and the enacting part of the first clause.

Whereas by an act, made in the eighth year of the reign of Her late Majesty Queen Anne, intituled 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, it was among other things provided and enacted, that nine copies of *each book* or books, *upon the best paper*, that from and after the tenth day of April, one thousand seven hundred and ten, should be printed and published as in the said act mentioned, or reprinted and published with additions, should, by the printer and printers thereof, be *delivered to the warehouse-keeper* of the Company of Stationers for the time being, at the hall of the said company, *before such publication* made, for the use of the Royal Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities in Scotland, the library of Sion College in London, and the library of the Faculty of Advocates at Edinburgh; which said warehouse-keeper is by the said act required to deliver such copies for the use of the said libraries; and that if any proprietor, bookseller, or printer, or the said warehouse-keeper, should not observe the directions of the said act therein, that then he or they so making default in not delivering the said printed copies, should forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered: And whereas by an act made in the forty-first year of the reign of His present Majesty, intituled *An act for the further encouragement of*

learning in 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 herein mentioned*, it is amongst other things provided and enacted, that in addition to the nine copies required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each and every book and books *which shall be entered in the register books* of the said company, two other copies shall *in like manner* be delivered for the use of the library of the College of the Holy Trinity, and the library of the Society of the King's Inns in Dublin, by the printer and printers of all and every such book and books as should thereafter be printed and published, and the title of the copyright whereof should be *entered* in the said register book of the said company: And whereas it is expedient that copies of books hereafter printed or published, should be delivered to the libraries herein-after mentioned, *with the modifications* that shall be provided by this act; 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 so much of the said several recited acts of the eighth year of Queen Anne, and of the forty-first year of His present Majesty, as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof to the warehouse-keeper of the said Company of Stationers, for the use of any of the libraries in the said act mentioned, and as requires the delivery of the said copies by the said warehouse-keeper for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies, shall be, and the same is hereby, repealed.

In the second section it is enacted, that eleven printed copies of the whole of every book, upon the paper on which the largest impression shall be printed for sale, together with maps and prints, *on demand made in writing at the publisher's within twelve months*, shall be delivered to the warehouse-keeper of the Stationers' Company, within *one month* after such demand, for the use of the libraries following: videlicet,

The British Museum,
Sion College,
The Bodleian Library at Oxford,
The Public Library at Cambridge,
The Library of the Faculty of Advocates at Edinburgh,
The Libraries of the four Universities of Scotland,
Trinity College Library, and
The King's Inns Library, at Dublin.

And the warehouse-keeper is required, within *one month* after such deposit, to deliver the same for the use of the libraries.

We here present so much of the second section as relates to the preceding analysis.

II. And be it further enacted, that eleven printed copies of the *whole* of every book, and of every volume thereof, upon the paper upon which the *largest number* or impression of such book shall be printed for sale, together with *all maps and prints* belonging thereto, which, from and after the passing of this act, shall be printed and published, *on demand* thereof being made in writing to, or left at the place of abode of, the publisher or publishers thereof, at any time *within twelve months* next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian or other person thereto authorized by the persons or body politic and corporate, proprietors or managers of the libraries following, *videlicet*, the *British Museum*, *Sion College*, the *Bodleian Library* at *Oxford*, the *Public Library* at *Cambridge*, the library of the *Faculty of Advocates* at *Edinburgh*, the libraries of the four Universities of *Scotland*, *Trinity College Library*, and the *King's Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively, within *one month after demand* made thereof in writing as aforesaid, to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall, and he is hereby required to, receive at the hall of the said Company, for the use of the library for which such demand shall be made, within such twelve months as aforesaid; and the said warehouse-keeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library.

SECTION II.

Of the Tax on Second and subsequent Editions.

By the third section it is provided, that no copy shall be demanded or delivered for the use of the libraries of any second or subsequent edition of any book, unless the same shall contain *additions or alterations*.

And such additions or alterations only, if printed in an uniform manner with the former editions of the book, may be delivered for the use of the libraries entitled to such former editions.

The following is the clause in full.

III. Provided always, and be it further enacted, that no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries herein before mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any edition after the first, of any

book so demanded and delivered as aforesaid, shall contain any addition ar alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid.

SECTION III.

Of Periodical Publications.

In the case of magazines, reviews, or other periodical publications, it is provided that it shall be sufficient to make such entry in the register book of the Company, within *one month* next after the publication of the first number or volume of such magazine, review, or other periodical publication(1).

SECTION IV.

Of Maps and Prints and the quality of Paper.

All maps and prints belonging to the works delivered, must accompany them(2).

The copy of every book that shall be demanded by the British Museum, (according to the third section) must be delivered of the *best paper* on which such work shall be printed.

The copies for the other public libraries are directed to be upon the paper on which the largest number or impression shall be printed for sale(3).

SECTION V.

Of the Registry of Books at Stationers' Hall.

In order to ascertain what books shall be from time to time published, it is by the fifth section enacted, that publishers shall enter them at Stationers' Hall, within *one calendar month* after the day on which they shall be first sold, published, advertised, or offered for sale within the *bills of mortality*, or within *three* calendar months for books published in any other part of the United Kingdom, and one copy on the best paper to be delivered for the use of the British Museum.

The payment for each entry in the register book of the Stationers' Company, is two shillings, and it may be inspected

(1) Section V. 54 Geo. III. (2) Section II. Ib. (3) Ib.

at all seasonable times on the payment of one shilling to the warehouse-keeper.

A certificate of the entry may also be obtained on paying one shilling.

The clause thus far referred to, is as follows:

V. And in order to ascertain what books shall be from time to time published, be it enacted, that the publisher or publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall, within one calendar month after the day on which any such book or books respectively shall be first sold, published, advertised, or offered for sale, within the bills of mortality, or within three calendar months if the said book shall be sold, published, or advertised in any other part of the United Kingdom, enter the title to the copy of every such book, and the name or names and place of abode of the publisher or publishers thereof, in the register book of the Company of Stationers in London, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such register book, and deliver *one copy, on the best paper as aforesaid, for the use of the British Museum;* which register book shall at all times be kept at the hall of the said company; for every of which several entries the sum of two shillings shall be paid, and no more; which said register book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehouse-keeper of the said Company of Stationers; and such warehouse-keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid.

SECTION VI.

Of the Duty of the Warehouse-keeper.

The sixth clause enacts, that the warehouse-keeper of the Company shall, without any greater interval than three months, transmit to the libraries correct lists of the books entered, and on request of the libraries call on the publishers for the copies to be demanded.

The wording of the clause is as follows:

VI. And be it further enacted, that the said warehouse-keeper of the Company of Stationers shall from time to time, and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before mentioned, correct lists of all books entered in the books of the said company, and not contained in former lists; and that on being required so to do by the said librarians or other authorized person, or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

SECTION VII.

Of the Penalties for non-registration.

In case the titles of books are not duly made in the Stationers' Registry within the period prescribed, the publisher is liable to forfeit five pounds, together with eleven times the price at which the book shall be sold or advertised, to be recovered, with full costs, by the party injured, in any Court of Record.

The words of the clause are the following :

And in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books, within the said calendar month, or three months, as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with *eleven times the price* at which such book shall be sold or advertised, to be recovered, together with full costs of suit, by the person or persons, body politic or corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed(1).

SECTION VIII.

Of the Place of delivering the Books.

If any publisher be desirous of delivering the copies at the libraries entitled to them, he is authorized to do so under the 7th section, which is in the following terms :

VII. Provided always, and be it further enacted, that if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to deliver the same at such library, to the librarian or other person authorized to receive the same (who is hereby required to receive and to give a receipt in writing for the same) ; and such delivery shall, to all intents and purposes of this act, be held as equivalent to a delivery to the said warehouse-keeper.

SECTION IX.

Of the Penalties for non-delivery.

Publishers or the warehouse-keeper making default in not delivering or receiving the copies, are liable by the second section to forfeit the value of the printed copies, and five pounds for each copy not delivered, with full costs of

(1) Sec. V. 54 Geo. III. c. 156.

suit, to be recovered by the party injured, who is authorized to sue in any Court of Record.

The conclusion of this clause of the act is as follows:

And if any publisher, or the warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons, body politic or corporate, is or are now hereby authorized to sue by action of debt or other proper action, in any Court of Record in the United Kingdom.

It is provided by the fifth section of this act, that no failure in making any entry, shall in any manner affect any copyright, but shall only subject the person making default to the penalty under the act.

For the other clauses of the act regarding the duration of copyright, we refer to the first part of this book(1).

CHAP. II.

OF THE CONSTRUCTION OF THE ACT.

SECT. I.——*Of Works included in the Act.*

It does not appear that any case has been authentically reported since the passing of the act relating to its judicial construction, until the commencement of the present year.

The only previous occasion on which the claim of the public libraries was brought into litigation, was in the year 1812, when it was decided that the copies must be delivered, though the work should not have been entered at Stationers' Hall. This solitary decision, pronounced in the absence of one of the judges(2), we have fully stated in the first book(3).

In addition to which, it may be here observed, that the University of Cambridge claimed, in that case, to be entitled to a copy of the book on the *best paper;* and it is stated in the margin of the report(4),

(1) Page 55, *ante.* (2) Mr. Justice *Grose.* (3) Vide page 55, *ante.*
(4) 16 East, 317. The Chancellor, Masters and Scholars of the University of *Cambridge v. Bryer.*

That the 8th Anne, c. 19, section 5, makes it necessary for the printer of a book, composed after the passing of the act, and published for the first time after the composition, which book is printed and published with the consent of the proprietor of the copyright, to deliver a copy, *upon the best paper*, to the warehouse-keeper of the Company of Stationers, for the use of the library of the University of Cambridge, notwithstanding the title to the copy of such book, and the consent of the proprietor to the publication, be not entered in the Register Book of the Company.

Though the *result* of the decision is thus quoted by the reporter, it does not appear that the quality of the paper was any where noticed in the judgment pronounced by the court.

The first section, however, of the 54th Geo. III. cap. 156, has set this question at rest. The clause in the statute of Anne, relating to the delivery of copies, is thereby expressly repealed, and in the second section the eleven copies are directed to be delivered "upon the paper on which the *largest number* or impression shall be printed for sale," with the single exception of the *British Museum*, which, under the third clause, is entitled to a copy on the *best paper* on which the work shall be printed; and this National Institution seems to have been so far justly preferred to the other public libraries, that a copy is directed to be delivered at Stationers' Hall, at the time of the entry of the book, prior to the publication. The copies for the other libraries are not deliverable, unless demanded, within twelve months. If demanded, they must be supplied in the course of a month.

Maps and prints published without letter-press, are not liable to the tax; but it seems that if the smallest imaginable quantity of letter-press should accompany the maps or prints, it will bring them within the range of this legislative method of encouraging literature and the fine arts, and entitle the libraries to sweep away eleven copies, maps, prints, letter-press and all!

SECTION II.

Of Works not included in the Act.

Where the publication of a work in parts or numbers was commenced prior to the statute, and is still in progress, published at uncertain periods, it has been recently held, in a case between the *British Museum* and Messrs. Payne and Foss, the publishers, that the libraries are not entitled to the copies, either of the past or continuing numbers: the book

being considered as one entire work, and part of it having been published before the act, and the remainder not yet completed, it is not comprised within the provisions of the statute.

The following is an account of the case referred to, as stated in a respectable periodical work:

The Lord Chief Baron of the Court of Exchequer lately pronounced judgment in an important literary question, The British Museum v. Payne and Foss, Booksellers and Publishers, which had been elaborately argued for some days in that court. The Trustees of the British Museum claimed a copy of a number of a splendid publication entitled *Flora Græca*, got up entirely by subscription, and no more copies printed than those subscribed for. The claim was resisted on the ground, that a publication for private circulation did not come under the operation of the act giving a copy of every work to the library of that national establishment. The court pronounced unanimously against the claim of the Trustees, *on the ground of its being only a portion of the work, and not a complete volume*(1).

Since writing the above, we have obtained an authentic report of the judgment of the court, sitting in the Exchequer Chamber, on an appeal by way of writ of error, the substance of which it may be necessary to set forth.

The following is stated in the margin of the report, as the *result* of the case:

A *part* of a work *published at uncertain intervals*, of which thirty copies only were printed, twenty-six of which were subscribed for, the principal costs of publication being defrayed by funds devised by a testator for that purpose, is not a book demandable by the public libraries under the 54th Geo. III. c. 156.

It was contended on behalf of the publishers,

1st. That the work in question was not a work of profit within the contemplation of the act.

2nd. That the publication having been commenced originally before the act, it was not within the meaning of the clause for the infraction of which the penalty was sought to be recovered.

3rd. That this *fasciculus* was not a *book*, and need not therefore be entered at Stationers' Hall.

The judgment of the court seems to have proceeded on the last ground only, which is the one most general and advantageous to the interests of literature.

Lord Chief Baron Alexander delivered the judgment of the court.—This was an action brought by the British Museum against the defendants in error, for penalties given

(1) Gent. Mag. Feb. 1828.

by the 54th Geo. III. c. 156, section 5, which act is for the encouragement of learning, and respects literary property. The fifth section of that statute requires that the publisher of every book demandable by force of it, shall enter the title of such book, with the name and residence of the publisher, at Stationers' Hall; and endeavours to enforce obedience to that requisition by imposing a penalty of five pounds, with eleven times the price of the book. The present action is brought for the recovery of those penalties.

The first count of the declaration avers, that the defendants in error were on the 10th of January, 1825, the publishers of, and did then publish, a certain book entitled *Flora Græca*. Then follows the title of the book, which it is not necessary for the purposes of this judgment to state. It avers the book to have been first published at the time mentioned at the price of £12. 12*s*. The count then avers it to be a book demandable by the act of 54th Geo. III., and charges the defendants with neglecting to enter the title to the copy of the book, and their names as publishers, at Stationers' Hall. There are many other counts in the declaration, but as the opinion of the court does not turn upon the form of the pleadings, it is not necessary to pursue the pleadings further. The defendants in error pleaded the general issue. Upon the trial a verdict was found in their favor, and upon that occasion a bill of exceptions was tendered to the learned judge who tried the cause.

The result of the evidence, as it appears from the bill of exceptions, is, that the publication in question is part of a considerable work, prepared by the late Doctor *Sibthorpe*, and by his will directed to be printed; that funds to a certain extent were by the same will given to carry on the undertaking; that some of the numbers were published before the act in question, that is, before July, 1814; that the defendants have of late years been the publishers; and that the number which is the foundation of this action is called No. 9, being the first part of the fifth volume.

In the view which this court takes of the question, these are the material facts. Mr. Justice Bayley, before whom the cause was tried, stated to the jury his opinion to be, that the defendants were publishers, within the true intent and meaning of the act, of the number called No. 9; but that this No. 9 was not a book demandable by force of the statute 54 Geo. III., and, therefore, that the evidence produced by the defendants was sufficient to bar the action. This opinion is excepted to by the plaintiffs in their bill of exceptions. It avers, that the No. 9 was a book demandable by virtue of the Act of Parliament, and whether it be or be not, is the question which this court is to decide upon the present occasion. Now, whether that which is confessedly not a book, nor even a volume, but a part only of a volume, be demandable, depends upon the second section of the act. This section, so far as it is necessary to state, enacts, "that eleven printed copies of the whole

of *every book*, and of every *volume* thereof, and upon the paper upon which the largest number or impressions of *such book* shall be printed for sale, together with all maps and prints belonging thereto, which, *from and after the passing of this act*, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of, the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian or other person authorized by the managers of libraries, shall be delivered by the publisher or publishers thereof respectively, within one month after demand made thereof in writing." By this provision, the thing required to be delivered on demand is the whole of every book, and of every volume thereof, and of which, the non-feasance is made penal.

This Court is of opinion, with the learned judge who tried the cause, that the persons for whose benefit this provision was intended, have no right, by force of a provision so expressed, to demand from the publishers that which is *neither a book nor a volume*, but only a *part* of a volume. We are of opinion that we are to understand the legislature as having in this clause employed the words in their *common accepted sense*, and that we have no right, by a questionable subtilty, to extend the construction of the words beyond their usual and natural import.

No inference favorable to the plaintiffs, as it appears to us, can be collected from the fifth clause, on which this section is immediately founded, and which requires the entry. So for as it respects publications of this kind, it is general, and speaks of *book* or *books* only. And when the two clauses are combined, the act appears to mean that a volume would come within the word "book," but that a *fasciculus* cannot be said to be a volume.

We are, as I understand, all clearly of opinion, that this is not a periodical publication within the proviso which respects works of that description. The previous acts, the 8th Anne, 15th Geo. III., and 41st Geo. III., have been referred to as illustrating the clauses in question, and tending to sustain the view taken by the plaintiffs of this case. These acts have been looked into, and do not appear in any manner to warrant the construction contended for.

It has been asked, if this *fasciculus* is not demandable, nor required under a penalty to be entered, has the author any copyright in it? I answer, that is a different question, and whichever way it may be answered, would not rule that which is now before the court.

It has been also asked, if not now, will this *fasciculus* ever

be demandable? I answer again, that question is properly left to be decided when it shall occur; but that, be that as it may, this No. 9, part of the fifth volume, was not demandable, nor required, upon the true construction of the statute, to be entered at the time when this action was brought.

We are all of opinion that there should be judgment for the defendants, and consequently the judgment will be affirmed(1).

(1) 2 Younge and Jervis, 166.

THIRD PART.

OF PIRATING COPYRIGHT.

CHAP. I.——OF PIRATING THE COPYRIGHT IN PRINTED BOOKS.

SECT. I.——*Of Original Works.*

It would, perhaps, be unreasonable to expect, that any full and precise definition should have been made of the extent to which a writer may lawfully quote or extract from the works of his predecessors. The courts have generally confined themselves to the decision of the mere point in litigation. The general principle, however, may be collected to be, that extracts made in a bona fide manner, are justifiable. According to some authorities, however, they must not be so extensive as to injure the sale of the original work, even though made with no intention to invade the previous author; nor must they be speciously or colorably adapted from the original into a form differing only in appearance and manner of composition.

The identity of a literary composition, says BLACKSTONE, consists entirely in the sentiment and the language. The same conceptions, clothed in the same words, must necessarily be the same composition: and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies or at any period of time, it is always the identical work of the author which is so exhibited(1).

Where labor, judgment, and learning, however, have been applied in adapting existing works into a new method, and the composition has been evidently made with a fair and honest intention to produce a new and improved work, it seems that the law will justify the publication, although the abridgment or compilation should injure the sale of the former works.

Lord ELDON, in the case of a *rival magazine*, protested against the argument that a man is not at liberty to do any thing which can affect the sale of another work of the same kind, and that because the sale was affected, therefore, there was an injury which the court was called upon to redress(2).

(1) 2 Comm. 405.

(2) Hogg v. Kirby, 8 Vesey, 221. For a further consideration of this point, vide the subsequent sections on *abridgments* and *compilations*.

In the case referred to, an injunction was granted against the defendant from publishing a number of the magazine in question, which was so printed as to appear a continuation of a work published by the plaintiff, and from selling any other publication as or being a continuation of the plaintiff's work or of the defendant's work, which had been published as such continuation.

The case was partly argued upon the ground of a breach of contract by the defendant, who had been the original publisher of the work of the plaintiff; but the court seemed to admit the general principle, that a person cannot publish a work professing to be, and handed out to the world as, the continuation of a work published by another. It was said in argument to have been determined, that property exists in a newspaper, and that an action lies for publishing under the same title.

In the course of his judgment the Lord Chancellor said, I do not see why, if a person collects an account of natural curiosities and such articles, and employs the labor of his mind in giving a description of them, that it is not as much a literary work as many others that are protected by injunction and by action. It is equally competent to any other person, perceiving the success of such a work, to set about a similar work, *bona fide* his own. But it must be in substance a new and original work, and must be handed out to the world as such.

My opinion is, that the defendant was at full liberty to publish a work really new. But the question is, whether he has not published this work, not as his own original work, but as a continuation of the work of another person.

Most of the cases have been, not where a new work has been published as part of the old work; but where, under color of a new work, the old work has been republished, and copies multiplied.

The question is, whether the regulating principle of these cases can be applied to this.

It is impossible not to say, (until it is better explained) an intention does appear both as to the transaction of the fifth number, and the other circumstances—in some degree upon the appearance of the outside, in a great degree upon the first page, the index, and the promised contents—to state this as a continuation of the former work, though in a new series.

The injunction, however, must operate upon nothing but the publication handed out to the world as the continuation of the plaintiff's work, and as to these numbers, the plaintiff shall bring his action.

I am anxious that nothing in the injunction shall imply that reviews, magazines, and other works of this species, may not be multiplied.

SECTION II.

Of Notes and Additions.

Great talents, ingenuity, and judgment, (says Mr. Godson) are in general required to compose good notes or additions to the established work of an author of reputation(1). To which may be added, that the annotator should possess great industry and habits of research, of arrangement or classification, and powers of analyzing and condensing the masses of new materials which recent times have produced. Hence it is justly said, when these notes or additions (brought down through a considerable lapse of time) are made on a book which is already in the power of any one to reprint, reason and justice say, that they ought to confer a copyright, as much as a separate and distinct work.

In the case of *Gray's Poems*, which had been for many years published, and were afterwards collected by Mr. Mason, and reprinted with the *addition* of several new poems, though he had not a property in the whole book, yet the defendant having copied the whole, the Lord Chancellor, granted an injunction against him as to the publication with the additional pieces(2).

So Lord HARDWICKE in another case(3) granted an injunction to restrain the defendants from printing Milton's Paradise Lost, *with Dr. Newton's notes*, although there was no doubt that the original work, without the notes, might have been published.

The bill stated that the defendants had advertised to print Milton's Paradise Lost, with his life by Fenton, and the notes of all the former editions, of which Dr. Newton's was the last. The bill derived a title to the *poem* from the author's assignment in 1667. It was published about 1668, and it derived a title to his *life* by Fenton, published in 1727; and to *Bentley's* notes, published in 1732; and Dr. *Newton's* in 1749. The answer came in the 12th December, 1751, in which the defendants insisted they had a right to print their work in numbers, and to take in subscriptions.

It was intended to take the opinion of the court solemnly. The searches and affidavits which were thought necessary to be made occasioned a delay, and no motion was made till near the end of April, 1752.

The injunction was moved for on Thursday the 23rd of April. Lord Mansfield argued it. It was argued at large, upon the general ground of copyrights at common law.

(1) Godson, 242. (2) Mason v. Murray, cited 1 East, 360.
(3) Tonson v. Walker, cited 4 Burr. 2325.

The Lord Chancellor directed it to proceed on the Saturday following, and to be spoken to by one of a side. Afterwards it stood over, by order, till Thursday, the 30th of April, when it was argued very diffusely.

The case could not possibly be varied at the hearing of the cause. The notes of the last edition (Dr. Newton's) were within the time of the act. But an injunction as to them only would have been of little avail; and it did not follow that the defendants should not be permitted to print what they had a *right* to print, because they had attempted to print *more*. For in the case of Pope v. Curl, Lord Hardwicke injoined the defendant only from printing and selling the plaintiff's letters. There were a great many more in the book which the defendant had printed, which the plaintiff had no right to complain of.

If the inclination of Lord Hardwicke's own opinion had not been strongly with the plaintiff, he never would have granted the injunction to the whole, and penned it in the disjunctive; so that printing the poem, *or* the life, *or* Bentley's Notes, without a word of Dr. Newton's, would have been a breach of the order.

In Cary v. Longman, Lord Kenyon said the plaintiff had no title to that part of his book which he had taken from the previous author; yet it was as clear that he had a right to his own *additions and alterations*, many of which were very material and valuable, and the defendants were answerable at least for copying those parts in their book(1).

Lord Mansfield, in another case, said, the question is, whether the *alteration* be colorable or not? There must be such a similitude as to make it probable and reasonable that one is a transcript of the other, and nothing more than a transcript. Upon any question of this nature, the jury will decide whether it be a servile imitation or not(1).

SECTION III.

Of Abridgments.

An abridgment of a voluminous work, executed with skill and labor, in a bona fide manner, is not only lawful in itself, and exempt from the charge of piracy; but is protected from invasion by subsequent writers. It seems, however, from the import of the word, as well as the reason and justice of the thing, that the abridgment should really be "an epitome of a large work contracted into a small compass."

A real and fair abridgment, said Lord Hardwicke, may with great propriety be called a new book, because the invention, learning, and judgment of the author are shewn in it, and in many cases abridgments are extremely useful.

(1) 1 East, 360. (2) Ib. 362.