

No 2.      thers, for damages and reparation, on account of this encroachment on his alleged right; but the COURT, after a full discussion of the question, being of opinion, that such a right did not exist in authors or publishers at common law, assoilzied from the action.

*Fol. Dic. v. 3. p. 388.*

No 3.

1775.

DODSLEY *against* M'FARQUHAR.

THE letters written by Philip Earl of Chesterfield to his son Philip Stanhope, having, at the death of the latter, come into the possession of his widow, were, by her, sold and assigned to Dodsley, bookseller in London; who, with consent of the Earl's executors, published them, and entered the work in the Stationers' Hall. M'Farquhar, and others in Edinburgh, having soon afterwards printed an edition of this book, Dodsley, before its publication, applied to the Court of Session for an interdict against the Edinburgh printers. *Urged* in defence, *imo*, That the exclusive right given by the statute was merely personal to authors, and to those to whom they, during their lives, might assign their copy-right, and could not descend in the course of legal succession after their deaths; *2do*, That this right could not, at any rate, extend to the editors of works which the authors themselves never intended to publish, such as private letters. THE COURT being of opinion, that the statute was entitled to a more liberal construction, granted the interdict.

*Fol. Dic. v. 3. p. 388.*

No 4.

1776. December 21. TAYLOR and SKINNER *against* BAYNE and WILSONS.

TAYLOR and SKINNER published, in a series of engraved maps, a survey which they had made of all the roads in Scotland; and they likewise published an abstract of this survey in a small pocket volume, under the title of "The Traveller's Pocket-book." Wilson, publisher of the Town and Country Almanack, copied into that work several entire pages of the above abstract. Taylor and Skinner applied, by bill of suspension, for an interdict against the sale of this Almanack, as an invasion of their property, which had been entered in Stationers' Hall; *urging*, That the honest fruits of their labour, in a work which had cost them years of toil and much expense, were thus carried off, by persons who had never laid out a shilling, nor exerted the smallest ingenuity on the subject. The defence was, That the Almanack contained nothing but a mere list of stages and their distances, known before the pursuers' survey ever appeared, and in which it was ridiculous for any body to claim a property. The act was for the encouragement of learning; but there was no exertion of learning in publishing a list of roads and stages. THE COURT were of opinion,

that this was an evident piracy on the work of the complainers, and that the practice was *pessimi exempli*; they therefore granted the interdict.

No 4.

*Fol. Dic. v. 3. p. 388.*

1785. June 25.

JOHN MURRAY, and Others, *against* COLIN M'FARQUHAR, and Others.

M'FARQUHAR, and other editors of a dictionary, entitled, "Encyclopedia Britannica," having, under the article relative to Scotland, inserted a history of that kingdom, at the æra of the Reformation, which they had extracted, in a great measure, *verbatim*, from two treatises published by Dr Gilbert Stuart, though it was so far abridged as not to exceed in extent a half of the original works; Murray, and others, who had purchased the copy-right of those publications, sued the above-mentioned editors in an action founded on the act 8th of Queen Anne, for having the printing and sale of the article stopped, for the statutory penalties, and for damages.

*Pleaded* for the defenders; By the terms of the statute in question, which, from its penal tendency, demands a strict interpretation, the exclusive property thereby created is confined to complete or entire compositions, and does by no means extend to partial extracts or passages taken from authors. Otherwise, not a single sentence, it is evident, nor a line of a book, could be quoted without as real an infringement of the statutory property, as if ever so large a portion of the work had been extracted. This consequence shews how unreasonable such a construction would be, and how much exploded by daily usage in the publication of magazines, reviews, annual registers, and other periodical miscellanies, which could not exist without the unrestrained freedom of borrowing select passages from all such treatises as excite curiosity. If, indeed, in this matter, fraud were to be committed, and even partial extracts made, in order to interfere with the profits of the literary proprietor, the sanction of the statute might be rightly applied. To that case alone, except when entire performances have been extracted, all the actions on this statute which have been sustained in this Court, or by the English Judges, will be found to refer. But in a case similar to the present, action was denied in the equity Court of Exchequer in England, 25th July 1783, Longman and Broderick *versus* Fielding. In this instance, neither have the entire works in question been published by the defenders, nor have they, in following out the plan of their undertaking, used any means to deprive the pursuers of the benefit of their property.

*Answered*; If the simple device of publishing a treatise in separate parts were sufficient for eluding the protection afforded by the enactment under consideration, the argument no doubt of the defenders would be good, and the statute nugatory. But that is a supposition which, though evidently inseparable from their plea, is in itself highly unreasonable, and is contradicted by every

No 5.

It was found an infringement of literary property, to print in the Encyclopedia Britannica, in the way of abridgement, a great part of Stewart's History of the Reformation.