

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.

No 5. authority on the subject. In many cases similar to the present, action under this statute has been sustained; such as, *Skinner and Taylor contra The Editors of the Town and Country Almanack*, No. 4. p. 8308.; and in England, *Macklin versus Richardson and Urquhart*; and *Mason versus Murray*. But in none of those instances was there a greater infringement of literary property than that which occurs in the present case.

The cause was reported by the Lord Ordinary, when

THE COURT 'repelled the defences.'

And to this judgment they adhered, on advising a reclaiming petition and answers.

Reporter, *Lord Eskgrove.*

Act. *Lord Advocate, Blair.*

Alt. *Solicitor General, Wight.*

Clerk, *Home.*

S.

*Fol. Dic. v. 3. p. 389. Fac. Col. No 216. p. 340.*

1787. *July 17.*

THOMAS CADELL, and Others, *against* WILLIAM ANDERSON and JOHN ROBERTSON.

### No 6.

The reversionary interest of authors under the statute 8th Anne, cap. 19, assignable.

The statute extends to notes, variations, and corrections, introduced in new editions of a book.

THE late Sir William Blackstone published his "Commentaries on the Laws of England," consisting of four volumes, in so many different years; and he entered each volume, previously to its publication, in the register of Stationers' Hall. The copy-right of the whole book he afterwards sold to Mr Cadell, and two other English booksellers.

On the expiration of 14 years after the publishing of the first volume, Sir William assigned to the same persons his reversionary interest in it for the second statutory term; but he died before 14 years had elapsed from the publication of any of the other volumes.

In revising this work, he had made, throughout, a considerable number of corrections and alterations of the text, which he also conveyed to his assignees; and they employed another author, Dr Burn, to subjoin some annotations.

The assignees included all those corrections and notes in a new edition, which they too entered at Stationers' Hall. This new edition having been reprinted in Scotland, by Messrs Anderson and Robertson, the assignees sued them in an action of declarator and damages, founded on the statute 8th Queen Anne, cap. 19.

*Pleaded* for the defenders; With respect to the first volume; the statute enacts, 'That the author of any book not then published, and his assignee or assigns, shall have the sole liberty of printing and re-printing such book for the term of 14 years, to commence from the day of the first publishing of the same, and no longer.'