

in the contemplation of the Legislature, that there is not a word about patents in the whole Act. Could they have given any right, it was not worth saving; because it never exceeded fourteen years.

It was strongly urged, "that a common law right could not exist; because there was no time from which it could be said to attach or begin:" whereas the statute-property was ascertained by and commenced from the entry.

Undoubtedly, the previous entry is a condition upon which all the security given by the statute depends: and if every man was intitled to print, without the author's consent, before this Act, no body can be questioned for so printing since the Act, before an entry. Nay, the [2407] offence being newly created, it can only be prosecuted by the remedies prescribed, and within the limited time of three months.

But the Court of Chancery has uniformly proceeded upon a contrary construction. They considered the Act, not as creating a new offence, but as giving an additional security to a proprietor grieved; and gave relief, without regard to any of the provisions in the Act, or whether the term was or was not expired. No injunction can be obtained, till the Court is satisfied "that the plaintiff has a clear legal right." And where, for the sake of the relief, the Court of Chancery proceeds upon a ground of common or statute law, their judgments are precedents of high authority in all the Courts of Westminster-Hall.

His Lordship adopted and referred to other observations made upon the Act by the two Judges who spoke first:—and then concluded thus—

I desire to be understood, that it is upon this special verdict, I give my opinion. Every remark which has been made, as to what is and what is not found, I consider as material. The variation of any one of the circumstances may change the merits of the question: the variation of some, certainly would. Every case, where such variation arises, will stand upon its own particular ground; and will not be concluded by this judgment.

The subject at large is exhausted: and therefore I have not gone into it. I have had frequent opportunities to consider of it. I have travelled in it for many years. I was counsel in most of the cases which have been cited from Chancery: I have copies of all, from the register-book. The first case of Milton's *Paradise Lost* was upon my motion. I argued the second: which was solemnly argued, by one on each side. I argued the case of *Millar* against *Kincaid*, in the House of Lords. Many of the precedents were tried by my advice. The accurate and elaborate investigation of the matter, in this cause, and in the former case of *Tonson and Collins*, has confirmed me in what I always inclined to think, "that the Court of Chancery did right, in giving relief upon the foundation of a legal property in authors; independent of the entry, the term for years, and all the other provisions annexed to the security given by the Act."

Therefore my opinion is—"that judgment be for the plaintiff." And it must be * entered as on the day of the last argument of this case at the Bar.

[2408] A writ of error was afterwards brought: but the plaintiff in error, after assigning errors, suffered himself to be nonprosd. And the Lords Commissioners, after Trinity term 1770, granted an injunction.

In the case of *Donaldsons* against *Becket and Others*, the matter came before the House of Lords, upon an appeal from a decree of the Court of Chancery, founded upon this judgment: and what appears from the minutes is as follows—

Die Mercurii, 9 Februarii 1774. *Donaldsons* against *Becket and Others*.

[See note, ante, 4 Burr. 2303.]

Ordered, that the Judges be directed to deliver their opinions upon the following questions (viz.)

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?

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

* Vide ante, p. 2303.

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

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

Ordered, that the Judges do deliver their opinions upon the following questions (viz.)

Whether the author of any literary composition and his assigns, had the sole right of printing and publishing the same in perpetuity, by the common law?

Whether this right is any way impeached restrained or taken away by the Statute 8th Ann.?

Whereupon, the Judges desiring that some time might be allowed them for that purpose,

[2409] Ordered, that the further consideration of this cause be adjourned till Tuesday next; and that the Judges do then attend, to deliver their opinions upon the said questions.

Die Martis, 15 Februarii 1774.

The Lord Chancellor acquainted the House, that the Judges differed in their opinions upon the said questions.

Ordered, that the Judges present do deliver their opinions upon the said questions, seriatim, with their reasons.

Accordingly,

Mr. Baron Eyre was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had not the sole right of first printing and publishing the same for sale; and could not bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that if the author had such sole right of first printing, the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such right is taken away by the Statute of 8 Ann.; and that an author by the said statute is precluded from every remedy except on the foundation of the said statute: but that there may be a remedy in equity upon the foundation of the statute, independent of the terms and conditions prescribed by the statute, in respect of penalties enacted thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had not the sole right of printing and publishing the same in perpetuity, by the common law.—And gave his reasons.

[2410] 5. Upon the fifth question, delivered his opinion—that the right is impeached restrained and taken away by the Statute 8th Ann.—And gave his reasons.

Then Mr. Justice Nares was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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 the person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is taken away by the Statute 8 Ann.; and that an author by the said statute is precluded for every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is impeached restrained and taken away by the Statute 8 Ann.—And gave his reasons.

Then Mr. Justice Ashurst was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

[2411] 2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of 8th Ann.; and that an author by the said statute is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute of 8th Ann.—And gave his reasons.

Then Mr. Justice Ashurst delivered the opinion of Mr. Justice Blackstone (who was absent, being confined to his room with the gout,) upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of 8th Ann.; and that an author, by the said statute, is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

[2412] 4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute 8th Ann.—And gave his reasons.

Ordered, that the further consideration of this cause, and hearing the opinion of the rest of the Judges upon the said questions, be adjourned till Thursday next; and that the Judges do then attend.

Die Jovis, 17 Februarii 1774.

Mr. Justice Willes was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of the 8th Ann.; and that an author by the said statute is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any

literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute of 8th Ann.—And gave his reasons.

[2413] Then Mr. Justice Aston was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of the 8th Ann.; and that an author by the said statute is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.^(a)

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained or taken away by the Statute of 8th Ann.—And gave his reasons.

Then Mr. Baron Perrott was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that at common law an author of any book or literary composition had the sole right of first printing and publishing the same; but could not bring an action against any person who printed published and sold the same, unless such person obtained the copy by fraud or violence.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward re-[2414]-print and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such right is taken away by the Statute of 8th Ann.; and that an author, by the said statute, is precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that the right is impeached restrained and taken away by the Statute of 8th Ann.—And gave his reasons.

Then Mr. Justice Gould was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing and publishing

(a) *Multum postea de impulsoribus suis, præcipue de regulo, questus est, qui se in sententia, quam ipse dictaverat, deseruisset. Est alioquin regulo tam mobile ingenium, ut plurimum audeat, plurimum timeat. Plinii Epis. lib. 2, epis. 11, p. 131.*

Regulus being in great favor with Domitian, was highly flattered by Martial, though the character given of him by Pliny, not only in the passage quoted but in many other of his epistles is infamous; and particularly so in lib. 1, epis. 5, on which Mr. Melmoth observes, that poets especially when needy, are generally not the most faithful painters in that way, and adds, if antiquity had delivered down more of those drawings of the same persons by different hands, the truth of characters might be easier ascertained, and many now viewed with rapture would perhaps greatly sink; and he adds even Horace himself we find giving a very different air to his Lollius from that in which he is represented by Patereulus.

the same for sale; and might bring an action against any person who printed published and sold the same without his consent.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is taken away by the Statute of 8th Ann.; and that an author, by the said statute, is precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

[2415] 5. Upon the fifth question, delivered his opinion—that this right is impeached restrained and taken away by the Statute of 8th Ann.—And gave his reasons.

Then Mr. Baron Adams was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that at common law, an author of any book or literary composition had the sole right of first printing and publishing the same; but could not bring an action against any person who printed published and sold the same, unless such person obtained the copy by fraud or violence.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterwards reprint and sell, for his own benefit, such book or literary composition against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such right is taken away by the Statute of 8th Ann.; and that an author, by the said statute, is precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that the right is impeached restrained and taken away by the Statute of 8th Ann.—And gave his reasons.

Ordered, that the further consideration of the said cause be adjourned to Monday next; and that the Judges do then attend, to deliver their opinions seriatim, with their reasons, upon said questions.

[2416] Die Lunæ, 21 Februarii 1774.

The Lord Chief Baron of the Court of Exchequer was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

2. Upon the second question, delivered his opinion—that the law did not take away his right, upon his printing and publishing such book or literary composition; and that no person might afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is not taken away by the Statute of 8th Ann.; and that an author, by the said statute, is not precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—that this right is not any way impeached restrained and taken away by the Statute of 8th Ann.—And gave his reasons.

Then the Lord Chief Justice of the Court of Common Pleas was heard upon the said questions.—And

1. Upon the first question, delivered his opinion—that 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.—And gave his reasons.

[2417] 2. Upon the second question, delivered his opinion—that the law did take away his right, upon his printing and publishing such book or literary composition; and that any person might afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author.—And gave his reasons.

3. Upon the third question, delivered his opinion—that such action at common law is taken away by the Statute of 8th Ann; and that an author by the said statute is precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby.—And gave his reasons.

4. Upon the fourth question, delivered his opinion—that the author of any literary composition and his assigns had not the sole right of printing and publishing the same, in perpetuity, by the common law.—And gave his reasons.

5. Upon the fifth question, delivered his opinion—That this right is impeached, restrained and taken away by the Statute of 8th Ann.—And gave his reasons.

So that of the eleven Judges, there were eight to three, upon the first question; seven to four, upon the second; and five to six, upon the third.

It was notorious, 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. 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.

And the Lord Chancellor seconding Lord Camden's motion "to reverse; the decree was reversed."

The argument upon the third question turned greatly upon the meaning of the proviso in the 8th of Queen Ann, which saves the right of the universities. It is the 9th clause, and runs in these words—"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."

[2418] The universities, alarmed at the consequences of this determination, applied for and obtained an * Act of Parliament establishing, in perpetuity, their right to all the copies given them heretofore, or which might hereafter be given to or acquired by them.

Memorandum.—In a former account of this case, which (at the request of several of my most learned and respectable friends) I communicated to the public, some time ago, in a detached piece, I inserted a marginal note upon Lord Mansfield's mentioning "that printing was introduced in the reign of Edw. 4th, or Hen. 6," which marginal note was not only unnecessary and improper, but grossly erroneous and false in fact. I have never been able to recollect or discover what led me into such an egregious blunder. The only method that occurs to me of making compensation for it, is to endeavour to fix with some degree of accuracy and precision, by this present note, the real and true times and persons, when and by whom the art of printing was originally discovered; and when and how it was afterwards first introduced into this country.

Very great honour is certainly due to the ingenious inventors of this most noble and useful art: and even the cities where it was first attempted to be put in practice claim some share of reputation, from having given birth or residence to the first discoverers.

Haerlem, Mentz and Strasburgh seem to have the best pretensions of this sort, with regard to the original invention. Venice has a better claim to the improvement, than to the first rudiments. For Nicolas Jenson, who is generally supposed to have first taught the art of printing to the Venetians, did not begin printing there till the year

* 15 G. 3, c. 53.