

No 7. Of the truth of this observation, the trade of printing or selling books has ever afforded a remarkable instance.

The LORD ORDINARY reported the cause; when

With regard to the first ground of action, the Court seemed to be clearly of opinion, That as literary property was not protected by the common law, so no action could proceed on the statute, except for the penalties there mentioned. But

“THE LORDS found, That it was irregular and hurtful in the defenders to publish the work in question with the names of the pursuers affixed to the title-page; and therefore prohibited and discharged them in time coming to sell any copies of the said work with such title-page; and found them conjunctly and severally liable in expenses: And further, found the defender, William Anderson, liable in damages to the pursuers; which the LORDS modified to the sum of L. 20 Sterling.”

Reporter, *Lord Justice-Clerk.* Act. Blair, Fraser-Tytler, Stewart. Alt. Lord Advocate,

Dean of Faculty. Clerk, Sinclair.

Fol. Dic. v. 3. p. 389. Fac. Col. No 342. p. 524.

1790. May 22.

HIS MAJESTY'S PRINTER & STATIONER *against* MESSRS BELL & BRADFUTE, and Others.

No 8.

The King's Printer has the exclusive privilege of printing Bibles. A Commentary, large and voluminous, although the whole of the Bible was printed along with it, was found to be no infringement of the privilege; but a Bible, published with short notes under it, was prohibited.

THE letters patent conferring the office of King's Printer, bear, that he shall have *solum et unicum privilegium imprimendi in Scotia Biblia Sacra, Nova Testamenta, Psalmorum libros, et libros Precum-Communium, Confessiones Fidei, Majores et Minores Catechismos, in lingua Anglicana.*

Upon that title, a bill of suspension was presented to the Court, complaining of, and craving an interdict against the publication of several Commentaries on the Bible, in respect that each of them contained a complete copy of the Bible itself; and in particular those of Henry and of Ostervald, the first of which is very voluminous, while the other is remarkable for its brevity.

Pleaded for the complainer, Of the royal prerogative to grant this exclusive privilege, there can be no doubt. It was in particular recognised by a judgment of the Court in 1717, in the case of Mr Watson, *see* APPENDIX, who was then the patentee; and in the late celebrated questions concerning the existence of literary property at common law, this exercise of prerogative was on all hands considered as indisputable.

By the publications in question, the complainer's right is infringed. They contain the whole of the Bible from beginning to end; and though they also

comprehend extraneous matter, in the form of annotations or commentaries, that does not vary the case with regard to the printing of the sacred text.

This patent is analagous to the act of Q. Anne, vesting authors with the copy-right of their works. But the law will not suffer that property to be violated under the pretence, either of the addition of notes or observations on the original work, or of annexing it to other compositions; 25th June 1785; Murray *contra* Macfarquhar, No 5. p. 8309. ; 17th July 1787, Payne and Caddell *contra* Anderson and Robertson, No 6. p. 8310.

If the complainer would not be entitled to subjoin to the Bible as an accessory of it, those commentaries, if they were private property, the publishers of them surely should not be allowed to consider the Bible itself as an accessory of their annotations. It is evident, besides, that the patent would in this way be defeated by every thing which bore the appearance of a commentary. For how is a line of distinction to be drawn, in respect of magnitude and importance, between one commentary and another?

Answered, The power of granting monopolies is, in England, conferred on the Crown by statute 21st James I. cap. 3. In Scotland, where that power was as little implied in the royal prerogative, as appears from act 1540, cap. 127. no such statute ever passed, except that of 1551, cap. 27. concerning the licensing of books; an arbitrary enactment, framed on purpose to repress a spirit of inquiry in the infancy of the reformation, and long ago in desuetude. The validity of exclusive privileges like that in question, is therefore at least doubtful; Bankton, b. 1. tit. 19. § 11.; 5th January 1683, Anderson *contra* Lindsay, *voce* PRIVILEGE. Corporation of Girdlesmiths of Culross *contra* Watson and Masterton, No 60. p. 1924. As a strong indication of this, it is to be remarked, that though the patent now in question, besides Bibles, gives equally the sole privilege of publishing New Testaments, Psalm Books, Confessions of Faith, and Books of Common Prayer; yet it is notorious, that all of these have been constantly published without challenge from the King's patentee.

But at any rate, such exclusive privileges ought always to suffer the strictest interpretation, as being unfavourable to the rights and liberties of the people at large; a rule which is exemplified in the encouragement given to those, who, by adding any improvement to the subject of a patent, obtain the full benefit of the monopoly.

This patent, it is plain, does not concern commentaries on the Bible; and the only point in dispute is, whether the text may be published alongst with the commentary. But it is impossible to exhibit, with convenience or propriety, a commentary on any work, unless the text be subjoined; nor is there more than an instance or two in the Protestant countries, of any commentary on the Bible having been published separate from the text. As this monopoly then does not extend to commentaries on the Bible, they ought to be per-

No 8.

mitted to appear in that form and manner which are suited to their nature, and annexed or subjoined to the text which they are intended to illustrate.

It is no doubt true, that an appearance of a commentary may be assumed for the unlawful purpose of evading an exclusive right of publication; but such a fallacy cannot escape detection. By that standard, the present parties are willing to be tried.

The LORD ORDINARY on the bills reported the cause upon memorials; when

The COURT seemed to entertain no doubt, on the one hand, of the patentee's right to the sole printing of Bibles, nor, on the other, with respect to the liberty of publishing commentaries on the scriptures in conjunction with the sacred text. At the same time, it was thought necessary to guard against devices for evading that illegal privilege. In this view, a distinction was made between Henry's Commentary, where the annotations are about five times the bulk of the text, and the work of Ostervald, whose notes are so inconsiderable in quantity, that they might, without much difficulty, be employed as a subterfuge.

THE LORDS, therefore, refused the bill so far as it concerned Henry's Commentary, and allowed expenses; but passed it with respect to that of Ostervald.

Reporter, *Lord Gardenston.*

For the Complainer, *Solicitor-General.*

Alt. Roland, Fraser-Tyler, Dickson.

Fol. Dic. v. 3. p. 390. Fac. Col. No 131. p. 256.

1793. March 18.

HIS MAJESTY'S ADVOCATE *against* JAMES ROBERTSON & WALTER BERRY.

No 9.
Publisher responsible for what he publishes.

JAMES ROBERTSON and WALTER BERRY were charged with having wickedly and feloniously printed and published a seditious pamphlet entitled, "The Political Progress of Britain," &c. and containing among others, certain seditious passages, which were inserted in the criminal letters.

The Court found the libel relevant to infer the pains of law.

The jury found it proved, "That the said James Robertson did print and publish, and that the said Walter Berry did publish only the pamphlet libelled on."

The pannels contended, That no punishment could follow on this verdict; because it neither found that there was any thing seditious in the pamphlet, nor that they had acted with a wicked and felonious intention, both of which were essential ingredients in the crime charged against them.

Upon advising minutes of debate, it was

Observed on the Bench, The jury might, if they pleased, have returned a general verdict of guilty or not guilty. For although in trials for libel be-