The pre-history of fair use: English copyright from 1710 to 1828

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A TREATISE
ON THE
LAWS OF LITERARY PROPERTY,
COMPRISING
THE STATUTES AND CASES
RELATING TO
BOOKS, MANUSCRIPTS, LECTURES; DRAMATIC AND MUSICAL
COMPOSITIONS; ENGRAVINGS, SCULPTURE, MAPS, &c.
INCLUDING THE
PIRACY AND TRANSFER OF COPYRIGHT;
WITH A
HISTORICAL VIEW,
AND
DISCUSSIONS ON THE PRINCIPLES AND EFFECTS OF THE LAWS.

By ROBERT MAUGHAM,
SECRETARY TO THE LAW INSTITUTION,
Author of the "Law of Attorneys," &c.
A Tentative Thesis

There is more continuity between modern fair use doctrine and the so-called “pre-modern era” of copyright law than had previously been thought
To abridge a book, therefore, is no violation of the right of the proprietor, because to be subject to the hazard of an abridgement was an original condition of the property.
Samuel Johnson

Abridgment

“an act, in itself legal, and justifiable by an uninterrupted series of precedents, from the first establishment of printing among us, down to the present time.”
Gyles v. Wilcox  1741

A real and fair abridgment, ... 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.
Robert Maugham

[a]n 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.
Austen v. Cave
PLEAS OF THE CROWN

In Two Parts.

A Methodical Summary of the Principal Matters relating to that Subject. With Several Hundred References, never before printed, to the Ancient and Modern Books of the Law. And likewise three other Treatises by Sir Matthew Hale; viz. Of Sheriffs Accompts, Trial of Witches, and Provisions for the Poor.

By Sir Matthew Hale, Knight, late Chief Justice of the King's Bench.

Second Part being a Continuation of the PLEAS of the CROWN, down to this Time, in Sir MATTHEW HALE's Method.

By Giles Jacob, Gent.

London:
Continuity with modern fair use doctrine in the United States

(1) case by case analysis
(2) amount
(3) market effect, especially substitution
(4) a type of transformative use
If an article in a general compilation of literature and science copies so much of a book, the copyright of which is vested in another person, as to serve as a substitute for it, though there may have been no intention to pirate it, or injure its sale,—this is a violation of literary property for which an action will lie to recover damages.
Dodsley v. Kinnersley
Rowath v Wilkes
Folsom v Marsh Reconsidered