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

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#### TREATISE

ON THE

#### LAWS OF LITERARY PROPERTY,

COMPRISING

#### THE STATUTES AND CASES

RELATING TO

BOOKS, MANUSCRIPTS, LECTURES; DRAMATICAND MUSICAL COMPOSITIONS; ENGRAVINGS, SCULPTURE, MAPS, &c.

INCLUDING THE

PIRACY AND TRANSFER OF COPYRIGHT;

A HTIW

HISTORICAL VIEW,

AND

DISQUISITIONS ON THE PRINCIPLES AND EFFECTS OF THE LAWS.

#### By ROBERT MAUGHAM,

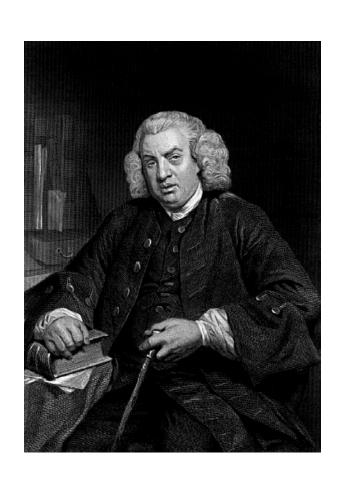
SECRETARY TO THE LAW INSTITUTION,

Author of the "Law of Attornies," &c.

### A Tentative Thesis

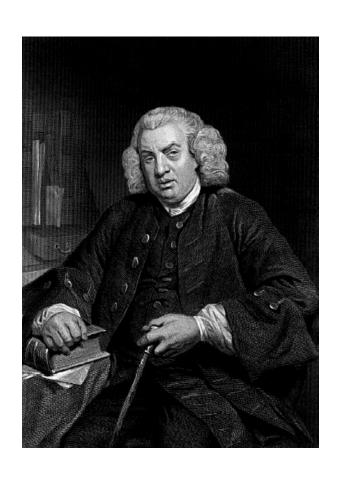
There is more continuity between modern fair use doctrine and the so-called "pre-modern era" of copyright law than had previously been thought

### Samuel Johnson



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



# Gyles v Wilcox

# PLEAS OF THE CROWN:

O R. CONTROL

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 Matthem 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:

Printed by J. D. Aflignee of Edw. Sayer, Efq; for D. Brown, at Exeter Change, M. Wotton, at the 3 Daggers in Fleetfireet, W. Mears, at the Lamb; J. Brown, at the Black Swan without Temple-Bar, and T. Woodward, at the Inner-Temple-Gate. 1716.

# 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

# Robert Maugham on market effect

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

THE HISTORY

OF

#### RASSELAS,

PRINCE OF ABYSSINIA.

A TALE.

BY SAMUEL JOHNSON, LL. D.



#### Paris.

BAUDRY, RUE DU COQ-ST. HONORE, Nº 9; 1 C O L I

1831

Charles State

C- ell The ODO Grand Magazine of Magazines;

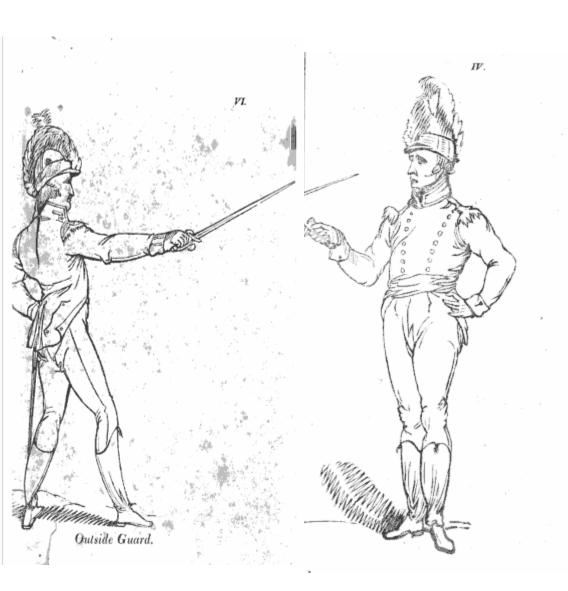
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By M. COOPER, at the Globe in Pater Nofter-Row London.

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# Rowath v Wilkes





## Folsom v Marsh Reconsidered