

= Gyles v Wilcox =

Gyles v Wilcox (1740) 26 ER 489 was a decision of the Court of Chancery of England that established the doctrine of fair abridgement , which would later evolve into the concept of fair use . The case was heard and the opinion written by Philip Yorke , 1st Earl of Hardwicke , and concerned Fletcher Gyles , a bookseller who had published a copy of Matthew Hale 's Pleas of the Crown . Soon after the initial publication , the publishers Wilcox and Nutt hired a writer named Barrow to abridge the book , and repackaged it as Modern Crown Law . Gyles sued for a stay on the book 's publishing , claiming his rights under the Statute of Anne had been infringed .

The main issues in the case were whether or not abridgements of a work inherently constituted copyright infringement , or whether they could qualify as a separate , new work . Lord Hartwicke ruled that abridgements fell under two categories : " true abridgements " and " coloured shortenings " . True abridgements presented a true effort on the part of the editor , and by this effort , constituted a new work which did not infringe upon the copyright of the original . Leaving it to literary and legal experts to decide , Hartwicke ruled that Modern Crown Law was not a true abridgement , but merely a duplication intending to circumvent the law .

The case set a legal precedent which has shaped copyright law to the present day . It established the common law doctrine of fair abridgement , which was cited in other cases , ultimately building up to the idea of fair use . The opinion also recognised the author 's right to a work through the nature of the labour it took to produce it , shifting copyright away from publishing rights and towards the idea of serving the greater good by encouraging the production of new , useful works .

= = Facts = =

Fletcher Gyles , an English bookseller , had previously published a book entitled Matthew Hale 's Pleas of the Crown , for which he had purchased the exclusive publishing rights . Around the same time , publishers Wilcox and Nutt paid a writer named Barrow to abridge the book , circulating it under the title Modern Crown Law . Gyles alleged that Modern Crown Law was a near verbatim copy of his publication , with only minor alterations , including the translation of Latin and French passages into English and cutting old , obsolete laws . Seeking to protect his printing rights , Gyles sued both Wilcox and Nutt , along with Barrow , for a stay on the publication .

= = Arguments = =

The case involved whether Wilcox , Barrow , and Nutt had violated Gyles ' publishing rights as defined under the Statute of Anne , particularly the section stating that an author , or purchaser of an author 's copyrights as Gyles was , " shall have the sole Liberty of Printing and Reprinting such Book and Books for the Term of four @-@ teen years . " Philip Yorke , 1st Earl of Hardwicke presided over and decided the case .

Browning , Gyles ' attorney , cited a case which had also appeared before Hardwicke , that of Read v Hodges . In that case , a publisher attempted to circumvent the rights of the author of Czar Peter the Great by including all three volumes in one and cutting several pages . Hardwicke rejected the argument , however , declaring that the former case had been decided merely on a motion , and that he had given his decision and statements without the thought he would have given a normal hearing . Hardwicke further took contention with the Attorney General for England and Wales ' assertion that the Statute of Anne provided a publishing monopoly , instead interpreting the act as one meant to promote public education and the public good .

As Hardwicke had decided to interpret the Statute of Anne as for the public good , the main question of the case became which " any such book or books " the act referred to and protected . The defendants argued that his abridgement must be considered separate from the original work published by Gyles . The defendant 's lawyers furthered pushed the court to try the case as if the abridgement had been recorded in the Stationers ' Register , an action that would have given Wilcox and Nutt the right to publish their book , and the lawsuit brought against a second , unique book .

Therefore , the only question before the court was whether the second book differentiated sufficiently from the first . Further , the attorneys for the defendants argued that the book was not a direct transcription , but that several chapters had been omitted , while other , original sections had been added to the Wilcox and Nutt publication . They further pointed to the fact that the Gyles ' publication consisted of 275 sheets , whereas the abridgement contained only 35 sheets .

= = Judgment = =

The opinion , written by Hardwicke , found that a true abridgement of a published book may be considered an entirely separate , new work , as the abridgement showed the labour , originality , education , and judgement of the editor . This new book did not run the risk of infringing the rights of the author or bookseller who owned the publishing rights . However , Lord Hardwicke drew a distinction between works " fairly made " and those " colourably shortened " . Hardwicke refused to compare the books himself to determine whether Modern Crown Law was indeed a fair abridgement , or to force a judge and jury to sit and hear both books read , instead opting to have two legal experts and a literary master read the books and report the findings to the court . The parties were allowed to choose these examiners , in a way leaving the case to arbitration . After a week in which the parties were given a chance to make amends outside of court , the book in question was ruled a colourable shortening , created only to circumvent the law , and thus was an infringement of Gyles ' printing rights .

In his decision , Hartwicke went counter to the prevailing view that the Statute of Anne should be interpreted very strictly , proclaiming , " I am quite of a different opinion , and that it ought to receive a liberal construction , for it is far from being a monopoly , as it is intended to secure the property of books in the authors themselves , or the purchasers of the copy , as some recompense for their pains and labour in such works as may be of use to the learned world . "

= = Consequences = =

The case established the doctrine of fair abridgement , which allowed that abridgements displaying a fair amount of labour on the part of the editor , and that differed from the original published work in a significant way , could not be copyright violations . This in effect raised the abridger to the level of an author . The decision did not define the exact parameters that would qualify a work as a valid abridgement . This distinction came with a later case involving an abridgement of Hawksworth 's Voyages , in a decision written by Lord Chancellor Apsley . This concept of fair abridgement eventually evolved through common law , initiated from Gyles v Wilcox , into the current concept of fair use . Hardwicke 's decision also added the exercise of personal judgement to the list of admissible defences against the charge of copyright infringement , adding to the growing case law establishing that British copyright would be based on labour and not on originality . The opinion advanced the position that copyright law should serve the public interest by promoting the creation of new educational and useful works , rather than focusing on publishing rights . The case played a significant role in the development of English copyright law . The United States federal courts have cited the case as recently as the 1980s .