

1777. *Dormer v. Fortescue*,\* the court under such circumstances refused to grant a new trial.

DOE  
versus  
WIL-  
LIAMS.

ASTON, Justice.—I am of the same opinion. As to the question whether the evidence of Mrs. Pearce the tenant in possession was admissible in support of the defendant's title under whom she held, in *Bourne v. Turner*, 1 Str. 632. upon a motion to admit the landlord a defendant, upon an affidavit that the tenant in possession was a material witness for him, the court refused it, saying, he was liable to the mesne profits, and therefore if the motion were granted it would not make the tenant a witness. I have always understood that a tenant in possession cannot be a witness to support his own possession. Therefore I entirely agree that the testimony of Mrs. Pearce in this case was properly rejected. As to the other point, the evidence given by Mr. Way was very proper to be left to the jury; and in a favourable case might have had its effect. Here it was left to the consideration of the jury, and they have notwithstanding found for the plaintiff. Therefore the rule must be discharged.

Mr. Justice Willes, and Mr. Justice Ashurst were of the same opinion.

*Per Cur.* Rule discharged.

\* 2 Str. 1, 106.

Tuesday,  
June 10th.  
A musical  
composition is  
a writing  
within the  
stat. 8 Ann.  
c. 19. for  
the encourage-  
ment of  
learning, by  
vesting the  
copies of  
printed  
books in the  
authors or  
purchasers  
of such co-  
pies, during  
the times  
therein  
mentioned.

BACH versus LONGMAN et al.

THIS was a case out of Chancery for the opinion of this court, stating, that the plaintiff about twelve years ago composed and wrote a certain musical composition for the harpsichord, called a *Sonata*; and that being desirous of publishing the said work or composition, together with other musical works, compositions and writings, he did apply for and obtain his Majesty's licence, dated the 15th day of December, 1763, whereby his Majesty did grant unto the plaintiff, his executors, administrators and assigns, his royal licence for the sole printing and publishing the said works mentioned in the said licence, for fourteen years from the date of the same, as appears by the said licence; and that about four years ago the plaintiff composed and wrote another musical composition for the harpsichord, called a *Sonata*; together with an accompaniment for the *Viol di Gamba*; and that the defendants, being music sellers and copartners, had lately obtained copies of the two several *Sonatas*, musical works, or compositions before mentioned, together with the said accompaniment to the latter: and had lately in the name of

[1899] 1 Cl. & F. 842

of the said *John Christian Bach*, but without his licence or consent, printed, published, and sold for profit, divers copies of the said two several compositions and accompaniment. And it likewise appeared, that it was possible to know the musical compositions of any master or composer of musick, who had composed any quantity thereof. The question was, Whether a *musical composition* is within the statute of the 8th of *Ann. c. 19.* intitled an act for the encouragement of learning, by vesting the copies of printed books in the authors, or purchasers, of such copies during the times therein mentioned?

1777.

BACH  
versus  
LONGMAN.

Mr. *Robinson* for the plaintiff—Mr. *Wood* for the defendant.

Lord *Mansfield* called on Mr. *Wood* to begin; and without hearing Mr. *Robinson* in answer, said, the case was so clear and the arguments such, that it was difficult to speak seriously upon it. The words of the act of parliament are very large: “*Books* and *other writings.*” It is not confined to language or letters. Music is a science; it may be *written*; and the mode of conveying the ideas, is by signs and marks. A person may use the copy by playing it; but he has no right to rob the author of the profit, by multiplying copies and disposing of them to his own use. If the narrow interpretation contended for in the argument were to hold, it would equally apply to algebra, mathematics, arithmetic, hieroglyphics. All these are conveyed by signs and figures. There is no colour for saying that music is not within the act. Afterwards, on *Monday, June 16th*, the court certified in these words, “Having heard counsel and considered this case, we are of opinion, that a musical composition is a *writing* within the statute of the 8th of *Queen Anne*, intitled an act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.”

---

JONES *versus* WALKER.

Same day.

THIS was a special action on the case, for *money had and received* to the plaintiff's use. Plea, *Non assumpsit.*—The cause was tried at *Westminster*, at the sittings after *Easter* term, 1777, before Lord *Mansfield*, when the Jury found a verdict for the plaintiff, damages 1 *d.* costs 40 *s.* subject to the opinion of

*Old-street* is within the suburbs of the city of *London*, being connected to it by a street of

contiguous buildings, before the stat. 9 *Ann. c. 10.* Therefore the *penny post-office* is entitled only to the penny for the carriage and delivery of a letter to any of the inhabitants thereof; viz. the penny paid upon putting such letter into the *penny-post-office.*

the