That the 8th Anne, c. 19, section 5, makes it necessary for the printer of a book, composed after the passing of the act, and published for the first time after the composition, which book is printed and published with the consent of the proprietor of the copyright, to deliver a copy, *upon the best paper*, to the warehouse-keeper of the Company of Stationers, for the use of the library of the University of Cambridge, notwithstanding the title to the copy of such book, and the consent of the proprietor to the publication, be not entered in the Register Book of the Company.

Though the *result* of the decision is thus quoted by the reporter, it does not appear that the quality of the paper was any where noticed in the judgment pronounced by the court.

The first section, however, of the 54th Geo. III. cap. 156, has set this question at rest. The clause in the statute of Anne, relating to the delivery of copies, is thereby expressly repealed, and in the second section the eleven copies are directed to be delivered "upon the paper on which the *largest number* or impression shall be printed for sale," with the single exception of the *British Museum*, which, under the third clause, is entitled to a copy on the *best paper* on which the work shall be printed; and this National Institution seems to have been so far justly preferred to the other public libraries, that a copy is directed to be delivered at Stationers' Hall, at the time of the entry of the book, prior to the publication. The copies for the other libraries are not deliverable, unless demanded, within twelve months. If demanded, they must be supplied in the course of a month.

Maps and prints published without letter-press, are not liable to the tax; but it seems that if the smallest imaginable quantity of letter-press should accompany the maps or prints, it will bring them within the range of this legislative method of encouraging literature and the fine arts, and entitle the libraries to sweep away eleven copies, maps, prints, letter-press and all!

SECTION II.

Of Works not included in the Act.

Where the publication of a work in parts or numbers was commenced prior to the statute, and is still in progress, published at uncertain periods, it has been recently held, in a case between the *British Museum* and Messrs. Payne and Foss, the publishers, that the libraries are not entitled to the copies, either of the past or continuing numbers: the book

being considered as one entire work, and part of it having been published before the act, and the remainder not yet completed, it is not comprised within the provisions of the statute.

The following is an account of the case referred to, as stated in a respectable periodical work:

The Lord Chief Baron of the Court of Exchequer lately pronounced judgment in an important literary question, The British Museum v. Payne and Foss, Booksellers and Publishers, which had been elaborately argued for some days in that court. The Trustees of the British Museum claimed a copy of a number of a splendid publication entitled *Flora Græca*, got up entirely by subscription, and no more copies printed than those subscribed for. The claim was resisted on the ground, that a publication for private circulation did not come under the operation of the act giving a copy of every work to the library of that national establishment. The court pronounced unanimously against the claim of the Trustees, *on the ground of its being only a portion of the work, and not a complete volume*(1).

Since writing the above, we have obtained an authentic report of the judgment of the court, sitting in the Exchequer Chamber, on an appeal by way of writ of error, the substance of which it may be necessary to set forth.

The following is stated in the margin of the report, as the *result* of the case:

A *part* of a work *published at uncertain intervals*, of which thirty copies only were printed, twenty-six of which were subscribed for, the principal costs of publication being defrayed by funds devised by a testator for that purpose, is not a book demandable by the public libraries under the 54th Geo. III. c. 156.

It was contended on behalf of the publishers,

1st. That the work in question was not a work of profit within the contemplation of the act.

2nd. That the publication having been commenced originally before the act, it was not within the meaning of the clause for the infraction of which the penalty was sought to be recovered.

3rd. That this *fasciculus* was not a *book*, and need not therefore be entered at Stationers' Hall.

The judgment of the court seems to have proceeded on the last ground only, which is the one most general and advantageous to the interests of literature.

Lord Chief Baron Alexander delivered the judgment of the court.—This was an action brought by the British Museum against the defendants in error, for penalties given

(1) Gent. Mag. Feb. 1828.

by the 54th Geo. III. c. 156, section 5, which act is for the encouragement of learning, and respects literary property. The fifth section of that statute requires that the publisher of every book demandable by force of it, shall enter the title of such book, with the name and residence of the publisher, at Stationers' Hall; and endeavours to enforce obedience to that requisition by imposing a penalty of five pounds, with eleven times the price of the book. The present action is brought for the recovery of those penalties.

The first count of the declaration avers, that the defendants in error were on the 10th of January, 1825, the publishers of, and did then publish, a certain book entitled *Flora Græca*. Then follows the title of the book, which it is not necessary for the purposes of this judgment to state. It avers the book to have been first published at the time mentioned at the price of £12. 12*s*. The count then avers it to be a book demandable by the act of 54th Geo. III., and charges the defendants with neglecting to enter the title to the copy of the book, and their names as publishers, at Stationers' Hall. There are many other counts in the declaration, but as the opinion of the court does not turn upon the form of the pleadings, it is not necessary to pursue the pleadings further. The defendants in error pleaded the general issue. Upon the trial a verdict was found in their favor, and upon that occasion a bill of exceptions was tendered to the learned judge who tried the cause.

The result of the evidence, as it appears from the bill of exceptions, is, that the publication in question is part of a considerable work, prepared by the late Doctor *Sibthorpe*, and by his will directed to be printed; that funds to a certain extent were by the same will given to carry on the undertaking; that some of the numbers were published before the act in question, that is, before July, 1814; that the defendants have of late years been the publishers; and that the number which is the foundation of this action is called No. 9, being the first part of the fifth volume.

In the view which this court takes of the question, these are the material facts. Mr. Justice Bayley, before whom the cause was tried, stated to the jury his opinion to be, that the defendants were publishers, within the true intent and meaning of the act, of the number called No. 9; but that this No. 9 was not a book demandable by force of the statute 54 Geo. III., and, therefore, that the evidence produced by the defendants was sufficient to bar the action. This opinion is excepted to by the plaintiffs in their bill of exceptions. It avers, that the No. 9 was a book demandable by virtue of the Act of Parliament, and whether it be or be not, is the question which this court is to decide upon the present occasion. Now, whether that which is confessedly not a book, nor even a volume, but a part only of a volume, be demandable, depends upon the second section of the act. This section, so far as it is necessary to state, enacts, "that eleven printed copies of the whole

of *every book*, and of every *volume* thereof, and upon the paper upon which the largest number or impressions of *such book* shall be printed for sale, together with all maps and prints belonging thereto, which, *from and after the passing of this act*, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of, the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian or other person authorized by the managers of libraries, shall be delivered by the publisher or publishers thereof respectively, within one month after demand made thereof in writing." By this provision, the thing required to be delivered on demand is the whole of every book, and of every volume thereof, and of which, the non-feasance is made penal.

This Court is of opinion, with the learned judge who tried the cause, that the persons for whose benefit this provision was intended, have no right, by force of a provision so expressed, to demand from the publishers that which is *neither a book nor a volume*, but only a *part* of a volume. We are of opinion that we are to understand the legislature as having in this clause employed the words in their *common accepted sense*, and that we have no right, by a questionable subtilty, to extend the construction of the words beyond their usual and natural import.

No inference favorable to the plaintiffs, as it appears to us, can be collected from the fifth clause, on which this section is immediately founded, and which requires the entry. So for as it respects publications of this kind, it is general, and speaks of *book* or *books* only. And when the two clauses are combined, the act appears to mean that a volume would come within the word "book," but that a *fasciculus* cannot be said to be a volume.

We are, as I understand, all clearly of opinion, that this is not a periodical publication within the proviso which respects works of that description. The previous acts, the 8th Anne, 15th Geo. III., and 41st Geo. III., have been referred to as illustrating the clauses in question, and tending to sustain the view taken by the plaintiffs of this case. These acts have been looked into, and do not appear in any manner to warrant the construction contended for.

It has been asked, if this *fasciculus* is not demandable, nor required under a penalty to be entered, has the author any copyright in it? I answer, that is a different question, and whichever way it may be answered, would not rule that which is now before the court.

It has been also asked, if not now, will this *fasciculus* ever

be demandable? I answer again, that question is properly left to be decided when it shall occur; but that, be that as it may, this No. 9, part of the fifth volume, was not demandable, nor required, upon the true construction of the statute, to be entered at the time when this action was brought.

We are all of opinion that there should be judgment for the defendants, and consequently the judgment will be affirmed(').

(1) 2 Younge and Jervis, 166.

THIRD PART.
OF PIRATING COPYRIGHT.

CHAP. I.——OF PIRATING THE COPYRIGHT IN PRINTED BOOKS.

SECT. I.——*Of Original Works.*

It would, perhaps, be unreasonable to expect, that any full and precise definition should have been made of the extent to which a writer may lawfully quote or extract from the works of his predecessors. The courts have generally confined themselves to the decision of the mere point in litigation. The general principle, however, may be collected to be, that extracts made in a bona fide manner, are justifiable. According to some authorities, however, they must not be so extensive as to injure the sale of the original work, even though made with no intention to invade the previous author; nor must they be speciously or colorably adapted from the original into a form differing only in appearance and manner of composition.

The identity of a literary composition, says BLACKSTONE, consists entirely in the sentiment and the language. The same conceptions, clothed in the same words, must necessarily be the same composition: and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies or at any period of time, it is always the identical work of the author which is so exhibited(1).

Where labor, judgment, and learning, however, have been applied in adapting existing works into a new method, and the composition has been evidently made with a fair and honest intention to produce a new and improved work, it seems that the law will justify the publication, although the abridgment or compilation should injure the sale of the former works.

Lord ELDON, in the case of a *rival magazine*, protested against the argument that a man is not at liberty to do any thing which can affect the sale of another work of the same kind, and that because the sale was affected, therefore, there was an injury which the court was called upon to redress(2).

(1) 2 Comm. 405.

(2) Hogg v. Kirby, 8 Vesey, 221. For a further consideration of this point, vide the subsequent sections on *abridgments* and *compilations*.

In the case referred to, an injunction was granted against the defendant from publishing a number of the magazine in question, which was so printed as to appear a continuation of a work published by the plaintiff, and from selling any other publication as or being a continuation of the plaintiff's work or of the defendant's work, which had been published as such continuation.

The case was partly argued upon the ground of a breach of contract by the defendant, who had been the original publisher of the work of the plaintiff; but the court seemed to admit the general principle, that a person cannot publish a work professing to be, and handed out to the world as, the continuation of a work published by another. It was said in argument to have been determined, that property exists in a newspaper, and that an action lies for publishing under the same title.

In the course of his judgment the LORD CHANCELLOR said, I do not see why, if a person collects an account of natural curiosities and such articles, and employs the labor of his mind in giving a description of them, that it is not as much a literary work as many others that are protected by injunction and by action. It is equally competent to any other person, perceiving the success of such a work, to set about a similar work, *bona fide* his own. But it must be in substance a new and original work, and must be handed out to the world as such.

My opinion is, that the defendant was at full liberty to publish a work really new. But the question is, whether he has not published this work, not as his own original work, but as a continuation of the work of another person.

Most of the cases have been, not where a new work has been published as part of the old work; but where, under color of a new work, the old work has been republished, and copies multiplied.

The question is, whether the regulating principle of these cases can be applied to this.

It is impossible not to say, (until it is better explained) an intention does appear both as to the transaction of the fifth number, and the other circumstances—in some degree upon the appearance of the outside, in a great degree upon the first page, the index, and the promised contents—to state this as a continuation of the former work, though in a new series.

The injunction, however, must operate upon nothing but the publication handed out to the world as the continuation of the plaintiff's work, and as to these numbers, the plaintiff shall bring his action.

I am anxious that nothing in the injunction shall imply that reviews, magazines, and other works of this species, may not be multiplied.

SECTION II.

Of Notes and Additions.

Great talents, ingenuity, and judgment, (says Mr. Godson) are in general required to compose good notes or additions to the established work of an author of reputation(1). To which may be added, that the annotator should possess great industry and habits of research, of arrangement or classification, and powers of analyzing and condensing the masses of new materials which recent times have produced. Hence it is justly said, when these notes or additions (brought down through a considerable lapse of time) are made on a book which is already in the power of any one to reprint, reason and justice say, that they ought to confer a copyright, as much as a separate and distinct work.

In the case of *Gray's Poems*, which had been for many years published, and were afterwards collected by Mr. Mason, and reprinted with the *addition* of several new poems, though he had not a property in the whole book, yet the defendant having copied the whole, the Lord Chancellor, granted an injunction against him as to the publication with the additional pieces(2).

So Lord HARDWICKE in another case(3) granted an injunction to restrain the defendants from printing Milton's Paradise Lost, *with Dr. Newton's notes*, although there was no doubt that the original work, without the notes, might have been published.

The bill stated that the defendants had advertised to print Milton's Paradise Lost, with his life by Fenton, and the notes of all the former editions, of which Dr. Newton's was the last. The bill derived a title to the *poem* from the author's assignment in 1667. It was published about 1668, and it derived a title to his *life* by Fenton, published in 1727; and to *Bentley's* notes, published in 1732; and Dr. *Newton's* in 1749. The answer came in the 12th December, 1751, in which the defendants insisted they had a right to print their work in numbers, and to take in subscriptions.

It was intended to take the opinion of the court solemnly. The searches and affidavits which were thought necessary to be made occasioned a delay, and no motion was made till near the end of April, 1752.

The injunction was moved for on Thursday the 23rd of April. Lord Mansfield argued it. It was argued at large, upon the general ground of copyrights at common law.

(1) Godson, 242. (2) Mason v. Murray, cited 1 East, 360.
(3) Tonson v. Walker, cited 4 Burr. 2325.

The Lord Chancellor directed it to proceed on the Saturday following, and to be spoken to by one of a side. Afterwards it stood over, by order, till Thursday, the 30th of April, when it was argued very diffusely.

The case could not possibly be varied at the hearing of the cause. The notes of the last edition (Dr. Newton's) were within the time of the act. But an injunction as to them only would have been of little avail; and it did not follow that the defendants should not be permitted to print what they had a *right* to print, because they had attempted to print *more*. For in the case of Pope v. Curl, Lord Hardwicke injoined the defendant only from printing and selling the plaintiff's letters. There were a great many more in the book which the defendant had printed, which the plaintiff had no right to complain of.

If the inclination of Lord Hardwicke's own opinion had not been strongly with the plaintiff, he never would have granted the injunction to the whole, and penned it in the disjunctive; so that printing the poem, *or* the life, *or* Bentley's Notes, without a word of Dr. Newton's, would have been a breach of the order.

In Cary v. Longman, Lord Kenyon said the plaintiff had no title to that part of his book which he had taken from the previous author; yet it was as clear that he had a right to his own *additions and alterations*, many of which were very material and valuable, and the defendants were answerable at least for copying those parts in their book(1).

Lord Mansfield, in another case, said, the question is, whether the *alteration* be colorable or not? There must be such a similitude as to make it probable and reasonable that one is a transcript of the other, and nothing more than a transcript. Upon any question of this nature, the jury will decide whether it be a servile imitation or not(1).

SECTION III.

Of Abridgments.

An 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. It seems, however, from the import of the word, as well as the reason and justice of the thing, that the abridgment should really be "an epitome of a large work contracted into a small compass."

A real and fair abridgment, said Lord Hardwicke, 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.

(1) 1 East, 360. (2) Ib. 362.

The grounds of the decisions on this important subject, as reported in the law books, are not altogether consistent in principle. In some of them, it appears that the piracy occasioning, or obviously tending to, a *depreciation in the value* of the original work, is a fact on which much reliance has been placed in determining the question. In others, this circumstance has been altogether disregarded.

On the one hand it has been held, that a fair and bona fide *abridgment* of any book, is considered a new work; and however it may injure the sale of the original, yet it is not deemed a piracy or violation of the author's copyright(1). On the other hand, in the case of the *Encyclopædia Londinensis*, in which a large part of a treatise on fencing was transcribed, though there might have been no intention to injure its sale, yet as it might serve as a substitute for the original work, and was sold at a much lower price, it was held actionable, and damages were recovered(2).

There is, however, a clear distinction in the nature of these two cases, although the fact of *depreciation* might be in each the same. For the one was a case of *bona fide abridgment*, in which labor and judgment had been applied; and the other was a *wholesale compilation*, in which seventy-five pages were successively transcribed, without addition or alteration, and on which consequently no *skill or learning* had been bestowed, the exercise of which may be considered as the true criterion by which to determine the bona fide character of the abridgment or compilation(3).

(1) Brown, C. R. 451. 2 Atk. 141. (2) 1 Camp. 94.

(3) An abridgment, where the act of understanding is exercised in reducing the substance of a work into a small compass, by retrenching superfluities of language and circumstances, is a new work, useful and meritorious, and no violation of the author's property.

In the case of Mr. *Newbery's* Abridgment of Dr. *Hawkesworth's* Voyages, Lord Chancellor ARSLEY, assisted by Mr. Justice BLACKSTONE, was of opinion, that to constitute a true and proper abridgment of a work, the whole must be preserved in its *sense*, and then the act of abridgment is an act of the understanding, employed in carrying a large work into a smaller compass, and rendering it less expensive, and more convenient both to the time and use of the reader, which made an abridgment in the nature of a new and meritorious work.

This had been done by Mr. Newbery, whose edition might be read in a *fourth part* of the time, and all the substance preserved and conveyed in language as good, or better, than in the original, and in a more agreeable and useful manner.

His Lordship had consulted Mr. Justice BLACKSTONE, whose knowledge and skill in his profession were univereally known, and who, as an author himself, had done honor to his country. They had spent some hours together, and were agreed, that an abridgment, when the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work: and that this abridgment of Mr. Newbery falls within these reasons and descriptions.—*Anon.* Lofft's Reports, 775. Mich. 1774.

The following cases and decisions will further elucidate the rules which govern this part of the subject.

The assigns of Dr. *Johnson* instituted a suit against the publisher of "The Grand Magazine of Magazines," for publishing *the Prince of Abyssinia* a tale, which they had abridged, leaving out all the reflections.

The MASTER of the ROLLS observed, that the court had protected books which did not so well deserve it, as *Hoyle's Games of Whist*, &c.

The next question was, whether there had been any infringement of property? It was said to be a piracy, and not a fair abridgment;—1st. From the quantity of it which was printed. 2nd. Because it was done in such a way as not to recommend the book, but the contrary; by printing only the narrative, and leaving out all the moral and useful reflections.

But, 1st., it does not appear that one tenth part of the first volume had been abstracted.

2nd. I cannot enter into goodness or badness of the abstract. It may serve the end of an advertisement. In general, it tends to the advantage of an author, if the composition be good;—if it be not, it cannot be libelled. The plaintiffs had before published an abstract of the work in the London Chronicle, and therefore this work could not tend to their prejudice.

If I were to determine this to be elusory, I must hold every abridgment to be so(1).

In the case of Gyles v. Wilcox (in 1740), a bill was filed to stay a book entitled *Modern Crown Law*, which it was alleged was colorable only, and borrowed from Sir Matthew Hale's Pleas of the Crown,---the repealed statutes being left out, and the Latin and French quotations translated into English.

Lord HARDWICKE said, where books are colorably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment.

But this must not be carried so far. If I should extend the rule to restrain all abridgments, it would be of mischievous consequences, for the books of the learned, *les Journals des Scavans*, and several others that might be mentioned, would be brought within the meaning of this Act of Parliament.

In the present case it is merely colorable, some words out of the

In *Bell v. Walker and Debrett*, regarding "Memoirs of the Life of Mrs. Bellamy," passages were read to shew that the facts, and even the terms in which they were related, were taken frequently *verbatim* from the original work.

The MASTER of the ROLLS said, if this were a fair *bona fide* abridgment of the larger work, several cases in that court had decided, that an injunction should not be granted; but he had heard sufficient read to entitle the plaintiff to an injunction until answer and further order. 1 Brown, C. R. 451.

(1) Dodsley v. Kinnersley, Amb. 403.

Historia Placitorum Coronæ are left out only, and translations given instead of the Latin and French quotations that are dispersed through Sir Matthew Hale's works; yet not so flagrant as in the case of *Read v. Hodges*, for there they left out whole pages at a time(1).

In a more recent case (in 1801), an injunction was applied for to restrain the defendant from selling a work entitled *An Abridgment of Cases argued and determined in the Courts of Law*, &c.

It was stated that the work was by no means a fair abridgment; that, except in colorably leaving out some parts of the cases, such as the arguments of counsel, it was a mere copy *verbatim* of several of the reports of cases, and among them of the Term Reports, of which the plaintiff is proprietor; comprising not a *few* cases only, but all the cases published in that work; the chronological order of the original work being artfully changed to an alphabetical arrangement under heads and titles, to give it the appearance of a new work.

In support of the motion, *Bell v. Walker* was cited(1).

Lord Chancellor. I have looked at one or two cases, with which I am pretty well acquainted, and it appears to me an extremely illiberal publication.

An injunction was accordingly granted(2).

SECTION IV.

Of Compilations.

It is difficult to define the exact limits to which a compiler is confined in his extracts or quotations from original authors, or from abridgments or previous compilations. In each case the peculiar circumstances attending it must be ascertained and considered.

A compilation, in a legal as well as a literary sense, is "a collection from various authors into one work;" and as the law allows this to be done, and even establishes a copyright in the compilation itself, it evidently follows, that in the exercise of the right, very considerable latitude must be granted. It seems a necessary consequence of the legality of a compilation, that the law must also sanction its being done in a complete manner, and to effect this object, the quotations must generally be both full and numerous.

Yet reasonable bounds must be set to the extent of transcripts. If an article in a general compilation of literature and

(1) 2 Atkyns, 141.

(2) Butterworth v. Robinson. 5 Vesey, 709. Yet a selection of what is material from a large body of Reports, commodiously arranged, whether alphabetical or systematic, seems an original work. Indeed the right is undisputed of selecting passages from books and reports (including entire judgments) in treatises on *particular* subjects. 2 *Evans' Coll. Stat.* 629.

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.

In the case of Roworth v. Wilkes, Lord Ellenborough said: This action is brought for prejudice to a work vested in the plaintiff, and the question is, whether the defendant's publication would serve as a substitute for it? A *review* will not, in general, serve as a substitute for the book reviewed; and even there, if so much be extracted that it communicates the same knowledge with the original work, it is an actionable violation of literary property. The intention to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy, whereby a work vested in another is prejudiced. A compilation of this kind may differ from a treatise published by itself, but there must be certain limits fixed to its transcripts; it must not be allowed to sweep up all modern works, or an *encyclopædia* would be a recipe for completely breaking down literary property. Here seventy-five pages have been transcribed out of one hundred and eighteen, and that which the plaintiff sold for half a guinea, may be bought of the defendant for eight-pence(1).

In the case of Mr. Wilkins's *Antiquities of Magna Græcia*, an injunction was granted against "An Essay on the Doric Order of Architecture," in which various extracts from the former work had been made; and an action directed to try whether the work was original, with a *fair use* of the other by *quotation and compilation*, which in a considerable degree was admitted.

The Lord Chancellor said, there is no doubt that a man cannot, under the pretence of quotation, publish either the whole or part of another's work, though he may use, what is in all cases very difficult to define, *fair quotation*.

Upon inspection of the different works, I observe a considerable proportion taken from the plaintiff's, that is *acknowledged;* but also much that is *not;* and in determining whether the former is within the doctrine upon this subject, the case must be considered as also presenting the latter circumstance. The question upon the whole is, whether this is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation, deserving the character of an original work(2).

It was urged in one of the cases by *Sir Samuel Romilly*, that in a work consisting of a selection from various authors, two men might make the same selection; but, said the Lord Chancellor, that selection must be made by resorting to the original authors, not by taking advantage of the selection already made by another(3).

(1) 1 Camp. 98. (2) Wilkins v. Aikin, 17 Vesey, 422. (3) 16 Vesey, 271.

In Trusler v. Murray, which was an action for pirating a *Book of Chronology*, it was proved, that though some parts of the defendant's work were different, yet in general it was the same, and particularly it was a literal copy, for not less than fourteen pages in succession.

Lord KENYON was of opinion, that if such were the fact, the plaintiff must recover, though other parts of the work were original. He referred to the publication of some original poems by Mr. Mason, together with others which had been before published. And the like with respect to an abridgment of *Cook's Voyage* round the World. The main question here was, whether in substance the one work is a copy and imitation of the other, for undoubtedly in a chronological work the same facts must be related. The parties having received his Lordship's opinion, it was agreed to refer the consideration of the two books to an arbitrator, who would have leisure to compare them(1).

Though copyright cannot subsist in an *East India Calendar*, as a general subject, any more than in a map, chart, &c. it may in the individual work; and where it can be traced that another work upon the same subject is---not original compilation, but a mere copy with colorable variations, the former will be protected by injunction.

Lord Chancellor ERSKINE said, if a man by his station having access to the repositories in the India House, has by considerable expense and labor procured with correctness all the names and appointments on the Indian Establishment, he has a copyright in that individual work. I have compared the books, and find, that in a long list of casualties, removals, and deaths, there is not the least variation, even as to the situation in the page. I am bound to continue the injunction(2).

In the case of the *Imperial Calendar*, in which a motion was made to dissolve an injunction,

The LORD CHANCELLOR said, the question before me is, whether it is not perfectly clear that in a vast proportion of the work of the defendant, no other labor had been applied than copying the plaintiff's work. From the identity of the inaccuracies, he said, it was impossible to deny that the one was copied from the other *verbatim et literatim*. To the extent, therefore, in which the defendant's publication has been supplied from the other work, the injunction must go; but I have said nothing that has a tendency to prevent any person from giving to the public a work of this kind, if it be the fair fruit of original labor, the subject being open to all the world; but if it be a mere copy of an original work, this court will interpose against that invasion of copyright(3).

In King v. Read, the plaintiff had published a work

(1) 1 East, 363. (2) 12 Vesey, 276.
(3) Longman v. Winchester, 16 Vesey, 269.

entitled *Tables of Interest*, giving calculations for one hundred days, which was extended by a second part to one hundred and eighty-four days. The defendant afterwards published a work under a similar title, but upon a more extensive plan, containing calculations for every day of the year.

The plaintiff moved for an injunction, alleging, that though the plaintiff could not claim any copyright in the calculations which had been previously published, nor in those which went beyond his calculation, yet he was entitled to restrain the intermediate calculations; that as to these, the piracy was evident from the circumstance that errors were followed which could not be the effect of miscalculation; for instance, an error to the amount of ten shillings, in a column of sums increasing regularly by very small fractions; and that copyright must exist in such a work upon the same principle that protects books of logarithms and calculations for the purpose of navigation.

For the defendant it was insisted, that a particular subject cannot be occupied; that his work was produced by original calculation; that the calculation for the extended period would be useless unless commencing with the beginning of the year; and supposing both calculations accurate, the results for the same period must be the same, as in the cases of maps and surveys.

The Lord Chancellor directed the plaintiff to bring an action(1).

In Cary v. Faden(2), the plaintiff published a *Book of Roads* of Great Britain, comprising Patterson's book, to the copyright of which the plaintiff was not entitled, with improvements and additions, made by actual survey and otherwise.

The Lord Chancellor said, upon my inspection they are very different works. Patterson's is the original work. Corrections, improvements, and alterations have been made upon that from time to time. The plaintiff has taken a different line, having had a survey made for that purpose, to which he is very well entitled. He has made a very good map, with which it is very pleasant to travel. I think it is fair they should try their weight with the public. But what right had the plaintiff to the original work? If I was to do strict justice, I should order the defendants to take out of their book all they have taken from the plaintiff, and reciprocally the plaintiff to take out of his all he has taken from Patterson.

In another case of a *Book of Roads*, Lord Kenyon, in addition to the remarks already quoted(3), said,

That the defendants had pirated from the plaintiff's book, was proved in the clearest manner at the trial. Nine tenths at least of the alterations and additions were copied verbatim. The printed work itself was made use of by the defendants at the press, some of it clipped with scissars, with a few slips of paper containing MS. additions inter-

(1) 8 Vesey, 223. (2) 5 Vesey, 24. (3) page 129 *ante*.

spersed here and there, and some of these merely nominal and colorable. The Courts of Justice (said his Lordship) have been long laboring under an error, if an author have no copyright in any part of a work, unless he have an exclusive right to the whole book.

SECTION V.

Of Translations.

On the same principle which governs abridgments and compilations, that they constitute a species of new work, produced by *the labor and abilities of the writer*, it appears that TRANSLATIONS are also within the scope of the legislative provisions, and are protected for the same period of time.

In the case already referred to, a translation was distinguished from a reprinting of the original work, on account of the translator having bestowed his care and pains upon it(1); but the decision on that occasion turned on another point, namely, the immortality of the book.

The LORD CHANCELLOR, in the case of Wyatt v. Barnard(2), observed, that translations, if original, whether written by the plaintiff, made at his expense, or given to him, were protected like other works by the statutes.

The plaintiff in the latter case was the proprietor of a periodical work called "The Repository of Arts, Manufactures, and Agriculture." He claimed the sole copyright of the work, containing, amongst other articles, translations from the foreign languages. The defendants were publishers of another periodical work, which contained various articles copied or contracted from the plaintiff's work, without his consent, being translations from the *French* and *German* languages, &c.

The defendants, by their affidavit, stated the usual practice among publishers of magazines and monthly publications, to take from each other articles, translated from foreign languages, or become public property, as having appeared in other works.

They relied on the custom of the trade, and contended, that neither of the works was original composition, both being mere compilations; that it was never decided that a translator has a copyright in his translation, supposing (what was not proved) that these translations were made by the plaintiff himself.

The LORD CHANCELLOR said, the custom among booksellers could not control the law.

An affidavit was afterwards produced, stating, that all the articles were translated by a person employed and paid by the plaintiff, and were translated from foreign books, imported by the plaintiff at considerable expense. Upon that affidavit an order was pronounced for an injunction(3).

(1) Burnett v. Chetwood, see page 89, *ante*. (2) 3 Ves. and B. 77.
(3) See also Longman v. Winchester, 16 Vesey, 269. Wilkins v. Aikin, 17 Ves. 422.

CHAP. II.

OF PIRATING COPYRIGHT IN MANUSCRIPTS.

SECT. I.——*Of unpublished Manuscripts in general.*

Manuscripts were always protected by the common law as the property of the author, and are also comprised in the provisions made by the legislature.

In the case of Donaldson v. Beckett, the first question put to the judges was,

Whether at common law the author of any literary composition had the sole first right of printing and publishing the same for sale, and could bring an action against any person for publishing the same without his consent?

Mr. Baron EYRE held, that "the *thinking faculty* being common to all, should likewise be held common, and no more be deemed subject to exclusive appropriation than any other of the common gifts of nature. I am, therefore, said he, clearly of opinion, as to the first question, that at common law the author of a literary composition hath *no* right of printing and publishing the same for sale."

The reason given for this conclusion is evidently falacious: no author claims a property in "the thinking faculty"—he claims the *fruits* of the labor of his own mind only.

Not less than *eleven* of the judges of the land (including those who decided against some of the claims of authors) were clearly of opinion, that by the common law the author of any literary composition had the sole right of printing and publishing the same for sale, and might bring an action against any person for publishing it without his consent.

The following extracts are made in their own language, and shew the unanimity of these learned personages on this interesting point of literary property.

Nares, J. It is admitted on all hands that an author has a beneficial interest in his own manuscript.

Ashurst, J. If a man lends his manuscript to a friend, and his friend prints it, or if he loses it, and the finder prints it, an action would lie.

Yates, J. Admitted this doctrine.

Blackstone, J. When a man, by the exertion of his rational powers, has produced an original work, he has clearly a right to dispose of it as he pleases.

Willes, J. I declare it as my opinion, that an author hath an indisputable power and dominion over his manuscript.

Aston. J. An author hath a natural right to the produce of his mental labor.

Perrot, B. An author certainly hath a right to his manuscript; he may line his trunk with it, or he may print it.

Gould, J. I agree that an author hath a right at common law to his manuscript.

Smyth, L. C. B. The cases prove, and it is allowed, that literary property *is property* previous to publication.

De Grey, L. C. J. There can be no doubt that an author has the sole right to dispose of his manuscript as he thinks proper.

Lord Mansfield. It is just that an author should reap the pecuniary profits of his own ingenuity and labor.

There are several early cases in which the Court of Chancery restrained the printing and publishing of the manuscript works of authors without their consent.

One of these was that of Mr. Webb, who had his *Precedents of Conveyancing* stolen out of his chambers and printed. Another instance was that of Mr. Forester, whose *notes* had been copied by a clerk to the gentleman to whom he had lent them, and which were printed. In both cases the parties were prohibited from printing and publishing the works.

According to a recent decision of the Court of *King's Bench*, the 54th Geo. III. c. 156, does not impose upon authors, as a condition precedent to their deriving any benefit under the act, that the composition should be *first printed;* and therefore an author does not lose his copyright by selling his work in manuscript before it is printed.

Thus in the case of *White v. Geroch*, it appeared that the plaintiff was the author of a musical composition, of which he had sold several thousand copies whilst in manuscript, a year before it was printed. Upon this it was objected, that by the previous sale in manuscript, the plaintiff had lost the benefit conferred by the statute.

On the trial of the cause, Mr. Justice BAYLEY directed the jury to find a verdict for the plaintiff, with liberty for the defendant to move to enter a non-suit. And subsequently, on a motion being made for that purpose,

ABBOTT, C. J. said the object of the legislature was to confer upon authors, by the act in question, a more durable interest in their compositions than they had before. I am of opinion that the author does not lose his copyright by having first sold the composition in manuscript, for the statute 54th Geo. III. c. 156, must be construed with reference to the 8th Anne, c. 19, which it recites, and which, together with the 41st Geo. III. c. 107, were all made in pari materia for the purpose of enlarging the rights of authors. The 8th Anne, c. 19, gave to authors a copyright in works, not only composed and printed, but composed and *not printed;* and I think that it was not the intention of the legislature either to abridge authors of any of their former rights, or to impose upon them as a condition precedent,

that they should not sell their compositions in manuscript before they were printed(1).

The *Court of Chancery*, also, has lately exercised its power by restraining the use of manuscripts surreptitiously obtained.

Thus in the case of *Stephens* and *Sherwood* (Michaelmas Term, 1826). Mr. *Horne* applied for an injunction to restrain the publication of a work, which the defendant Stephens claimed as his property. His client, the plaintiff, was a Mr. Sherwood, a Parliamentary Agent, who, in the course of his business, had made various observations and notes, which he had observed in the passing of private bills through the Houses of Parliament. His clerk, *Thomas Ebbes*, who had access to these MSS. purloined large portions of them, together with many of Mr. Sherwood's opinions upon practice, &c., and published them, with certain trifling and colorable alterations, in a work entitled "Practical Instructions upon passing Private Bills through Parliament, by a Parliamentary Agent." Mr. Sherwood afterwards determined to publish a book upon the subject himself, for which purpose he wrote many notes and observations, which *Ebbes* also transcribed for the purpose of a second edition of his own work. Ebbes published his second edition, but sold the copyright to Mr. Butterworth. Stephens moved for and obtained an injunction against Butterworth. It was established by that injunction, that for all purposes of publication the first and second editions were the same.

Mr. Wright for the defendant said, he had nothing to do with Ebbes. He had only to shew that Sherwood was not entitled to the book. Ebbes might have learned all that it contained from his practice as a clerk. Sherwood's observations were not original. Three parts of the book consisted of rules and orders. There was also a book on the same subject by Mr. Ellis, in which he had no doubt he should find the source of most of Sherwood's observations. Sherwood had allowed twenty months to elapse before he applied for the injunction.

Mr. Horne said, Stephens had published the book on condition that Ebbes should receive half the profits.

The Lord Chancellor. If that fact had been stated in the case where Stephens, Ebbes, and Butterworth were concerned, there would have been no ground for the injunction. When the motion for an injunction against Mr. Butterworth was made, it stated that Stephens gave Ebbes seventy pounds for the copyright of the work, and he therefore thought that there could never be a clearer case in which an injunction might be granted. The fact, however, that Ebbes was to divide the profits with Stephens, introduced an entirely new feature into the case; and although during the present motion he was strongly impressed with the idea, that by permitting twenty months to expire, the plaintiff had abandoned his right, yet he was so impressed under the supposition that the work had been purchased by Stephens. All objections, however, were removed by the proof of this compact respecting the work between Ebbes and Stephens. The injunction must be granted.

(1) 2 Barn. and Ald, 293.

SECTION II.

Of the Manuscripts of Deceased Persons.

The manuscripts of the deceased seem in some respects to be placed on a different footing from the manuscripts of the living. The distinction has been pointed out by *Sir William D. Evans*.

During the life of a writer, the publication (he observes) may be deemed a *personal injury;* but after his death, several material questions may arise with respect to the claim of his representatives. It is taken for granted in Millar v. Taylor, that the injunctions were founded upon clear *property*. Now an executor can only bring an action on the case for some *damage* which reduces the assets, and to the extent of which assets he is accountable. But the right to prevent any person having a manuscript of the deceased, from publishing it, is no "property," which can constitute part of the *assets*, in respect of which alone he represents the deceased. The same observation will in some degree apply to the heir. Besides which, this kind of property is nowise analogous to any hereditament recognized by the law. The interpositions appear to be on behalf of the family of the writer. But it seems a legal anomaly to take notice of the family of a deceased person in any other manner than as connected with the property which constitutes real or personal assets.

The Court of Chancery, however, exercises its authority in restraining the publication of manuscripts of persons deceased. In the case of the Duke of Queensbury v. Shebbeare, before Lord Hardwicke(1), an injunction was granted against printing the second part of *Lord Clarendon's History*.

Lord Clarendon, it was stated, let Mr. Francis Gwynn have a copy of his history. His son and representative insisted he had a right to print and publish it. The court was of opinion that Mr. Francis Gwynn might have every use of it, *except the profit of multiplying in print*. It was to be presumed (as Mr. Justice WILLES observed) that Lord Clarendon never intended that extent of permission when he gave him the copy. The injunction was acquiesced under, and Dr. Shebbeare recovered before Lord Mansfield a large sum against Mr. Gwynn for representing that he had a right to print. Mr. Justice WILLES adduces this case as an argument for the general right of literary property, in which he is followed by Lord Mansfield, who observes, that Mr. Gwynn was entitled undoubtedly to the paper of the transcript of Lord Clarendon's History, which gave him the power to print and publish it after the fire at Petersham, which destroyed one original. That copy might have been the only manuscript of it in being. Mr. Gwynn

(1) Cited in Millar v. Taylor, 4 Burr. 2330.

might have thrown it into the fire had he pleased. But at the distance of near a hundred years, the *copy* was adjudged the property of Lord Clarendon's representatives, and Mr. Gwynn's printing and publishing it without their consent, was adjudged an injury to that property, for which, in different shapes, he paid very dear(1).

SECTION III.

Of Private Letters, Literary and General.

There is a material distinction between *literary* and *general* letters---the former being protected as the subject of copyright, whilst the publication of the latter is restrained on the ground only of *breach of contract* or *confidence*, or when they tend to the injury of private *character*, or are calculated to wound private *feelings*.

The earliest case on this subject is that of Pope v. Curl (in 1741), in which a motion was made to dissolve an injunction obtained by Mr. *Pope* against the bookseller, for vending a book called "Letters from Swift, Pope, and others."

Lord HARDWICKE. I think it would be extremely mischievous to make a distinction between a book of *letters*, which comes out into the world either by the permission of the writer or receiver of them, and *any other learned work*.

The same objection may hold against *sermons*, which the author may never intend should be published, but are collected from loose papers, and brought out after his death.

It has been objected, that where a man writes a letter, it is in the nature of a gift to the receiver.

But I am of opinion it is only a special property in the receiver; possibly the property in the paper may belong to him; but this does not give a licence to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer.

It has also been insisted on, that this is a sort of work which does not come within the meaning of the Act of Parliament, because it contains only letters on familiar subjects, and inquiries after the health of friends, and cannot properly be called a learned work.

But it is certain that no works have done more service to mankind, than those which have appeared in this shape upon familiar subjects, and which perhaps were never intended to be published; and it is this makes them so valuable, for I must confess for my own part, that letters which are very elaborately written, and originally intended for the press, are generally the most insignificant, and very little worth any person's reading.

The injunction, however, was continued by the Lord

(1) Millar v. Taylor, *per Lord Mansfield*.

Chancellor only as to those letters which are under Mr. Pope's name in the book, and which are written *by him*, and not as to those which are written *to him*(1).

In the case of *Lord Chesterfield's* Letters, an injunction was obtained till the hearing by his Lordship's executors against the widow of Mr. Stanhope.

Lord Apsley, according to the report, recommended it to the executors to permit the publication, in case they saw no objection to the work upon reading it, and having copies delivered to them(2). It is said, that by the register's book it does not appear that an injunction was actually granted(3). It is well known that the publication did appear, but whether upon the judgment of the executors, that they saw no objection to the work, or upon what other ground, we are not informed.

In the case of the Earl of Granard v. Dunlein(4), the executors of Lady Tyrawley obtained an injunction in the first instance against the defendant publishing *Letters to Lady Tyrawley* from different correspondents, and which he had got possession of by being permitted to reside in her house, and continuing to do so after her death.

Another case of private letters was heard by the Lord Chancellor in private, in which an injunction was granted, restraining the publication of *Letters from an Old Lady*, of a nature that made it very important to prevent the publication; but the defendant in that case, as stated by the Vice Chancellor in his judgment, had received a sum of money not to publish the letters, and the attempt to publish them was therefore a *violation of contract*(5).

In the case of the late *Dr. Paley*, who left certain manuscripts to be given to his own parishioners only, a bookseller, having obtained possession of them, was restrained from publishing(6).

But this principle does not extend to letters which are not of a literary kind. Thus in the case of Lord and Lady Percival v. Phipps and Mitford, it was stated by the bill, that *Lady Percival* had written to the defendant Mitford several letters of a private nature, upon the confidence that he would not part with them, or communicate the contents to any person, nor publish, or permit them to be published;---that Mitford had communicated them to Phipps, who had published one, and announced an intention to publish others, and on these facts an injunction was prayed. On the other hand, Phipps by his answer stated, that Mitford was confidentially employed by

(1) 2 Atk. 342.
(2) Ambler, 737.
(3) 2 Ves. and B. 21.
(4) 1 Ball and B. 207.
(5) ——— v. Eaton, 13th April, 1813. 1 Ves. and B. 27.
(6) Cited 2 Ves. and B. 23.

Lady Percival to publish authentic information relative to a subject which very much engaged the public attention,---that Phipps desired Mitford to offer his newspaper as a channel for communicating such information. This offer, it was alleged, was accepted, and the letter in question delivered to the defendant for publication, and various paragraphs were also delivered from time to time for the same purpose. Subsequently, a statement was inserted in the *News*, (which was the title of the paper) conveying intelligence as communicated by Lady Percival, which it appeared was false, and which was disavowed by her. The letters in question were written to Mitford upon similar subjects, materially tending to shew that the intelligence did come from Lady Percival, and that as she had denied being privy to the former publication, the character of Phipps, and the value of his paper, were in danger of falling into discredit with the public.

The VICE CHANCELLOR.—An injunction, restraining the publication of private letters, must stand upon this foundation, that letters, whether of a private nature, or upon general subjects, may be considered as the subject of *literary property;* and it is difficult to conceive in the abstract, that they may not be so. A very instructive and useful work may be put into that shape, as an inviting mode of publication.

Admitting, however, that private letters may have the character of literary composition, the application of that as an universal rule, extending to every letter which any person writes upon any subject, appears to me to go a great way; including all mercantile letters, all letters passing between individuals, not only upon business, but on every subject that can occur in the intercourse of private life. If in every such instance the publication may upon this doctrine be restrained, as a violation of literary property, whatever may be the intention, the effect must frequently be to deprive an individual of his defence by proving agency, orders for goods, the truth of his assertion, or any other fact, in the proof of which, letters may form the chief ingredient.

"This is the naked case of a bill to prevent the publication of private letters, not stating the nature, subject, or occasion of them, or that they were intended to be sold as a literary work for profit, or are of any value to the plaintiff. Upon such a case, it is not necessary to determine the general question, how far a Court of Equity will interfere to protect the interest of the author of private letters. The interposition of the court in this instance is not a consequence from the cases that were cited; upon which I shall merely observe, that though the form of familiar letters might not prevent their approaching the character of a literary work, every private letter upon any subject to any person, is not to be described as a literary work, to be protected upon the principle of copyright. The ordinary use of correspondence

by letters, is to carry on the intercourse of life between persons at a distance from each other, in the prosecution of commercial or other business, which it would be very extraordinary to describe as a literary work, in which the writers have a copyright. Another class is the correspondence between friends or relations upon their private concerns, and it is not necessary here to determine how far such letters, falling into the hands of executors, assignees of bankrupts, &c. could be made public in a way that must frequently be very injurious to the feelings of individuals. I do not mean to say that would afford a ground for a Court of Equity to interpose to prevent a breach of that sort of confidence, independent of contract and property."

Although there may be a joint property in letters of correspondence between the sender and receiver, it does not seem by any means necessarily to follow that one of several *joint owners in a literary composition* may not exercise the right of publication. Supposing different persons to be possessed of manuscript copies of a given composition, in which no other has a paramount claim to restrain the publication, it cannot be supposed that any of them individually could prevent the publication by the others(1).

SECTION IV.

Of Written Lectures.

The means of diffusing knowledge, and the modes of instruction, vary at different periods of society. It is observable that of late years the custom has increased of communicating information by public lectures, and it seems fitting, therefore, in a work devoted to the examination of the laws relating to the protection of the fruits of intellectual labor, that a proportionate degree of attention should be paid to the questions which may arise out of the respective rights of lecturers and pupils, as well as the public generally. We shall, therefore, avail ourselves of the elaborate judgments which from time to time were delivered by the late Lord Chancellor in the celebrated litigation between *Mr. Abernethy* and the proprietors of *The Lancet*, in which all the questions suggested at that time were minutely and fully considered, and which his lordship enumerated as follow:

The first question is, whether an oral lecture is within the protection of the law? Now, as far as my recollection goes, that has not yet been the subject of determination. On the other hand, if there be a lecture apparently oral, but which is nevertheless delivered by the assistance of a very good memory from a written composition,

(1) 2 Evans's Coll. Stat. 625.

the question then will be, if it could not be made out in point of law that an oral lecture or an oral sermon was within the protection of the law, whether protection is due to the written composition? Another question will be, whether this court would interfere before notice had been given that that apparently oral lecture was the delivery of matter from a written composition? And a farther question will be, whether if the oral lecture is to be protected by the fact that it is, in truth, the delivery of a written composition, it does not lie on those who insist that that circumstance gives the protection of the law to that which appears to be orally delivered, to produce and shew that written composition, in order to make out their case.

We shall take the liberty of separating the luminous judgment of his lordship into two parts---the 1st, on the copyright in lectures which were either *read* from a written composition, or delivered from the *recollection* of it; the 2nd, on the copyright in lectures *orally* delivered, of which no manuscript existed.

First, then, of *written* lectures.

Where the court is called upon to restrain a publication on the ground that it is a piracy of a composition which has been substantially reduced into writing, it is the duty of the court to see that the plaintiff produces his written composition.

The Lord Chancellor.—The very early part of this case turned entirely upon the question of property; and indeed it can be viewed only in two ways---either as a question of *property*, or a question of *trust*. In the first place, I have nothing to do with all the considerations that have been pressed on me with respect to the benefit which the public may receive from the publication, even of such lectures as those which so distinguished a man as Mr. Abernethy might publish, or other persons might publish for him; and in the next place, I have nothing to do with the moral question of how far the editor of this work has righteously possessed himself of the means of publishing it. When I say with the moral question, I mean to qualify the expression; because if I can collect that those means have been obtained either by a *breach of trust*, or by *fraud*, this court *will* have something to do with it.

In the present case, Mr. Solicitor General has viewed it, with respect to its connection with writing, in these two ways. He says, that Mr. Abernethy has a composition which one would call a copy or a writing, and which contains the whole of what this defendant has published. And then he says, if he have not such a copy, yet he delivered it as *from writing*; and, therefore, he must be understood as having some notes, which were to suggest to him from time to time what sentiments to deliver orally to the persons who attended his lectures.

Now with respect to either of those views of the case, I apprehend when this court is called on to enforce a legal right, by giving a remedy beyond that which the law gives, it is the bounden duty of this

court, be the case what it may, to see that the plaintiff *produce his written composition*, and therefore, if this case be to be put at all on the right which Mr. Abernethy is supposed to derive from his having a full and correct copy; there must be an original, or a writing which contains all that has been published in this book, or he must have a writing which is such in its nature as that, coupled with what he orally delivered, it may be taken that he has *substantially* a written composition as well as that which he delivered orally. When this court is called on to give a remedy beyond the remedy which the law gives to persons who have a legal right, *the court must know what it is proceeding on*; and if the case be put on this ground, either that there is a writing of one character or a writing of another character, *that writing must be produced*, so that the court may know what it is doing. If that writing be not produced, I must then look at the motion as an application made to me merely on the ground of an oral publication; and then the question of property will arise, coupled as it may be with the doctrine of *trust* and with the *doctrine of fraud*(1).

It is said that Mr. Abernethy is not to be looked on as holding the same character with reference to a subject of this kind as a clergyman of the church, or a professor in a University; for as I understand the affidavit which has been filed on the part of the defendant, Mr. Abernethy is represented, not only as a surgeon, but as a person *appointed* by the governors and guardians of this hospital to give lectures:---" and this deponent saith" (such is the language of the affidavit) " that the surgeons and lecturers for the time being of such hospital, are appointed by the governors of the said hospital."

Now if a professor be appointed, he is appointed for the purpose of giving information to all the students who attend him, and it is his duty to do that; but I have never yet heard that any body could publish his lectures; nor can I conceive on what ground Sir William *Blackstone* had the copyright in his lectures for twenty years, if there had been such a right as that; we used to take notes at his lectures; at Sir Robert *Chambers's* lectures also the students used to take notes; but it never was understood that those lectures could be published;--- and so with respect to any other lectures in the University, it was the duty of certain persons to give those lectures; but it never was understood, that the lectures were capable of being published by any of the persons who heard them(2).

SECTION V.

Of Oral Lectures.

An injunction will not be granted to restrain an alleged piracy of lectures delivered *orally*, when no written composition substantially the same with these lectures is produced.

(1) On these points see the next section.

(2) 3 Law Journal, 309.

But persons attending an oral lecture have no right to publish it for profit.

An action upon the implied contract will lie against a pupil attending an oral lecture, who caused it to be published for profit.

The court will grant an injunction against third persons publishing lectures orally delivered, who must have procured the means of publishing those lectures from persons who attended the oral delivery of them, and were bound by the implied contract(1).

The Lord CHANCELLOR, in delivering his judgment in the case in which the preceding doctrine was held, commenced his observations as follows:

With regard to the question of literary property, I have no right to interfere by injunction, unless I have a very strong opinion that the legal right is with the plaintiff. Now looking at what has passed with respect to literary property, and particularly with respect to the case of *Millar v. Taylor*, which was first argued in the Court of King's Bench, and afterwards before the House of Lords (though there was a vast deal of argument on the question of what sort of property a man may have in his unpublished ideas or sentiments or the language which he uses), yet I do not recollect in the course of those proceedings (particularly in the House of Lords) that any question was put to the judges that did not adapt itself to the case of *a book* or *a literary composition*; for of the questions which were there put to the judges, the first was, "whether at common law an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?"

The next question was, "if the author had such a right originally, did the law take it away upon his printing and publishing such book or literary composition, and might any person afterwards reprint and sell for his own benefit such book or literary composition against the will of the author?" The third question was, "if such an action would have lain at common law, was it taken away by the statute of Anne, and was an author by that statute precluded from any remedy except on the foundation of the statute, and on the terms and conditions prescribed thereby?"

On these questions the judges of the land differed. On the first question, one of them was of opinion that at common law an author of any book or literary composition had not the sole right of first printing and publishing the same for sale, and that he could not bring an action against any person who printed, published, and sold the same, unless such person had obtained the copyright by fraud or by violence. So that although this judge was of opinion that at law the author was not the party who had the sole right of first printing

(1) Abernethy v. Hutchison, Knight and Lacey.

and publishing a composition for sale, yet he was also of opinion, that to give him a right of action against those who first printed and published the same for sale, it was necessary to shew, in order to maintain an action, that the person who had first printed and published had gotten it either by *violence or fraud*.

Now if, said his Lordship, it can be made out, as matter of contract between Mr. Abernethy and those who attend his lectures, that they should *not* be at liberty to print or publish the same, I should say then, that supposing notes of all that he delivered in his lectures to be taken, and supposing it to be a proper thing for the use of the students that that should be done, yet I never would permit a third person to make use of the delivery of those notes to that third person, for the purpose of doing that which the person delivering those notes would not himself be permitted to do. I should call that, in the sense in which a court of equity uses the word, *a gross fraud*.

If this injunction be applied for, not on what was done in *Millar v. Taylor*, but on the reasoning to be found in that case, it becomes a judge in equity to look about him before he ventures to decide the legal question. That legal question, in the shape in which it is now put, namely, with respect to an oral delivery of ideas and sentiments, has occasioned much abstruse learning; and as in the case which I have alluded to, the judges of the land in the first instance, and the House of Lords in the last instance, avoided giving any opinion upon it when it was discussed; certainly it becomes me to know what opinion a court of law would give in such a case as this, before I grant the injunction in unqualified terms.

There is another difficulty which belongs to a case of this kind, even supposing that there is the right which is contended for—I mean the difficulty there must be nine times out of ten in sustaining an action for want of proof; for if a lecture be published which has been delivered orally, and that can form the subject of an action, how is it possible, unless the court is to be satisfied with something like the substance of what was said, to prove that the printed publication was parcel of the oral publication. In this case, however, there is no difficulty on that point, which is another reason perhaps that ought to induce the court to be a little cautious in what determination it comes to. Because this editor has, in the most distinct manner, admitted in his publication—and what is admitted in his publication must be taken in this court to be true against himself---he has admitted in the publication that what he has published was orally delivered by Mr. Abernethy. The difficulty of proof, therefore, to which I have alluded, is not found to exist in this case.

At the same time *it is one thing to contend that it has not been established that a person who orally delivers lectures, has that species of property in them which may enable him to bring an action*, and after having succeeded in the action, to apply for an injunction here, either with or without an account to be kept in the mean time of the profits of the work; and *it is another thing to say, that a person who has possessed himself of the means* of publishing what another has delivered in lectures, which are afterwards to be put into writing, and which

the author (if I may so call him) may, or may not mean to publish, *has himself the copyright* of what he does so publish. That it may not be supposed I sanction that doctrine, I beg to have it understood, that I do not give any such opinion.

On the other hand, if the editor of the Lancet be not only himself at liberty to publish 5000 copies of this work, but 5000 other persons (notwithstanding his pretence of having the copyright of this publication called the Lancet) may likewise publish the work, that would go directly to destroy the value of any property which Mr. Abernethy may have in the subject. These are all the views of the case, as far as they go to the question of literary *property*.

With respect to the question of *trust*, a good deal of that must depend, not only on the nature of these lectures, and so on, and the rights and obligations abstractedly considered which those persons are under to whom they were delivered; but it must depend also (indeed very materially) on the affidavits that have been actually filed.

On a subsequent day, Mr. Abernethy made an additional affidavit, stating, "that he has given his lectures as most lecturers do, orally, and not from a written composition; but that previously to the delivery of such lectures, he had from time to time committed to writing notes of such, his said lectures, which have been increased and transposed until a great mass of writing has been collected, written in as succinct a manner as possible, with a view to exhibit the arrangement he has formed, and the facts he has collected together, with his opinions relative to certain subjects of surgery: that a considerable portion of such notes have been by, or under the direction of this deponent extended and put into writing, with a view to publication, which writings he is ready to submit to the inspection of any respectable and competent person, as a test of this deponent's accuracy in the statement made to the court in his former affidavit, and that such writings are in his possession; that at the time of delivering his said lectures, he did not read or refer to any writing before him, but that he delivers such, his lectures, orally, and from recollection of such notes and writings, and that the lectures so delivered by him, though not verbatim the same as his notes and writings, yet are in substance, arrangement, and statement of the facts substantially the same: that such lectures vary from time to time both in the language and arrangement according to circumstances, and from any new matter that may have occurred to him, by way of illustration or otherwise: that on a comparison of the written notes or lectures with those so orally delivered by him, they will, and must necessarily vary, and in like manner they will be found to vary from the lectures pirated, or alleged to be pirated, by the defendants in the publication

called the Lancet: that the composition of the said lectures so reduced into writing have cost him much time and study for a long series of years: that his duties as a surgeon to St. Bartholomew's Hospital and lecturer are entirely distinct, and that it is not a part of his duty as such surgeon to deliver lectures, but that the same are in the nature of private lectures, and are not attended by any persons unless by his permission, and are not in any way open or accessible to the public."

The case was again argued.

The Lord Chancellor. If Mr. Abernethy had produced in court the writings from which he says his lectures were really delivered, so that I might myself have exercised a judicial opinion upon those writings, and have seen that his lectures, though orally delivered, were delivered from what I should say was *a literary composition*, I should have had no difficulty in the case. If on the other hand in comparing what is said to have been orally delivered, and what has got into this book called the Lancet, with the notes, I could not accurately have referred the publication to those notes as being the same.—(I mean with those trifling literary distinctions which must exist in such cases.) I should then have known what to have done, by not applying myself to any thing but a reference to authorities. But I apprehend, that if those notes are not produced and made, (substantially made,) part of the case before me, the court has but two ways of proceeding left to it:--- the court must either refer it to the master, to enquire whether what is admitted to have been published in this book is the same as the notes, or it must decide the case by calling upon the lecturer to deliver the notes to the court itself, that the court may see whether they are the same. And it may be very inconvenient to produce those notes; so much so, that I should not be surprised if a gentleman such as Mr. Abernethy would rather suffer himself to go out of this court without a judgment, than produce the notes. But if he had gone to the master, which would have been the more private way, the master must have reported to me, and if there had been an exception taken to his report, there must afterwards have been a public production in this court. The consequence of all this is, that *I am compelled to look at the present case as that of a lecture delivered orally*. In Millar and Taylor, there is a great deal said with respect to a person having a property in sentiments and language, though not deposited on paper; but there has been no decision upon that point; and as it is a *pure question of law*, I think it would be going farther than a judge in equity should go, to say upon that, that he can grant an injunction upon it, before the point is tried.

There is another ground for an injunction, which is a ground arising out of an *implied contract*. I should be very sorry if I thought that anything which has fallen from me should be considered to go to the length of this---that persons who attend lectures or sermons, and take notes, are to be at liberty to carry into print those notes for their own profit, or for the profit of others. I have very little difficulty on that point. But that doctrine must apply either to *contract* or *breach of*

trust. Now with respect to contract, it is quite competent for Mr. Abernethy, and for every other lecturer, to protect himself, in future, against what is complained of here. There is a contract expressed and a contract implied; and I should be very sorry to have any man understand that this court would not act as well upon a contract implied, as upon a contract expressed, provided only the circumstances of the cause authorize the court to act upon it. I have not the slightest difficulty in my own mind that a lecturer may say to those who hear him, "you are entitled to take notes for your own use, and to use them perhaps in every way except for the purpose of printing them for profit; you are not to buy lectures to sell again: you come here to hear them for your own use, and for your own use you may take notes." In the case of *Lord Clarendon's* work, the history was lent to a person, and an application was made for an injunction to stay the publication; it was said there, that there was no ground for the injunction; and it was proved on affidavit that my Lord Clarendon's son said, "there is the book, and make what use you please of it;" the *Chancellor*, however, of that day said, that he could not mean he was to print it for his profit. So with respect to letters, my Lord *Hardwicke* says in one case, that the person who parts with letters, still retains a species of property in them; and that the person who receives them, has also a species of property in them. He may do what he pleases with the paper, he may make what use he pleases of the letters, *except print them.* There he puts his jurisdiction on the ground of *property*. In other cases we find it put upon the ground of *breach of a trust*---that the letter is property, part of which *I* have retained, and part I have given to you; you may make what use of the special property you have in it you please, but you shall not make use of my interest in it; therefore you shall not print it for profit. Now if there be an express contract---for instance, if Mr. Abernethy say "Gentlemen, all of you who attend and pay five guineas for attending my lectures, may take notes of what I say, but let it be understood, that you shall not print for profit;" then in that case I should not have the least difficulty in saying, if any student afterwards did think proper to publish for profit, that there is hardly a term which this court would think too harsh for him, and it would restrain him. There is another ground, which is, whether, looking at the general nature of the subject, it is not very difficult to say, that there is not a contract which would call upon the court to restrain the parties who hear the lectures, from publishing the notes they may have taken. They may make whatever use of them they please, but they ought not to publish them. If an express contract exists, or if any contract is to be implied, either contract would be the ground of an action for a breach of contract.

With respect to trust, the question here would be, whether there is not an *implied trust* with respect to the student himself? One thing is quite clear, that if those lectures have been published from short-hand writer's notes, they have been published from short hand writer's notes taken by some student, or from short hand writer's notes taken by some intruder into the lecture room; for I do not see how it is possible that they could have been taken otherwise. If there

is either an implied contract on the part of a student, or a trust, and if you can make out that the student has published, I should not hesitate to grant the injunction. With respect to the stranger, if this court is not to be told (and certainly it has no right to compel the parties to tell) whether the power of giving the oral lectures to the public was derived from a student or not, I think it very difficult to tell me that that should not be restrained which is stolen, if you would restrain that which is a breach of contract or of trust.

Upon the whole, taking this case as it now stands as a case simply of oral lectures, it must be tried whether it is legal to publish them or not. Upon the question of property in language and sentiments, not put into writing, I give no opinion, but only say that it is a question of mighty importance. At present, therefore, I must refuse the injunction: but I give leave to make this very motion on the ground of breach of contract or of trust.

Afterwards the bill was amended by the introduction of allegations, that no persons had a right to attend the lectures, except those who were admitted to that privelege by the lecturer: that it had always been understood by him, and those who preceded him in the office, and those who attended the lectures, that the persons who so attended did not acquire, and were not to acquire, any right of publishing the lectures which they heard: but that the plaintiff and his predecessors respectively had and retained the sole and exclusive right of printing and publishing their respective lectures, for his and their own respective benefit: that there was an implied contract between the plaintiff and those who attended his lectures, that none of them should publish his lectures, or any part thereof: that the defendants had been furnished with the copy of the lectures which they had printed, through the medium of some person who had attended the lectures under Mr. Abernethy's above-mentioned permission; and that it was a breach of contract or trust in such person so to furnish the copy, and in the defendants, to print and publish the same.

These allegations being verified by the affidavit of the plaintiff, the subject underwent further discussion.

Lord Chancellor. Without deciding the question of literary property in this case, but merely excluding it, the point to be determined was, whether there was such a violation of contract as to sustain an action; if not, whether an injunction could be asked for. No evidence was given to shew—first, whether the defendants attended as pupils, or secondly, whether they received their report from a person guilty of a breach of trust; or thirdly, whether a short hand writer not being a pupil, gave them a copy of the lectures. It was therefore a question, whether a stranger not bound by contract could be enjoined. Various considerations would arise out of this; for a Court of Equity would be called upon to say, whether the means by which the defendants were enabled to publish the lectures, might, or

might not, be used. One view of the case which ought not be lost sight of was, that supposing the lectures to have been taken down by a pupil who afterwards communicated them to the publishers, and you could not get at the pupil, you could not maintain an action. But in that case the publishers might come under the jurisdiction of the court, upon the ground of having made a fraudulent use of that which had been communicated to them, by one who had committed a breach of trust.

The LORD CHANCELLOR on a subsequent day(1) finally delivered his judgment.

He stated, that where the lecture was orally delivered, it was difficult to say that an injunction could be granted upon the same principle upon which literary composition was protected, because the court must be satisfied that the publication complained of was an invasion of the written work; and this could only be done by comparing the composition with the piracy. But it did not follow that because the information communicated by the lecturer was not committed to writing, but orally delivered, it was therefore within the power of the person who heard it to publish it. On the contrary, he was clearly of opinion that whatever else might be done with it, the lecture could not be published for profit. He had the satisfaction now of knowing, and he did not possess that knowledge when this question was last considered, that this doctrine was not a novel one, and that *this opinion was confirmed by that of some of the judges of the land.* He was therefore clearly of opinion, that when persons were admitted as pupils or otherwise to hear these lectures, although they were orally delivered, and although the parties might go to the extent, if they were able to do so, of putting down the whole by means of short hand, yet they could do that only for the purposes of their own information, and could not publish for profit that which they had not obtained the right of selling. There was no evidence before the court of the manner in which the defendants got possession of the lectures, but as they must have been taken from a pupil or otherwise, in such a way as the court would not permit, the injunction ought to go upon the ground of property and although there was not sufficient to establish an an implied contract as between the plaintiff and the defendants, yet it must be decided, that as the lectures must have been procured in an undue manner from those who were under a contract not to publish for profit, there was sufficient to authorise the court to say the defendants shall not publish. He had no doubt whatever that an action would lie against a pupil who published these lectures. How the gentlemen who had published them came by them he did not know; but whether an action could be maintained against them or not, on the footing of implied contract, an injunction undoubtedly might be granted: because if there had been a breach of contract on the part of the pupil who heard these lectures, and if the pupil could not publish for profit, to do so would certainly be what this court would call a

(1) June 17, 1825.

fraud in a *third* party. If these lectures had not been taken from a pupil, at least the defendants had obtained the means of publishing them, and had become acquainted with the matter of the lectures in such a manner that this court would not allow of a publication. It by no means followed because an action could not to be maintained, that an injunction ought not to be granted. One question had been, whether Mr. Abernethy, from the peculiar situation which he filled in the hospital, was precluded from publishing his own lectures for his profit; but there was no evidence before the court that he had not such right. Therefore the defendants must be enjoined in future.

The only question remaining was, whether the delay which has taken place in renewing the application, was a ground for saying that the injunction ought not to go to restrain the sale of such lectures as had been printed in the interim. His Lordship's opinion was, that the injunction ought to go to that extent, and should include the lectures already published(1).

CHAP. III.

OF PIRATING COPYRIGHT IN DRAMATIC WORKS.

SECT. I.——*Of Unpublished Plays.*

Not only is the manuscript of a dramatic author protected by the law, like every other literary composition, but even after it has been represented on the stage, the poet still retains the exclusive right of printing and publishing it.

In the case of *Macklin v. Richardson*(2), it appeared that the defendant had employed a short hand writer to take down the farce of *Love à la Mode,* upon its performance at the theatre and he inserted one act in a magazine; and gave notice that the second act would be published in the magazine of the following month.

Upon an application to LORD CAMDEN for an injunction, he directed the case to stand over until that of Millar and Taylor, which was then depending, should be determined, and after the determination, the injunction was, by the Lords Commissioners SMYTHE and BATHURST, made perpetual. *Smythe,* L. C .B. said, it has been argued to be a publication by being acted, and therefore the printing is no injury to the plaintiff, but that is a mistake; for besides the advantage of the performance, there is as much reason that he should be protected in that right as any other author. *Bathurst.* "The printing it before the author, is doing him a great injury."

(1) 3 Law Journal, 209. (2) Amb. 695.

SECTION II.

Of representing published Plays.

Although a represented and *un*published play is protected from piracy by *printing*, it seems that a different doctrine prevails in regard to the *representation* of published plays.

Hence an action cannot be maintained for the *penalties* under the statute for representing on the stage the production of an author which had been previously printed and published: it being held that such representation is not a publishing within the intent of the act.

Thus in Colman v. Wathen, an action was brought for the penalty under the statute 8th *Anne*, c. 19, for publishing an entertainment called the "Agreeable Surprise." The plaintiff had purchased the copyright from *O'Keeffe* the author, and the only evidence of publication by the defendant, was the representation of this piece upon his stage at Richmond. A verdict was given for the plaintiff with nominal damages, in order to raise the question, whether this mode of publication were within the statute(1)?

Erskine contended that this was sufficient evidence for the jury to conclude that the work had been pirated, for it could not be supposed that the performers could by any other means have exhibited so perfect a representation of the work. Besides, if this were not held to be a publication within the statute, all dramatic works might be pirated with impunity, as this was the most valuable mode of profiting by them.

Lord Kenyon, C. J. There is no evidence to support the action in this case. The statute for the protection of copyright only extends to *prohibit the publication of the book itself* by any other than the author, or his lawful assignees. It was so held in the great copyright case by the House of Lords. But here was no publication.

Buller, J. Reporting any thing from memory, can never be a publication within the statute. Some instances of strength of memory are very surprising, but the mere act of repeating such a performance, cannot be left as evidence to the jury that the defendants had pirated the work itself.

It is observable in this case that the party sought redress for the injury he had sustained, not by an action for damages, but for the *penalties given by the statute*, and consequently he was bound by the express provisions it contained, which in a penal action were of course construed strictly.

In a later instance (1822), that of *Murray v. Elliston*, the Lord Chancellor sent a case for the opinion of the Court of King's Bench, in which the manager of a theatre had represented Lord Byron's tragedy of *Marino Faliero, Doge of Venice* (altered and abridged for the stage), without the

(1) 5 T. R. 245.

(1) June 17, 1825.

consent of the owner of the copyright, who had previously caused the tragedy to be printed and published.

The COURT of King's Bench certified its judgment in the usual form to the Lord Chancellor, without stating the reasons on which it was founded. It will be necessary, therefore, to introduce the arguments of counsel.

SCARLETT, for the plaintiff. This question is quite different from that in *Colman v. Wathen*(1). There it turned upon the words of the statute, 8 Anne, c. 19, and the point determined was, that the acting a piece on the stage was not a publication of it within that statute. Here the question is different, for it depends not on the statute, but on the *right of property* which the plaintiff has in this work. The moment such a right is established, the consequences must follow, that any injury done to the property is the subject of legal redress. This is only one mode in which it may be injured. Unfair and malicious criticism is another, and for that an action will lie(2). Suppose this play failed of success when represented, the sale of the work would thereby be damaged. Besides, the curiosity of the public would be thereby satisfied, and so the plaintiff would be injured in the sale of the work. And whether the right of property arise from the common law, or from the statutes relative to it, is in this case immaterial. For if the statute makes a literary work property, the common law will give the remedy for the invasion of it. The only question is, whether the representation of this piece for profit, may not injure the copyright? If so, the plaintiff is entitled to the judgment of the court.

ADOLPHUS contra. In *Donaldson v. Beckett*(3), the majority of the judges were of opinion that the action at common law was taken away by 8th Anne, c. 19, and that the author was precluded from every remedy except on the statute, and on the terms and conditions prescribed thereby. The claim by the plaintiff on this occasion is at variance with this decision. For here he contends for a far more comprehensive security, and one co-existing with that given by the statute, and restraining the public in points of which the statute takes no notice. The case of *Macklin v. Richardson*(4) was very different. There the farce of Love á la Mode had never been published, and the defendant having employed a short hand writer to take it from the mouths of the actors, published it, and it was held that he could not do so. But when in Colman v. Wathen the converse of this was attempted, the court held that the action would not lie. This decision was plainly founded on the nature of copyright, the property in which is exactly the same as if but one book existed which the author permitted individuals to read on payment of a certain sum. The injury then which an author sustains by the violation of his copyright, is this; that a stranger without permission disposes of the use and possession of his book, and thereby receives the profit to which he the author is justly entitled. If then the book be not in all reasonable strictness

(1) See page 155 *ante*.
(2) Carr v. Hood, 1 Camp. 355.
(3) 4 Burr. 2408.
(4) Page 154 *ante*.

such as may be called the author's own book, as if it be a bona fide abridgment, the case of *Gyles v. Wilcox*(1) shews that the author has no remedy. Now in the present case a theatrical exhibition falls within the principle above laid down. Persons go thither not to read the work or to hear it read, but to see the *combined effect of poetry, scenery, and acting*. Now of these three things, two are not produced by the author of the work, and the combined effect is just as much a new production, and even more so, than the printed abridgment of a work. There are many instances in which works published have thus, without permission of their authors, been brought upon the stage. The safe rule for the court to lay down is, that an author is only protected from the piracy of his book itself, or some colorable alteration of it: and in that case the defendant is entitled to the judgment of the court.

The COURT afterwards sent the following certificate:

We have heard this case argued by counsel, and are of opinion, that an action cannot be maintained by the plaintiff against the defendant for publicly acting and representing the said tragedy, *abridged* in manner aforesaid, at the Theatre Royal Drury Lane, for profit(2).

CHAP. IV.

OF PIRATING UNREGISTERED BOOKS.

Although the fifth section of the statute 54 Geo. III. c. 156, requires that all books should be entered at Stationers' Hall within certain times after their publication, it is expressly provided, at the close of that section, that *no failure in making any such entry shall in any manner affect any copyright*, but shall only subject the person making default to the penalty under the act.

It may not be unimportant to state, that prior to this statute, the judges of the Court of King's Bench unanimously held that an action for damages might be maintained for pirating a work before the expiration of twenty-eight years from the first publication, although the work was not entered at Stationers' Hall, and although it was first published without the name of the author affixed(3).

Lord KENYON. All arguments in support of the rights of learned men in their works, must ever be heard with great favor by men of liberal minds, to whom they are addressed. It is probably on that account that when the great question of literary property was discussed, some judges of enlightened understanding went the length of main-

(1) 5 T. R. 245.
(2) *Quere* whether an *exact* representation would be permitted?
(3) Beckford v. Hood, 7 T. R. 620.

taining, that the right of publication rested exclusively in the authors and those who claimed under them for all time; but the other opinion finally prevailed, which established that the right was confined to the times limited by the Act of Parliament. And that, I have no doubt, was the right decision. Then the question is, whether the right of property being vested in authors for certain periods, the common law remedy for a violation of it does not attach within the times limited by the Act of Parliament. Within those periods the act says that the author "shall have the sole right and liberty" of printing &c. Then the statute having vested that right in the author, *the common law gives the remedy* by action on the case for the violation of it. Of this there could have been no doubt made, if the statute had stopped there. But it has been argued, that as the statute in the same clause that creates the right, has prescribed a particular remedy, *that* and no other can be resorted to. And if such appeared to have been the intention of the legislature, I should have subscribed to it, however inadequate it might be thought. But their meaning in creating the penalties in the latter part of the clause in question, certainly was to give an *accumulative remedy*; nothing could be more incomplete as a remedy than those penalties alone, for without dwelling upon the *incompetency of the sum*, the right of action is *not given to the party grieved*, but to any common informer. I cannot think that the legislature would act so inconsistently as to confer a right, and leave the party whose property was invaded without redress. But there was good reason for requiring an entry to be made at Stationers' Hall, which was to serve as a notice and warning to the public, that they might not ignorantly incur the forfeitures or penalties before enacted against such as pirated the works of others; but calling on a party who has injured the civil property of another for a remedy in damages, cannot properly fall under the description of *a forfeiture or penalty*. Some stress was attempted to be laid on the acts passed for preserving the property of engravers in their works in which a special provision is made to meet such a case as the present and to give the same right of action as is here contended for. But it is well known that provisions of that kind are frequently inserted in Acts of Parliament pro majori cautelâ, and no argument can be drawn from them to affect the construction of other Acts of Parliament. On the fair construction of this act, therefore, I think it vests the right of property in the authors of literary works for the times therein limited, and that consequently the common law remedy attaches if no other be specifically given by the act; and I cannot consider the action given to a common informer for the penalties which might be pre-occupied by another, as a remedy to the party grieved within the meaning of the act.

ASHURST, J. In the case alluded to, of Donaldson v. Becket in the House of Lords, I was one of those that thought that the invention of literary works was a foundation for a right of property, independently of the act of Queen Anne. But I shall not enter into the discussion of that point now, as the question in the present case is much narrowed. And upon the construction of that act I entirely concur with my Lord, that the act having vested the right of property in the

author, there must be a remedy in order to preserve it. Now I can only consider the action for the penalties given to a common informer as an additional protection, but not intended by the legislature to oust the common law right to prosecute by action any person who infringes this species of property, which would otherwise necessarily attach upon the right of property so conferred. Where an Act of Parliament vests property in a party, the other consequences follow of course, unless the legislature make a special provision for the purpose, and that does not appear to me to have been intended in this case. I am the more inclined to adopt this instruction because, the supposed remedy is wholly inadeqate to the purpose. The penalties to be recovered may indeed operate as a punishment upon the offender, but they afford no redress to the injured party; the action is not given to him, but to any person who may get the start of him and sue first. It is no redress for the civil injury sustained by the author in the loss of his just profits.

GROSE, J. The principal question is, whether within the periods which the exclusive right of property is secured by the statute to the author, he may not sue the party who has invaded his right for damages up to the extent of the injury sustained, and of this I conceive there can be no doubt. In the great case of Millar v. Taylor, [illegible] Justice *Yates* gave his opinion against the common law right cont[illegible]led for in authors, but he was decidedly of opinion that an exclusive right of property was vested in them by the statute for the time limited therein. No words can be more expressive to that effect than those used by him. But it is to be observed, that the penalties given by the act attach only during the first fourteen years of the copyright, and during that time only is the offender liable for such penalties if he invade the author's right; but he is liable during the whole period prescribed by the act to make good in an action for damages any civil injury to the author. If this construction were not to prevail during the last fourteen years of the term, the author would be wholly without remedy for any invasion of his property. But there must be a remedy, otherwise it would be in vain to confer a right. I was at first struck with the consideration that six to five of the judges who delivered their opinions in the House of Lords in the case of Donaldson v. Beckett were of opinion, that the common law right of action was taken away by the statute of Anne; but upon further view it appears that the amount of their opinions went only to establish that the common law right of action could not be exercised beyond the time limited by that statute.

LAWRENCE, J. I entirely concur with the opinions delivered by my brethren upon the principal point, and the case of Tonson v. Collins(1) is an additional authority in support of it; for there Lord MANSFIELD said, that it had been always holden that the entry in Stationers' Hall was only necessary to enable the party to bring his action for the penalty, but that the property was given absolutely to the author, at least during the term.

(1) 1 Black. Rep. 330.

CHAP. V.

OF PIRATING THE COPYRIGHT IN ENGRAVINGS, ETCHINGS, PRINTS, MAPS, CHARTS, AND PLANS.

SECT I.——*Of Engravings, Etchings, and Prints.*

It has been well expressed by Mr. *Godson*, that upon the same principles, and for the same reasons, that the legislature have protected the SCHOLAR in the enjoyment of the fruits of his knowledge and industry; so it has provided that the ARTIST shall not exert his skill and ingenuity without a hope of reward from the result of his labors(1).

There would appear to be a greater difficulty in detecting the piracy of an engraving or print, than in that of the language and sentiments of a literary composition, and the means of concealing the piracy appear somewhat easier in the former than the latter case. Still the subject is capable of ascertainment. And it is clearly decided, that where a print is a copy *in part* of an original, by varying in some trifling respects only from the main design, the vendor is liable to an action by the proprietor of the original; and this liability exists, although the vendor did not know it to be a pirated copy.

Thus in the case of *West* v. *Francis*, it appeared at the trial that the plaintiff was the proprietor of the prints described in the declaration; and that the defendant, who was a print-seller, had sold copies of the same, all varying from the original in some respect, but preserving generally the design of the original. There was no evidence to shew that the defendant knew the prints he sold to be copied from the plaintiff's prints. It was objected for the defendant, that the action was not maintainable under the 17th Geo. III. c. 57, for merely selling a varied copy of a print. The Lord Chief Justice reserved the point, and the plaintiff having obtained a verdict, a rule nisi was obtained for entering a non-suit. On the motion to make it absolute, the court pronounced the following judgment.

ABBOTT, C. J. This Act of Parliament was intended to preserve to artists the property of their works. The question is, what is the meaning of the word "copy" of a print? Now in common parlance there may be a copy of a print where there exist small variations from the original; and the question is, whether the words are used in that popular sense in this Act of Parliament. That is to be collected from looking at the whole clause, by which it is provided, that if any one shall engrave &c., or in any other manner copy in the whole or in part, by varying, adding to, or diminishing from, the main design, or shall print, or reprint, or import for sale, or publish, or sell, or otherwise dispose of any copy of any print, he shall be liable to an action. Now if the selling of a copy with colorable variations is not within the Act

(1) Godson, page 287.

of Parliament, the printing or importing for sale such copies will not be prohibited. The whole must be taken as one sentence; and the sale of any copy of a print, although there may be some colorable alteration, is within the Act of Parliament. The case of Gahagan v. Cooper proceeded upon a different Act of Parliament. In this case I am satisfied the verdict is right, and therefore this rule must be discharged.

Bayley, J. I am of the same opinion. The provisions of the 8th Geo. II. c. 13, are entitled to great weight in the construction of this latter Act of Parliament. That act imposes first a penalty upon any persons who shall engrave, copy, and sell, or cause to be copied and sold, in the whole or in part, by varying, adding to, or diminishing from, the main design; and secondly, upon persons selling the same knowing the same to be so printed or reprinted. The act of the 17th Geo. III. c. 57, was passed to remedy the same mischief, and the words "knowing the same to be so printed" are omitted. It may therefore be fairly inferred that the legislature meant to make a seller liable, who did not even know that they were copies. The former part of the 17th Geo. III. c. 57, s. 1, applies to persons who actually make the copy, and who therefore must know that it is a copy. But the latter branch applies to all persons who shall import for sale or sell any copy of a print. Every person, therefore, who sells a copy which comes so near the original as this, is thereby made liable to an action. There can be no reason why a person should not be liable where he sells a copy with a mere collusive variation; and I think we should put a narrow construction on the statute, if we held such a collusive variation from the original, not to be a copy. A copy is, that which comes so near to the original, as to give to every person seeing it the idea created by the original. For these reasons I think the plaintiff is entitled to recover; and consequently that the rule must be discharged.

Holroyd, J. I am of the same opinion. We should be careful not to give too extensive a construction to this Act of Parliament, but at the same time one sufficient to remedy the mischiefs intended to be guarded against. The question is, what is the meaning of the word "copy." Now in the preceding part of the clause, the legislature, have called that a copy which is not strictly so in all its parts, being one varying from the main design, and I think that the word must have the same construction in the latter part. Gahagan v. Cooper was decided upon another Act of Parliament, and Lord Ellenborough's judgment proceeded upon the particular mode in which the counts of the declaration were framed.

Best, J. concurred.

In treating of the *duration* and *extent* of copyright(1), we have already adverted to the "degree of originality," which entitles the inventor to the protection of the law.

In Blackwell v. Harper, it was held, that the statute was not confined merely to invention, as, for instance, an allegorical or fabulous representation, nor to historical only, as the design of a battle;

(1) Vide page 82, *ante*.

but it means the designing or engraving anything that is already in nature; even a print published of any building, house, or garden, falls within the act(1).

A person *procuring* a drawing or design to be made is not entitled to protection.

Lord HARDWICKE said, the case is not within the statute, which was made for encouragement of genius and art. If it was, any person who employs a printer or engraver would be so too. The statute is in this respect like the one of new inventions. If there can be no claim of property, there can be no title to relief(2).

SECTION II.

Of Pirating Maps, Charts, and Plans.

The general principles which regulate other kinds of copyright, are equally applicable to maps, charts, and plans. They are indeed expressly protected by the statute 7th Geo. III. cap. 38. Lord MANSFIELD, in a case tried before him in the year 1785, said, "the rule of decision in this case is a matter of great consequence to the country. In deciding it, we must take care to guard against two extremes equally prejudicial; the one, that men of ability who have employed their time for the service of the community may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded. The act that secures copyright to authors, guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subject. In all these cases the question of fact to come before a jury is, whether the alteration be colorable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of prints, no doubt different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here any more than in the other instances; but upon any question of this nature the jury will decide whether it be a servile imitation or not.

The charts in question were four in number, which the defendant had made into one large map.

(1) 2 Atk. 93. (2) Jeffery's v. Baldwin, Amb. 164.

It appeared in evidence, that the defendant had taken the body of his publication from the work of the plaintiffs, but that he had made many alterations and improvements thereupon. It was also proved, that the plaintiffs had originally been at a great expence in procuring materials for these maps. Delarochett, an eminent geographer and engraver, had been employed by the plaintiffs in the engraving of them. He said, that the present charts of the plaintiffs were such an improvement on those before in use, as made them an original work. Besides their having been laid down from all the charts and maps extant, they were improved by many manuscript journals and printed books, and manuscript relations of travellers: he had no doubt the materials must have cost the plaintiffs between £3000 and £4000, and that the defendant's chart was taken from those of the plaintiffs, with a few alterations. In answer to a question from the court, whether the defendant had pirated from the drawings and papers, or from the engravings? He answered, from the engravings. Winterfelt, an engraver, said he was actually employed by the defendant to take a draft of the Gulph Passage (in the West Indies) from the plaintiffs' map.

Many witnesses were called on behalf the defendant, amongst others a Mr. Stephenson and Admiral Campbell. Mr. Stephenson said, he had carefully examined the two publications; that there were very important differences between them, much in favor of the defendants. That the plaintiff's maps were founded upon no principle; neither upon the principle of the Mercator, nor the plain chart, but upon a corruption of both. That near the equator the plain chart would do very well, but that as you go further from the equator, there you must have recourse to the Mercator. That there were very material errors in the plaintiffs' maps. That they were in many places defective in pointing out the latitude and longitude, which is extremely essential in navigating. That most of these, as well errors in the soundings, were corrected by the defendant. Admiral Campbell observed that there were only two kinds of charts, one called a plain chart, which was now very little used, the other, which is the best, called the Mercator, and which is very accurate in the degrees of latitude and longitude. That this distinction was very necessary in the higher latitudes, but in places near the equator it made little or no difference. That the plaintiffs' maps were upon no principle recognized among seamen, and no rules of navigation would be applied to them; and they were therefore entirely useless.

Lord MANSFIELD, in addition to the general observation already quoted, said, "If an erroneous chart be made, God forbid it should not be corrected even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here there are various and very material alterations. This chart of the plaintiffs is upon a wrong principle, inapplicable to navigation. The defendant has therefore been correcting errors, and not servilely copying." And he directed the jury, if they thought so, to find

for the defendant; if they thought it was a mere servile imitation and pirated from the other, they would find for the plaintiffs. A verdict was accordingly found for the defendant(1).

In the case of a map of the island of St Domingo, made by Mr. Bryan Edwards, and which was pirated,

The Lord Chancellor said, it might be asked, how is it possible to have a copyright in a map of the Island of St. Domingo? Must not the mountains have the same position, the rivers the same course? Must not the points of land, the coast connecting them, the names given by the inhabitants, every thing constituting a map, be the same? The answer was, that the subject of the plaintiff's claim was a map, made at great expence, from actual surveys: distinguished from former maps by improvements that were manifest: the defendants map was a servile imitation, requiring no expence, no ingenuity; possessing nothing that could confer copyright(2).

CHAP. VI.

OF THE REMEDIES FOR PIRACY.

The statutes having vested the right of property in the author, there must be a remedy by the principles of the common law in order to preserve it. It is accordingly clearly settled, that the action for penalties given to a common informer as an additional protection to the copyright of an author, does not oust the common law right of property so conferred(3).

The modes of procedure in obtaining redress for injuries to copyright, are

1st. By action on the case for damages.

2nd. By action under the statute for penalties.

3rd. By a suit in Equity to restrain the publication, and compel an account of the profits.

SECTION I.

Of the remedy by action on the Case for Damages.

It is not deemed necessary to the completion of the design of this treatise, to enter upon the technical description of the *pleadings* either at law or in equity(4); but the general

(1) Sayre v. Moore, 1 East, 361, *note*. (2) Cited, 12 Vesey, 274.
(3) Beckford v. Hood, 7 T. R. 620.
(4) For observations on the pleadings, vide 6 Petersdorff's Abr. 574.

nature of the EVIDENCE required at the trial, it will be material to point out.

For the PLAINTIFF it must of course be proved, if the action be brought by him, that he is the author or proprietor of the work.

As the best species of evidence, he should produce the manuscript where the action is brought for pirating a book, and prove his hand writing, or the hand writing of his amanuensis. Hence it is always important to preserve the original.

If the manuscript should have been lost or destroyed, the fact of loss or destruction it should seem must be proved before evidence can be received of its composition by the author, or by his dictation.

In an action for pirating engravings, it is sufficient to produce one of the prints taken from the original plate—the production of the original itself not being required(1).

Where the action is brought by the *assignes* of the author, he must, in addition to the proof of the original title of the author, deduce his own title by legal assignment from him(2).

The same species of evidence will of course be required when the subject matter of the action consists of *notes* or *additions* to a former work.

It will next be necessary to produce a copy of the work complained of, and prove the injury sustained according to the specific allegations in the pleadings; whether by printing and publishing, or by exposing to sale, or importing.

Proof is often given, that parts of the first work were used at the press when the second was printed, and that the alterations supplied in the MSS. were merely colorable. The prevalence of errors in the second work identical with those in the first, is likewise good evidence of piracy, since it can scarcely have happened that two persons would fall into precisely the same mistakes in repeated instances.

The extent of the damages may be proved by the number of copies sold by the defendant, or by any other facts incident to the nature of the work.

The allegations in the pleadings of the title of the book pirated, and the time (if set forth) of the first publications should be carefully made, lest the defendant avail himself of the error by shewing a variance from the fact

For the DEFENDANT, the evidence will of course vary according to the nature of the defence.

It may be shewn that the plaintiff is not the author of

(1) 5 T. R. 41.
(2) For the mode of transfer vide the next part of this book.

the composition alleged to be pirated, by proving who was the real author.

If the defence be a publication of the second work by the *consent* of the author of the first, such consent must be strictly proved, and in conformity to all the statutes it must be given in *writing*.

According to the statutes previous to the 54th Geo. III. c. 156, it was requisite that the consent in writing should be signed in the presence of two or more credible witnesses, but in the last act, this clause of attestation is omitted.

The transfer of engravings and sculpture must be attested by two witnesses.

The next question at the trial will be, whether the defendant's work is *substantially* the same as that of the plaintiff, so as to leave no doubt that, however varied in some particulars, it is a fraudulent imitation.

It would be competent for the defendant to shew that the work which he had published, was compiled from the original authorities, and entitled therefore to be considered as a new work(1).

It would also be a good defence, as we have seen(2), if the work of the plaintiff were of an illegal or immoral nature.

So also if the period limited by the statute for the protection of the copyright had actually expired, or the action were not commenced within the time prescribed by the statutes.

On the latter point it is material to observe, that for pirating the copyright of BOOKS, the proceedings must be commenced within *twelve* months. For the piracy of ENGRAVINGS, etchings, prints, maps, and charts, as well as original SCULPTURE, models, and casts, the remedy is limited to *six* months.

In all the instances, whether for pirating the copyright of books, engravings, or sculpture, the plaintiff, if he recover a verdict, is entitled to *double the costs of the suit*, whether in the English or the Scottish Courts.

If the action be discontinued or the plaintiff should be nonsuited, the defendant is entitled to the ordinary costs.

We have already adverted to the conflicting decisions

(1) It is not a piracy to make another engraving from the same original picture.

Where an artist was employed to make engravings of two pictures, and after he had completed them, made two sketches from the same original without using the engravings, and sold them for the use of the Sporting Magazine,

Lord Chief Justice ABBOTT said, it would destroy all competition in the art to extend the monopoly to the painting itself. After quoting the words of the statute, his Lordship added, "in this case the defendant's engraving was made from the original picture, and not from the plaintiff's print. *De Berenger* v. *Wheble*, 2 Stark, 548.

(2) Page, 89, *ante*.

relating to the date of the publication of engravings, &c(1). In a late case, the Court of Common Pleas, after noticing these opposite opinions, and looking through the statutes, held, that it was the intention of the legislature that the public should be protected against the continuance of the monopoly beyond the prescribed term, which might be the case if the date had not been required to appear on the face of the prints(2).

But it was also held by the same court that the plaintiff need not describe himself *as proprietor*.

The words on the print were *Newton, del. 1st May*, 1826, *Gladwin, sculp.* The court said it was not usual, nor did they think it necessary that it should be stated on the print, in terms, that a particular person is the proprietor. The uniform practice is to place the names of the designer and engraver alone, and a decision questioning its propriety would have the effect of destroying much valuable property(3).

SECTION II.

Of the remedy by Penalties under the Statutes.

The author or proprietor of a work which has been pirated, or *any other person*, may maintain an action of debt to recover the penalties inflicted by the several statutes for the protection of literary compositions.

The clauses containing the penalties have been already stated. The following is a summary of their amount.

As to BOOKS.

1st. The forfeiture of pirated books, printed, published, or exposed to sale, and every sheet thereof, to be delivered to the author or proprietor, and by him (on the order of the court) forthwith damasked or made waste paper of.

2nd. A fine of three pence for every sheet printed, published, or exposed to sale, one moiety to the King and the other to the plaintiff.

Two penalties may be incurred on the same day for selling books, the originals of which have been written and published here, and afterwards reprinted abroad, and imported into this country, *if the acts of sale be distinct*(4).

As to ENGRAVINGS, &c.

1st. A forfeiture of the pirated plates and prints to the proprietor of the original to be forthwith destroyed and damasked.

(1) Page, 82. (2) Newton v. Cowie, 5 Law Journal, p. 161. Easter T. 1827.
(3) Ibid. In Thompson v. Symonds it was doubted whether in an assignment the name of the inventor or the assignee should appear. 5, T. R. 41.
(4) Brooke v. Milliken. 3 T. R. 509.

2nd. A fine of five shillings for every print found in the defendant's possession, either printed or published, or exposed to sale: the one moiety to the King, and the other to the plaintiff.

As to SCULPTURE.

The remedy for pirating sculpture, models, and casts, seems confined to an action for damages, or a suit for an injunction and account. No penalties are specified in either of the acts on this subject.

It would seem that the EVIDENCE necessary to support an action for the penalties must be as complete in all respects as that which is required for the recovery of damages. Indeed it is reasonable that the informer should be held, if possible, to a stricter degree of proof than the party really injured; and if the latter were to sue for the penalties, he must still be bound by the strict construction applicable to cases under penal statutes.

The LIMITATION of the time within which the penalties must be sued for, is the same as that prescribed for the commencement of an action for damages; namely, in regard to the copyright of books, *twelve* months, and of engravings, sculpture, &c. *six* months.

Though it is still doubtful whether the name and date are essential to the recovery of damages in an action for piracy, it is clear they are both necessary in an action for *penalties* under the statute(1).

SECTION III.

Of the remedy by Injunction in Equity.

The most usual and expeditious means of obtaining redress for piracy, and preventing the continuance of the injury, are to be found in a Court of Equity, where, by the preliminary process of injunction, justice is more readily administered than in a Court of Law, where the evil may continue until the final decision of the cause, and from the circumstances of the case may then be irremediable.

In order to obtain this summary relief, the title of the plaintiff must be founded on the possession of a legal copyright; or at all events there must be a strong *prima facie* case of legal title. Where the plaintiff's right is doubtful, a Court of Equity will not interpose in the first instance, but

(1) 2 Atkins, 92. 5 T. R. 41. 1 Camp. 94.

leave the party to establish his right by an action at law. After which, he will of course be entitled to the additional aid of an injunction in equity.

The question regarding the date of engravings, has also occurred in the Court of Chancery.

In Harrison v. Hogg, the *Master of the Rolls* said, he was glad that he was relieved from determining upon the act, for *at present* he was inclined to differ from Lord Hardwicke. He must believe that it is essential to the plaintiff's right to insert the date. Many good reasons, which it was not then necessary to mention, require that the date should be upon the plate. But, he said, as Courts of Law have permitted plaintiffs to make this sort of general allegation (on the pleadings), it would be strange for Equity to be more strict(1).

The *mode of procedure* to obtain an injunction, is simple and expeditious. A bill is filed by the proprietor, stating his title to the original work, the nature of the piracy, and the consequent injury.

The particular facts are next to be verified by affidavit, and a special motion may then be made to restrain the publication. The whole question may thus be brought before the court; and an injunction will either be granted forthwith, or an issue directed to try the question before a jury in a Court of Law, unless the work be apparently excluded from legal protection on the ground of its mischievous tendency, or for other reasons be of a description in which no legal proprietorship can exist; and then the plaintiff is left to seek such remedy as he may be entitled to in another court.

In injunction cases, it appears that no affidavit as to the title of an author or proprietor will be received after the defendant's answer has been filed, though affidavits in opposition to the answer may be read as to facts(2).

Though it is clear that the proceeding by injunction is thus the most ready and effectual remedy which can be resorted to on the part of the plaintiff; a great degree of caution, in the application of that proceeding, in the first instance, is requisite for preventing injustice to the defendant, whose loss does not from the nature of it admit of reparation, if the injunction should, upon further investigation, be found to have been erroneously applied, and the judges in Courts of Equity have in many cases expressed a strong sense of the importance of this principle(3).

(1) 2 Vesey, 327.
(2) Cited in Platt v. Button, 19 Ves. 448, and see Norway v. Rowe, ib. 144.
(3) 2 Evans's Coll. Stat. 630.

FOURTH PART.

OF THE TRANSFER OF COPYRIGHT, THE CONTRACTS OF AUTHORS AND BOOKSELLERS, AND OTHER INCIDENTS OF LITERARY PROPERTY.

SECT. 1.——*Of the Transfer of Copyright generally.*

The transfer of every kind of copyright, according to the several provisions in the statutes, must be *in writing*. There does not appear to be any reason for making a distinction between the copyright of books, and that of engravings, of maps, or of sculpture. But the last statute has made a distinction which it is necessary to point out.

The statutes of 8 Anne, c. 19 and 41 Geo. 3. c. 107, required the consent of the authors or proprietors for printing, reprinting, or importing books of which they possessed the copyright to be in writing, "signed in the presence of *two* or more credible witnesses." The 54 Geo. III. cap. 156, does not contain this requisition, and the mode of attestation, therefore, appears to be immaterial in giving effect to the transfer.

In the acts relating to engravings, etchings, prints, maps, and charts, it is required that there should be an "express consent of the proprietor or proprietors, first had and obtained *in writing*, signed by him, her, or them respectively, with his, her, or their *own hand* or hands, in the presence of, and attested by *two or more credible witnesses*(1)."

In the case of *original sculpture, models, and casts*, the requirements of the act proceed still further, for though in the second section the same language is used as in the case of engravings, &c.; in the 4th section it is provided, that persons who purchase the right or property in original sculpture, &c. from the proprietors, expressed in a *deed* in writing, signed and attested as in the former case, shall not be subject to any action under the statute(2).

It would appear, therefore, that the right of exclusively printing and publishing books may be transferred by a con-

(1) The 7th section of 7 Geo. III. c. 38, by which the copyright in engravings, &c. is extended to twenty-eight years, gives no additional term in case the author survives that period.

(2) By the 6th section of 54 Geo. III. c. 56, the artist is entitled to a second term of fourteen years, if he survives the first, but it does not continue during his life beyond he second period.

sent in writing, without attestation---the right of publishing prints and maps by a consent in writing, attested by two witnesses---and for the right of making models and casts, the consent must be given by deed, also attested by two witnesses.

SECTION II.

Of particular Contracts between Authors and Booksellers.

Although the transactions between authors and booksellers must evidently be very numerous, and greatly diversified in their nature, there are few cases reported in the authentic law books of any disputes which have existed between them.

We shall presently refer to the particular points which have undergone judicial investigation, but have previously to notice a peculiar species of literary property which has become of vast importance to its proprietors in recent times. We allude to the articles or *contributions* supplied *to periodical works and encyclopedias.*

Some distinction appears to exist between *entire works* completed by the author, and sold to the publisher, and those *partial contributions* which are composed at the request of the proprietor, and originally intended to form part of larger works under the editorship of a person distinct from the author. There seems here some analogy to the principle by which an exception is allowed in the law of debtor and creditor; for although no one is answerable for the debt of another, unless the engagement be in writing, yet an original credit may be given to one person, and the goods supplied to another. So here, it may be said, the bookseller is the *proprietor of the work at large*, and engages different persons to supply different portions of the undertaking. When these are delivered, they appear to be the property of the owner of the general work, more especially as the several articles are wrought into their appropriate form by the literary agent of the proprietor. They seem thus to lose their separate identity after leaving the hands of the author.

Transactions of this kind between publishers and authors resemble contracts for so much work and labor towards a general undertaking, and are different from the sale of a complete copyright, which requires an assignment in the exact terms of the act---as there may be various engagements (all verbal) with the several artificers to the building of a house; but the edifice itself cannot be conveyed on account of the *land* on which it is situated, unless the transfer be in writing.

It may also be urged, that a composition of this sort is *not a book* in the language of the statute, *nor any volume thereof*, and cannot be comprised within its provisions. All contracts therefore, relating to such compositions, can be limited only by the ordinary principles of law, and a *verbal* agreement, (distinctly proved,) would be sufficient to pass all the interest which an author can possess in such works. This view of the subject, is somewhat supported by a very recent decision in the Appeal Court of the Exchequer Chamber, in which it was held that the public libraries are not entitled to copies of works which are not within the ordinary signification of a "book" or a "volume," and that *parts* of a volume published at uncertain intervals, are not within the meaning of the act(1).

On the other hand, it is evident from all the cases which have been decided on the subject of the transfer of copyright, that the interests of authors are favorably regarded, and the requirements of the statutes on their behalf strictly enforced. This rule of construction is important not only to authors themselves but to those who derive their title by assignment for them. We have seen, in treating of the extent of copyright, that the law protects it from piracy, however small or insignificant the composition may be. Every original work, though consisting merely of a single sheet of paper, or the music of a single song, has been considered a book within the meaning of the Act of Parliament(2). And it is not improbable, therefore, that an express assignment would be held necessary to deprive the author of the right of republishing the article himself in a separate form, although evidently it would be a breach of contract to dispose of it again for the use of another compilation(3).

The communications, however, from correspondents to the editors or proprietors of periodical publications, are said to be the property of the person to whom they are directed; and cannot be published by any other person, who by chance may have obtained possession of them(4).

But these communications, it would appear, must be

(1) British Museum v. Payne and Foss, 2 Younge and J. 166. (2) Pages, 74-5-6.

(3) Supposing, that the proprietor of an encyclopædia, or periodical publication, possess such a property in the articles contributed for his work, that the author can make no other use of them without the consent of the proprietor, still it is questionable whether the right be *limited to the purpose for which the composition was written*, or may be extended, so as to enable the proprietor of the encyclopœdia to publish it as a *separate book*, without a new agreement with the author. The copyright in such case would probably be considered as a *special* one---not *general* and unlimited;---and for the purpose of separate publication a consent must be given by the author in writing, according to the terms prescribed in the Act of Parliament. (4) 8 Vesey, 215.

such as are sent implied or expressly for the purpose of publication; but on the principle that an author has an absolute control over his manuscripts, it seems they may be reclaimed at any time before publication.

Under the *general* assignment by an author of all his right in a work, the assignee has the benefit of the resulting term for the life of the author, in case the latter should survive the twenty-eight years from the day of publication (1).

It has been questioned whether, in the case of a *joint authorship*, the copyright would continue to the end of the life of the survivor, supposing both of them outlived the twenty-eight years from the day of publication? And whether there would be any resulting term, supposing one of the authors died within the twenty-eight years?(2).

It would appear, however, that so much as had been actually composed by the survivor, must evidently be protected to the end of his life. And we do not see how any part of the work could be safely pirated, unless the extent were precisely known of the contribution of the deceased author. It seems also that the benefit of the resulting term to the survivor could not depend on *both* of them outliving the twenty-eight years.

If an author engage to furnish a bookseller with a transcript, he must answer in damages for not fulfilling his contract(3).

And Lord ELDON held, that a covenant in articles of agreement, by which a dramatic writer undertook not to compose pieces for any other than the Haymarket Theatre, was a legal covenant(4).

But where a gentleman had contracted to supply a bookseller with reports of the cases argued in the Court of Exchequer upon certain terms, and afterwards sold them to another bookseller, the Lord CHANCELLOR would not grant an injunction to restrain the publication, and force him to report and give his manuscript to the bookseller, observing that he could not grant an injunction whereby *the person* of the defendant would not be at liberty(5).

It is not necessary for an author to put his name in the title page in order to preserve it(6).

Lord ELDON, however, on one occasion, doubted how far he could relieve the publisher of a work with a fictitious name(7), but he granted an injunction until answer or further

(1) 2 Brown, C. R. 80. (2) Godson, 311.
(3) Gale v. Leckie, 2 Stark, 107. (4) Morris v. Colman, 18 Vesey, 437.
(5) Clarke v. Price, 2 Wils. 157. (6) 4 Burr. 2367. (7) 8 Vesey, 226.

order to restrain the publication of a work in the name of Lord BYRON, who was abroad, upon an affidavit of his Lordship's agent of circumstances, making it highly probable that it was not a work by his Lordship, and on the refusal of the defendant to swear as to his belief that it was written by him(1).

In Storace v. Longman, the plaintiff was the composer of a musical air, tune and writing, which was reprinted by the defendant within the fourteen years limited by the act.

Erskine for the defendant examined the plaintiff's sister, to shew that the song was composed to be sung by her at the Italian Opera, and that all compositions so performed were the property of the house, not of the composer. But,

Lord KENYON said, that this defence could not be supported; that the statute vests the property in the author, and that no such private regulation could interfere with the public right(2).

In *Power v. Walker*(3), at the trial before Lord Ellenborough, the plaintiff, in order to establish his title, proved, that Mr. Moore, the author of a work entitled "A Selection of Irish Melodies," of which this song was one, transferred the copyright of the work by *verbal* agreement to R. Power of Dublin, who agreed also by *parole* with the plaintiff that the latter should have the exclusive right of publishing and selling the work in England, reserving to himself the right of selling it in Ireland. It was objected for the defendant, first, that by stat 8th Anne, c. 19, every assignment of copyright must be in writing, and secondly, that the right conveyed to the plaintiff by Power, (supposing it to be well conveyed) did not amount to an assignment of the copyright, such as would sustain this action, but was a mere *licence* to the plaintiff for the publication and sale in England.

Lord ELLENBOROUGH said, that the statute having required that the consent of the proprietor, in order to authorize the printing or reprinting of any book by any other person, shall be in writing, that the conclusion from it seemed almost irresistible, but that the assignment, must also be in writing, for if the licence which is the lesser thing must be in writing, a fortiori, the assignment which is the greater thing must also be so.

DAMPIER, J. expressed himself to the same effect, and

(1) Lord Byron v. Johnson, 2 Meriv. 29.

(2) 2 Camp. 27, *note*. But *quere*, as to the accuracy of this opinion, as authors frequently dispose of MS. and copyright, and a general usage upon the subject may be evidence of such a disposition. 2 Evans's Coll. Stat. 627.

(3) 3 Maule and S. 7.

said, that the assignment could only be under the statute, and therefore the plaintiff must shew that he was such an assignee as the statute required.

The construction of the statute is so strict, that though the author of a musical composition acquiesced for six years in the defendant's publication of it; this was held insufficient evidence of the transfer of his interest in the copyright.

Nor will a receipt given by the plaintiff for money received by him as the price of the copyright, preclude him from maintaining the action.

The facts were as follows: the piece of music in question "Le Retour de Windsor," had been composed by the plaintiff in the year 1801, and it appeared that in 1812, and previously, the defendants had sold copies bearing Latour's name as the composer, and that this had been done with his acquiescence. It was also proved, that ten years ago the plaintiff had given a receipt (which had since been destroyed) to the defendants for thirty guineas, as the consideration of the purchase of the copyright, but that there was no other writing than the receipt; and that the plaintiff had afterwards said that he ought to have had more for the copyright.

ABBOTT, J. was of opinion, that there had not been any assignment. In the case of *Moore v. Walker*(1), the author had admitted that he had assigned his interest; but here it appeared in evidence that there had not been any assignment such as the statute required. By the act of Anne, which was made for the encouragement of genius and learning, an exclusive right had been given to the author of any work for the term of fourteen years; and he might during that term assign his interest to another, and if he died without assigning his copyright, the interest would go to his executors. If he survived the term of fourteen years, he would be entitled to the enjoyment of the copyright for fourteen years more. A question might perhaps be made, whether an assignment within the first fourteen years would carry the contingent interest; but here no such question arose, since there had been no assignment according to the mode pointed out by the statute(2).

Where, however, a copyright in music was not asserted against violation by several persons for *fifteen years*, the Court of Chancery refused an injunction until the right should be established at law.

The LORD CHANCELLOR said, I admit this to be the

(1) 4 Camp. 9, *note*.

(2) Latour v. Bland, 2 Stark. R. 382.

subject of copyright. But the plaintiff has permitted several people to publish these dances, some of them for fifteen years: thus encouraging others to do so. That, it is true, is *not a justification*; but under these circumstances a Court of Equity will not interfere in the first instance. If, as is represented, some of them were published only last year, and one two months ago; the bill ought to have been confined to those. You may bring your action, and then apply for an injunction(1).

SECTION III.

Of the Bequest of Copyright.

We have seen that it was usual from the earliest period after the invention of printing not only to sell copyrights (at that time in perpetuity), but that they were made the subject of family settlements for the provision of wives and children(2); and where they were not included in such settlements, of course the proprietors disposed of them by their wills, or they passed to the administrator in the same manner as other goods and chattels.

It does not appear that there is any case reported in which the title to a copyright depended upon a bequest; but there can be no doubt that an author has the power of bequeathing it. A patentee may bequeath his interest in a *patent*(3), and if he die intestate, it will be assets in the hands of his administrator(4). It must clearly follow, therefore, that the author or proprietor of a book may transfer his copyright by a testamentary disposition, and in the absence of which it will pass in the same way as other kinds of personal property. Its limited duration has naturally prevented the occurrence of many instances in which copyright has been *specifically* bequeathed. The only case reported on the subject is that of the interest in a *newspaper*. The property in question on that occasion, however, consisted rather in *printing* the work and the implements of trade necessary to conduct it, than in the copyright of the composition.

In Keene v. Harris, the printer of a newspaper, the *Bath Chronicle*, bequeathed to his widow the benefit of that trade, subject to the trust of maintaining and educating her family. Having formed an attachment for the person who had been employed as foreman in conducting that business, she assisted him in setting up the same paper giving him the use of the

(1) Platt v. Button. 19, Ves. 447. (2) Page 16.
(3) Godson, 168. (4) 1 Vesey, Jun. 118. and 3 B. and P. 573.

letter press, &c., on the premises. A bill was filed by the executors, and an injunction was granted(1).

SECTION IV.

Of the rights of Creditors, under an Execution or a Commission of Bankruptcy.

The unpublished *manuscript* of an author cannot, it seems, be taken in execution at the suit of creditors(2). Such a seizure would be contrary to the established principle of law, that until an actual publication has taken place, the author has an uncontrolled right to, and dominion over his manuscripts(3).

It would also be contrary to the principle by which the instruments of a man's trade or profession, whilst in use, are protected from the process of distraint. The *books of a scholar* are enumerated in the old authorities as exempt from distress; and *a fortiori*, if his books generally are protected, the manuscript on which he is at work, which being unpublished may be presumed incomplete, is that kind of property, which the policy of the law has wisely protected from seizure.

Neither are the assignees under a Commission of Bankruptcy, entitled to the manuscripts of an author, although the copyright of a book which has been printed and published will legally pass for the benefit of the creditors(4).

(1) Cited 17 Vesey, 338. There is a distinction between the right to publish a similar work, or set up a similar trade, and the fraud of identifying it with the work or trade of another. *Ib.* 342.

(2) 4 Burr. 2,311. (3) Amb. 695.

(4) Longman v. Tripp, 3 New. rep. 67. It is questionable whether a book not completely printed and consequently unpublished, could be claimed by the creditors.

BOOK III.

DISQUISITIONS

ON THE

PRINCIPLES OF THE LAWS.

AND THEIR

EFFECT ON LITERATURE.

BOOK III.

On the Principles of the Laws.

FIRST PART.

OF THE LIMITATION OF COPYRIGHT TO TWENTY-EIGHT YEARS.

CHAP. I.——THE OBJECTIONS TO A PERPETUITY IN COPYRIGHT CONSIDERED.

I. It has been objected that, although the invention and labor, by which literary compositions are produced, entitle the author to the exclusive use of his manuscript, *the right cannot be extended to* IDEAS, because they are not objects of property.

In the commencement of our historical view, we have considered the nature and foundation of the rights of literary property, and shewn that it was equally entitled with any other production whether depending upon *occupancy* or *labor*, to the full protection of the laws—that if it came not within the *literal* definition of "property," as laid down of old, it was assuredly within its *spirit*---that the general interests of society, as well as the comprehensive principles of justice, required the protection of copyright, and to exclude it would be a violation of the boasted maxim of the English Law, that *redress is provided for every injury*.

In further reply to this objection, "that there can be no *property* in ideas," it must be observed, that an author does not claim a copyright in the *subject* on which he has written, but in *the composition which he has produced* on that subject. In the cases which have been decided regarding the piracy of copyright, it is repeatedly laid down, that "the subject" of literary compositions is open to all writers; but that no one must seize and appropriate to himself the labor bestowed by another. He may avail himself of it as a guide to the sources from whence the result was derived---to the mines where the raw material may be found, but he cannot lawfully take the manufactured article. A lively image has been used to explain the extent of the right. *The wells of*

literature are open to all, but no one has a right to use the bucket of another.

The objection, indeed, resolves itself entirely into the supposed difficulty of ascertaining whether the later author has drawn his materials from the original sources, to which the first must have resorted, or has availed himself of his predecessor's ingenuity and labor, without exerting his own.

But the same difficulty prevails in the present limited state of legal protection. The same questions arise *within* the twenty-eight years, as would arise after they had expired. The argument, therefore, if it be worth anything, should lead to the abolition of all protection whatever.

II. It has also been urged, that as it is every man's natural right to follow a lawful employment, and printing and bookselling are of that kind, *every monopoly that would intrench upon these lawful employments, is a restraint upon the liberty of the subject.* And if the printing and selling of every book that comes out may be confined to a few, and for ever withheld from all the rest of the trade, it is asked, what provision will the bulk of them be able to make for their respective families?

It is curious, that this objection should have occurred to the learned judge who advanced it; for, if it be well founded, then the holding of any kind of property exclusively and for ever is also a monopoly.

It is obvious there could be no monopoly in this case more then prevails in the possession of a plot of land or a herd of cattle. It is not a monopoly of *all* books, of all kinds —such as the prerogative claim was formerly made; nor of all books upon *one subject*—it is the mere appropriation of the property in *one book*, the produce of *individual* invention and labor. Not only is every subject of literature open to the exertion of the talents and industry of all; but every trader in literary works has the same opportunity as others to purchase the existing copyright of authors, by offering a sufficient price, or of engaging literary men to write new works on the same or on other subjects, of which there is a boundless and exhaustless number.

Further, this objection to a supposed undue restraint on plagiarists and pirates, like the former one, should extend, if it be tenable, to the abolition of the law altogether, and therefore annihilates itself.

III. But it said---*others, may arrive at similar conclusions.*

It would be difficult to a ascertain the right owner, and inconveniently increase litigation.

There is here an unfounded assumption: No two minds being alike, it is impossible for any two men to compose a work precisely similar. They may arrive indeed at the same "conclusions"—Thinking upon the same subject, the truth may be apparent to both; but each will proceed by different methods, and those who are skilled in criticism would have no difficulty in determining which of the two was the plagiarist, and an intelligent jury, aided by competent witnesses and the learning of the bar, and the experience and wisdom of the bench, would surely be able to determine whether the work was colorably pirated from another, or an original and *bona fide* production.

But, admitting that there might be occasional *difficulty in identifying* the works of one author from another. Such cases would be rare. Are we to abandon the property in general because it sometimes may be troublesome to ascertain it? There is frequent difficulty in identifying other species of property—nay, even, of identifying persons; but no one has yet been wild enough to propose the abolition of the laws of property or personal protection, because the evidence of ownership and identity is sometimes doubtful. We do not conceive the difficulty would be greater in this than in many other kinds of property. There are no insuperable obstacles in identifying a literary work within the time already limited by the statute, and the same rules might be applied if the time were extended.

That *it will give rise to litigation* so long as men are dishonest cannot be doubted; but the same occasional evil prevails in every kind of property. He who prints and publishes another man's copy, or makes such voluminous extracts from it as to injure its sale, knows as well as the depredator of any thing else, that it is not his own, and if he has no sense of rectitude, he should be taught by the law that it is wrong, and punished either in purse or person for his transgresssion. There would be no greater degree of litigation than in proportion to the number of violations of the law of copyright, and the inclination of the injured to seek redress. Let the experiment be tried and there will be no difficulty in providing remedies for any evil that may casually arise in the execution of the law.

IV. *The composition is the property of the writer whilst in manuscript, but the act of publishing gives it to the world.* If there be any force in mere *legal* reasoning, in this objection,

there is, none in reason or common sense. By the publication the author *gives* nothing whatever. He *sells* each copy for its price, and the purchaser may do what he pleases with the copy *except* printing other copies. He may make use of the language and sentiments it contains in any way he thinks proper, *except* to the injury of the author. He may quote or abridge passages to improve his own works, provided his extracts be not of unreasonable length, and have the effect of injuring the sale of the original. He may also lend or sell his copy, and may make a profit by the loan or sale. But he cannot appropriate to himself the profit derivable from the sale of *other copies* the right to print which was never sold. The purchase he has made is for his own use, not the use of the public, and he must abide by the reasonable conditions of his bargain. It may be compared to the case of a proprietor of a theatre, who grants for a certain price a ticket of admission, which, if transferrable, the purchaser may lend or let on hire; but whoever supposed, that he had a consequent right to multiply copies and sell them to the injury of the proprietor? So, in the instance of a public Water Company, the contract includes the unlimited use by the person who pays for it, but conveys no right to vend the smallest portion. By analogy, therefore, to other kinds of limited sales; as well as from the reason of the case, it is clear that the act of publishing is no dedication to the public, so as to make the property common to all.

V. Another objection is, that the *Patentees of Mechanical inventions possess but a limited term,* and therefore, that the authors of literary or scientific works should be satisfied with the same measure of legal protection.

We shall not enter into the argument of the distinction between the nature of new machinery and that of literary compositions, for we are not entirely satisfied that it is well founded(1). But we rest on this, if there is a distinction, in fact, we are glad the patentees suffer less wrong: If not, they are common sufferers, and should take part in seeking redress. It is a proof of the straits to which our opponents are driven when they excuse one act of injustice by another.

VI. It is objected that it would prolong the power of the owner to deal with the public as he chose, and that he might *either suppress a valuable work or put an exorbitant price upon it;* in both of which events the public would be injured.

The fear of *suppression* may be easily provided against. If the proprietor does not re-print the work when required within a reasonable time, there would be no injustice in con-

(1) The best comment on this point seems to be made by Mr. *Hargrave.*—vide NOTES.

sidering the copyright as abandoned. It is replied, that there would be a difficulty in proving an abandonment. We do not perceive the difficulty, at least, in the majority of instances, and regulations which experience would suggest, might be adapted to circumstances. Generally speaking, if it were worth while to reprint a work, the copies of which were exhausted, it would not be abandoned. Where it was out of print, notice might be given to the last publisher and entered in the registry of the Stationers' Company, and if at the expiration of a certain length of time (perhaps proportioned to the magnitude of the work) it were not reprinted, it might then become common property.

There is no probability that the *price* of literature will be enhanced more than the price of land. Some ages ago a large price might have been required, and as the demand was then limited, a higher price was not unjustifiable. But since the development of the true principles of trade, there can be no apprehension of such a result. Every publisher now knows that the cheaper he sells his books, the greater is the sale, and a small profit, upon a rapid and extensive sale is in the result more advantageous, than a larger profit upon a slow and limited one. The more generally useful the work, the cheaper it might be sold, on account of the greater number of purchasers. It is only of works which are little demanded that a high price could be necessary. So that the evil cures itself, and both the cause of literature and the interest of the public, would be promoted by enabling the proprietors of this kind of property to deal with it as unreservedly as with any thing else. And surely, if the principle of free trade should any where be acted upon, it ought to prevail in favor of the press—that great instrument of national knowledge and improvement, and by which all other improvements are so much extended and promoted.

Besides the price might be restrained by a jury. Compensation for property is settled on many occasions under Acts of Parliament for roads and canals. It would be competent for an author or proprietor to prove the *capital* invested and learned men might be called to estimate the *skill*, and publishers to prove what would be a fair or liberal remunerating price.

But then it is said, if there be an actual *right*, it is improper to restrain it. Now we have no wish that it should be restrained: we do not apply for the restraint. We think it not only *needless* but *objectionable* and unjust.—We conceive that every man's own interest will be the best protection to

the public for the fair exercise of the right. It is so in all other arts and trades and why should it not be the same in those of printing and publishing? But if we cannot have the right without the restraint, we will submit to it.—It is an odd objection that denies a right, because if exercised without the restraint it may be injurious, and then rejects the restraint because all restraints are reprehensible.

VII. The advocates of *limited* copyright further contend, that "*glory is the reward of science, and those who deserve it, scorn all meaner views.*" It was not for gain that Bacon, Newton, Locke, &c. instructed the world. There are various unanswerable replies to this piece of rhetoric.

First, the question is not what are the motives of an author—Glory or Gain—but what is due in justice from the public to those who have conferred benefits upon it? What is *right?* If the benefit be perpetual, why should not the reward? If Shakespeare has left us volumes of intellectual gratification which can die only (nay, not even then) with the language in which they are written, why should not his decendants (long reduced to poverty) derive the benefit which justice demands, and which gratitude would cheerfully pay. Granting that Nelson and Wellington were stimulated to their immortal exertions by glory alone, do we owe them nothing, because they have received their reward? Were the titles and the wealth that were bestowed upon them needless? Besides, it may be asked, how do the national rewards of *substantial* property act in the way of excitement upon the conduct of others. Has the perpetual entailment of Blenheim had no influence upon the minds of subsequent warriors?

2ndly. Different men possess different propensities and feelings. The objection supposes all men alike, and that they are alone influenced by the predominant passion of ambition. It is an objection founded in utter ignorance of human nature. A very large class certainly are desirous of renown. But there are *other classes besides the ambitious.* Many men love their parents, wives, children, and kindred, and to that intense degree that they will exert their powers more eminently for them than for the empty buzz of strangers or of distant posterity. Do these lawyer-like reasoners suppose that all men of warm affections are deficient in ingenuity, and that the stern and cold man of ambition is the only inheritor of genius and greatness? Now a man of this kindly nature may care but little for "gain," so far as he is personally concerned; but for the sake of those who are dearer to him even than "glory," he may bestow more labor

than the mere ambitious man, and wherefore should not he be permitted to receive that, which the public would readily and gladly pay? Who is there that has read the "Paradise Lost," that would not be delighted whilst paying its price to know, that he had contributed his mite to avert the penury in which had died the last descendant of its author?

It is any thing but philosophical to talk of men, in general, as exerting themselves *disinterestedly*, and "scorning all mean views." Small must be the knowledge of human nature which ventures upon such declamation. There are men of the strictest integrity, who far surpass the generous and the ambitious in acts of justice, and yet are influenced by motives of gain. Are all men, who desire to be paid for the services they perform, "mean?"

Authors are not a peculiar race of men---able to live on the air, "glory crammed." Neither we suspect were those who reasoned with such loftiness able to live on the renown, either of framing or administering the laws with impartiality.

There is yet another class of men, the most numerous of all, who are not actuated by any *single* predominant motive, to whom neither glory, nor gain, are master passions; but who are influenced by mixed motives, and who would bestow greater exertions, if their social, as well as selfish feelings were equally gratified. Why should we not use all the means which justice permits, to excite men to the exertion of their best faculties?

He who can, by his works, obtain not only the prospect of future fame, but the substantial advantage of immediate recompense, with a provision for his family after his death, will labor with greater diligence than those who are incited only by the desire of posthumous renown.

The reward of glory may, indeed, stimulate the production of works of pure genius, and the more especially as the exercise of the imagination is so peculiarly delightful; but this cannot be the case, in an equal degree, in the department of philosophy. Great, persevering, and often painful labor, is necessary to the accomplishment of many works of science, and therefore every possible inducement should be added, instead of being diminished, that may tend to encourage the prosecution of such labors.

Besides, an author, who wished for no other reward than renown, might still exercise his liberality, and either present his labors gratuitously to the public, or bestow them on some meritorious object. He can do so now in favour of the Uni-

versities; and the glory of the bequest would be the greater because it would be more rare and generous.

CHAP. II.

ON THE INJUSTICE AND IMPOLICY OF THE LIMITATION.

In the previous part of the work we have considered the reasons and foundation on which the claim to an extension of copyright depends, and the unlimited protection to which it is entitled, under the general laws which apply to all kinds of *property*. It will not be necessary in this place to enter into an examination of the subtilties, by which it was attempted to exclude literary compositions from the guardianship of our courts of justice. In the *Introductory Dissertation*, and the sections on the nature and *definition of literary property*, and its claim to a perpetuity by the *common law*, which commence the Historical View, we have endeavoured to establish a foundation for the property in question, which we conceive to be consistent, equally with the laws of civilized communities in general, and with those of this country in particular.

Referring to those previous parts of the Treatise, for the preliminary consideration of the basis on which the right is founded, we shall proceed, in this place, to discuss the *policy*, as well as the *justice*, of extending to the Scholar and the Artist the provisions which guard the property of all other classes of the community.

It is one of the most indisputable principles of justice, that THE LAWS SHOULD BE EQUAL.

This golden rule is violated in the distinction created between the copyright of individual authors, and the copyrights held by the Crown and the Universities, in both of which instances it endures without limitation.

The several cases reported in the law-books, for violating patents for printing prerogative copies, after the expiration of the period limited by the statute, prove that a copyright was acknowledged by the common law: since if the king had not the right, he could not grant it to the patentee. It is clear that the king, by his prerogative, has no power to *restrain* printing, which is a trade and manufacture; or to grant an *exclusive* privilege of printing any book whatsoever, *except* as a subject might; by reason of the copyright being his property. It is now clearly settled, that the king is owner of such books or writings only, as he had the sole right originally to publish,

consisting of acts of parliament, orders of council, proclamations, English translations of the Bible, and the Common Prayer-Book. These are his *own* works, as he represents the state, and, according to the constitution, is head of the church.

There seems to be no principle on which the exclusive privilege thus established in favour of the Crown, should be denied to private authors. If there be any sufficient reason for appropriating the acts of state and the ordinances of the church, the same reason would extend to the case of all other copyright;---if it be thought necessary, in order to secure correct copies of the statutes and ordinances, that no one but the king's printer should be permitted to publish them; it is in a comparative degree important, that the author of a literary work should retain the superintendence of its publication; since it may otherwise be incorrectly printed, or he may be deprived of the power of amending or improving it---of correcting errors on the one hand, or extending the illustration of truths on the other.

So far, indeed, from there being any solid reason for the exercise of the prerogative, whilst the ordinary rights of property are denied to individuals, it is manifest that here there ought to be no copyright whatever, beyond the printing of such copies as are necessary for judicial proof, or other public purposes. For all other objects there ought to be no restraint, since it must be the interest, as it ought to be the duty of government, to diffuse a knowledge, as extensively as possible, of the regulations both of church and state; and there is a sufficient guarantee, that the unofficial copies of these acts of state will be adequately faithful, for any blunders in them would be soon detected, and the publication which came recommended by its accuracy, would be the most extensively circulated.

The other instance in which the right claimed by authors has been granted to others, whilst it was denied to them, is that of the *Universities* of England and Scotland, and the *Colleges* of Eton, Westminster, and Winchester, and that of Trinity-College, Dublin.

It is difficult to conjecture any reason for allowing to these public institutions a copyright in literary compositions, which does not, in a far stronger degree, belong to the individuals by whom this intellectual property was produced.

Without exhausting conjectures on the foundation of this privilege, we may resort to the Act of Parliament by which it is created, and where the basis of the claim is thus described:—

Authors, it is said, may give or bequeath the copies of books to

these respective Universities and Colleges, and may direct the profits to be applied for the advancement of learning; lest, therefore, such useful purposes should be frustrated, the sole printing is secured to them in *perpetuity*.

Now, it is manifest, that if the Universities, as *the legatees of authors*, are entitled to this extended protection, the authors themselves are still better entitled to it. Admitting that the Universities are in possession of no more than their just rights, it is evident that private individuals, not merely for their own sakes, but for the interests of science and literature, are, at least, *equally*, if not in a higher degree, entitled to legal protection.

The Universities, in their corporate capacity, can establish no pretensions on which the exemption can be justly founded. They are not, collectively, in advance of the literary and scientific world; nor have they accelerated the progress of modern improvement It is, indeed, often urged, that these institutions rather impede than assist the extension of science; that they follow, at no inconsiderable distance, rather than lead forward the human intellect to new fields of inquiry. Without discussing this invidious view of the subject, it may be assumed, without much fear of injustice, that the personages who compose these learned associations, have achieved nothing in their *official* character, which can justify the peculiar exemptions they possess. The distinguished writers who, in their *private and individual* capacity, have conferred honor by their works on the seats of learning to which they belonged, cannot but make common cause with their literary brethren.

It is worth observing, also, that the privilege of the Universities cannot be upheld on the ground of necessity;---they cannot plead that it is granted in commisseration for their *poverty*, for they are unquestionably better able to bear the wrong which the laws inflict on individuals, but which the Colleges possess such effectual power to prevent. Indeed, were there any foundation for such a pretension, it would be infinitely better for the sake of justice, and the example of an equal administration of its sacred principles, that they should receive a parliamentary grant, than that so flagrant an anomaly should be permitted to exist.

THE EVASION OF THE LAWS is always a great evil, for there is not only the immediate injury to justice of the specific violation; but a general weakening of the salutary reverence which is entertained for national institutions when founded on principles of reason and equity.

Now both the authors and the publishers to whom they

have assigned their works, have a strong feeling that the limitation of copyright to the period of twenty-eight years is inconsistent with the regulations of all other arts and professions, at variance with the commonest principles of free trade, and equally injurious to authors and publishers without any correspondent benefit to the public. It is natural, therefore, that every effort should be made to elude the consequences of an arbitary and irrational infringement of their own rights and of the property of their families—of a patrimony often earned at the expence of health, and of the abridgment of life. And whilst acting under such feelings, there are few, even of the coldest-hearted legislators, who would visit with much censure, the plan of ingenuity and contrivance which has been resorted to by the parties interested, in saving themselves, as much as possible, from injury or diminishing its magnitude.

The proprietor of the copyright prior to its expiration takes care to prepare a new edition *with notes*, and though the original work becomes common property, the notes are protected on the ground of their constituting an original composition. By a sort of combination also amongst the principal booksellers, these renewed editions "with notes," receive a preference over others. The interpretation which the judges have put on this mode of republication is exceedingly liberal, but if it be right that publishers should resort to these expedients to protect their property, the law should allow it to be done openly instead of surreptitiously: an honorable man must revolt against a system which subjects him to lose his property or to practice devices and evasions which out of respect to the laws of his country he must dislike. And although by these means the mischief is somewhat practically diminished, much of it unavoidably remains. The work may not really require any notes either of explanation or addition or they may be such as the humblest talents can supply. There are, it is true, some subjects which are undergoing continual change and the publications which treat of them require proportionate alterations. But if not so, the work is incumbered with useless comments, or the name of some eminent author is appended to a new edition which an ordinary writer might equally well supply.

Not only individual publishers would gain by the extension, but it would promote the interest of publishers in general, if the property in a work were vested perpetually in the author and his assigns. Suppose that the moment a valuable book were published, every one had a right to pirate it, the effect would be, that a general scramble would ensue to

reprint cheaper editions than the original. A great number of persons would be engaged in doing the same thing. The market would be over stocked. None would be sufficiently remunerated and all would be more or less injured. It would be analagous to permitting the land of a deceased person to be retained by any one who could by stratagem or force obtain posession. A riot would then succeed the death of every landed proprietor. Now something of the same kind must take place, though in a less degree, at the expiration of the statutory period, and although the evil is partially subdued by the evasions and combination before adverted to, still it cannot be generally avoided.

It has been urged by those who maintain the sufficieney of the present system, that the extension of the term would produce *no good* to the public. But the question ought to be, *what evil will it occasion?* For if there be no evil, there ought to be no restraint. It is happily clear that right and expediency are as inseparable in this as in all other cases, for by the extension of the term the public would receive superior and cheaper publications. Authors are at present discouraged from executing works of a standard nature because such works demand the labor of a life. It is evident that talent may be more profitably employed in the attention to works of temporary excitement. The fashion of a particular age or season is consulted instead of the general and enduring interest of the community. The question with an author who is about to select the sphere of his literary labor is not determined by any opinion of what will be beneficial to mankind at large, or ultimately ensure his own reputation, but what will sell the best in the literary market.

It is not easy to estimate the labor and expence of a work of superior utility and importance. It demands a degree of research and care which can scarcely be bestowed whilst the law continues in its present state. Besides the works which are costly in their embellishments, the scientific and literary labor which many of them demand, can only be encountered where there is no apprehension of restraint. Thus, in works of great historical scope—the investigation of ancient as well as modern manuscripts and records—of scarce documents, ill-digested and repulsive works—of conflicting evidence—all these demand not only great judgment and accuracy in the winnowing of large masses of materials, but superior skill in adopting the best arrangement, and selecting the most appropriate language and illustration—and without the devotion of much time and leisure, the

greatest talents cannot execute the work in a manner proportioned to its magnitude and importance.

Again, in works of a philosophic and scientific character—should they comprise subjects of striking originality: the invention of a new system—the task of experiment and induction may require a still wider range of exertion and longer continued perseverance, which it is vain to suppose will be often bestowed without superior recompense. It is not reasonable to expect that the public can render immediate justice to works of an entirely novel description. For whatever is at variance with established opinions and received theories is naturally liable either to neglect or opposition. Perhaps it is the safer course for the public that it should be so. There is less danger in adopting a system after it has been subjected to every kind of ordeal, than if it were favorably received upon its first hasty and insufficient investigation. But whilst the public enjoy this immunity, let no needless injustice be done to the sons of genius. If the reward of their splendid discoveries cannot be bestowed in the age they live in,—if the authors of new and ingenious systems cannot reasonably expect that justice will be done to their meritorious labors during the span of their own brief existence, let them at least possess the consolation of looking forward to that day, however distant, when posterity will make amends to their surviving family or to some future descendant.

The evil it is evident must thus fall the heaviest on the most useful authors, whom it should be the policy of the legislature in the highest degree to protect, encourage, and recompense. It has often been remarked, that the best and most original works make the slowest advances in general circulation. *Smith's Wealth of Nations* passed through two editions only in eight years. *Hume's History* fell dead-born from the press; and MILTON's immortal poem remained for many years in almost total obscurity.

It is a fact, proved by indisputable evidence before a Committee of the House of Commons, that many important works of an expensive nature have not been published owing to the hardships imposed by the law. A great part of that hardship is attributable to the heavy tax of the eleven presentation copies for the public libraries (which we shall presently examine) but much also of disadvantage arises, even as regards these costly publications, from the limitation of time, because the splendid engravings, which occasion the chief expence of many of these works are equally

doomed to common depredation after the end of twenty-eight years.

It must be recollected that, authors are generally dependent on circumstances of a very uncertain nature for the notice their productions receive from the public. A great name will often do much and so may a great subject. Reviewers also are able to accomplish not a little in favor of a new publication, yet criticism is not infallible nor always well intentioned. It may suit the taste or the interest of the critic to cry down the subject, or to affix the "branding iron," upon the author. Malice may purposely condemn and prejudice, or ignorance blunderingly censure.—Thus "the whole ear" of the reading public may be "abused."

It is obvious, that if the period were extended, a higher remuneration might be afforded for works of superior importance on account of the enduring nature of the property in them. The profit it is true might not be rapid but its unlimited continuance would generally in the result compensate for the advance of a larger amount of capital. We might illustrate this fact by reference to the nature of leasehold and freehold property. For all ordinary purposes, to the great bulk of mankind, long leasehold property is really as useful as freehold, and endures as long as the lives of any for whom they feel an interest, yet we may perceive that such is not the general feeling, for the price in the market is exceedingly different: men are content with about three per cent when it is ensured to them in perpetuity, but they expect seven or eight in the other case, though it may last out three generations.

The cheapness of a work would thus obviously be promoted by the just extension of the period of its protection, because the proprietor would not depend upon any sudden return of his capital, but would proportion his gain to the extent of its duration. As he would ultimately receive a better remuneration he could afford to diminish its present amount. The calculation is now made upon an immediate return: if that does not take place, the work is supposed to be condemned—no matter what may be its intrinsic merits, no further efforts are made to bring them before the notice of the public.—The legal period being so short, it is not deemed worth while to keep open the account, and it is closed as soon as possible.

It may be said, however, that this extension of copyright would not produce any very perceptible difference in the immediate price to the public of literary works. And

undoubtedly to effect a sufficient reduction, corresponding with the sale of books on the Continent, the tax in favour of the public libraries, the imposts upon paper, and the duty on advertisements should be duly moderated if not removed. It must, however, be apparent, that great good would be done by the extension of the copyright, and it would be an earnest of future improvements, that would give a great impulse to the best kind of literary undertakings.

SECOND PART.

OF THE LIBRARY TAX OF ELEVEN COPIES OF EVERY BOOK.

CHAP I.——THE GROUNDS OF THE LIBRARY CLAIM EXAMINED.

Having brought before the reader the state of the law with reference to the contracted period during which the rights of authors are protected, and animadverted upon the monstrous injustice of permitting the productions of intellectual labor to become the object of common plunder after twenty-eight years, whilst the fruits of ordinary industry were wisely secured in perpetuity; we now turn to the consideration of the next feature of oppression in these statutes "for the encouragement of learning." After curtailing the duration of the right of literary property, from a perpetuity to the brief term of twenty-eight years (in return for which restraint, it might have been anticipated that some splendid boon was intended to be conferred) the Acts of Parliament proceed to impose *a tax of eleven copies* on every publication, whether the most rare and expensive, or the cheapest and most insignificant.

Although the statutes impose a penalty of three pence per sheet for pirating copyright, the old mode of redress by an action at law for damages, or an injunction and an account in equity has always been and is still preferred. So that, in truth, the statute has practically left the remedy just where it was, and in consideration of the three pence per sheet (which is rarely if ever sued for) cut down the perpetuity of right to the short span of twenty-eight years; and in return for these services to literature, this protection of learned men and their families, (which closely resembles the protection afforded by the vulture to the lambs)—the legislature imposed a new tax of six copies, and revived an old one of three others which had been levied in the time of Charles II. but had expired soon after the revolution. Thus we perceive, that the mild literary imposts of the Stuarts were not deemed sufficient in that æra which has somewhere been denominated the Augustine Age of English Literature!

The two remaining copies, which complete this measure of "encouragement," were imposed so late as the year 1802. The purpose for which these last copies are professedly de-

signed, might be considered, at first sight, as mitigating, in some degree, the quantum of injustice, for they are imposed *for the benefit of Ireland*—constituting, it may be supposed, some little compensation for the evils to which that ill-fated province was subjected, and realizing part of the high expectations which were so flatteringly held out to its patriotic feelings, that the union of the two parliaments would be followed by the happiest effects.

Thus, for the paltry consideration of these miserable copies, wrung from the hard pittance of the ingenious men of this country; the gifted sons of Ireland, who have so long shed a lustre upon the literature of the empire, are in their turn mulct,—not in *two* copies only, but in *eleven!* Such are the notions of equal laws and equal justice, which have hitherto prevailed on this important subject.

In treating of the origin of this tax, we examined the *legal* pretensions on which it was attempted to be maintained(1). It was formerly contended that the art of printing had been introduced at the expense of the king, and therefore that he was entitled to impose such terms as he pleased, in granting a license for its exercise. The agreement was also adduced by which the Stationers' Company engaged to furnish a copy of every book to the University Library at Oxford. These pretensions having been exploded, we have now to examine the *general and more popular grounds*, on which the advocates of the Universities still contend for the continuance of the tax.

I. That *the law is beneficial to the Universities* need not be disputed. These gratuitous contributions to their several libraries save their funds. But is the saving necessary or just? Have they not sufficient means to purchase every useful publication? Do they really make use of the current literature of the age? These are questions which cannot be answered, except in the negative. It cannot be requisite that every work that issues from the fertility of the press should be deposited in all the libraries. The works which are esteemed in these ancient colleges are those which have long maintained their rank as standard productions. The great bulk of modern publications are not introduced, and cannot, perhaps, with propriety be introduced into the course of study pursued at the Universities. A large part of the system of education is confined to ancient authors, and to subjects which do not admit of modern improvement. Indeed, the general plan of instruction is opposed to whatever is novel and speculative.

(1) Pages 44---49.

Nothing is adopted but that which has been long tried and established, and we cannot conceive, therefore, why the heads of colleges require those valuable but modern works, which they do not permit to be used.

Even were it necessary to the welfare of the Universities, that each should possess a copy of every publication, it is iniquitous to exact them at the expense of individual authors or proprietors. The colleges of which they are composed are in general richly endowed, and if each college could not afford to possess itself of the modern publications, their united funds would certainly be amply sufficient. It may be true, that some of the Scottish colleges have but little surplus wealth to dispose of in the purchase of every kind of publication; but whatever may be thought to the contrary, we are persuaded that the intelligent people of Scotland, in general, possess too much just pride to plead the *poverty* of their Universities as a ground for unjust exactions.

II. It is said that *the Universities cannot purchase the splendid editions* of great and expensive works, and yet they are works of which they stand in the greatest need: *they give a University dignity and respectability.* And in some departments of liberal education, accurate drawings and engravings are essentially requisite.

Now, however agreeable to the eye are splendid editions, and however suited to the taste of the affluent, we exceedingly question their utility, not only to the student, but to the professed author. Fine plates and bindings are adapted to the literary idler and looker-on, but can scarcely stimulate any one to intellectual exertion. These splendid trappings are for holidays, and not for days of learned labor. They tend, like great luxuries in general, more to enervate than invigorate.

That the welfare of a college is at all dependent on splendid editions we, therefore, altogether deny. If they should be rich enough to purchase these luxuries there can be no objection, for though not necessary to the real student and man of letters, they are no doubt agreeable subjects for literary relaxation.

The "respectability" of the establishment surely cannot be promoted by robbing an author of any portion of his fair-earned reward, and drawing down upon itself the odium of the whole republic of letters. And its "dignity" can scarcely be increased by any other means than the opportunity it affords to attain sound, comprehensive, and accurate knowledge, in the highest departments of philosophy and literature. It is beneath its real dignity to owe any of its attrac-

tions to the splendid decoration of its library, in which, indeed, there should be as little as possible addressed to the external sense, and every thing adapted to excite the intellect.

It is true that the student may be assisted in his pursuits by occasional engravings, but those which are useful are of a very different class to the splendid drawings which render many works so costly. Even in architecture, we apprehend it is not necessary that the plates for purposes of study, should be very costly, and besides, it is not in a college that the education of an architect can be completed. Antiquarian works are of course expensive, but we are not aware that the Universities profess to induct their pupils in the knowledge of antiquities, the study of which may safely be left to the Antiquarian Society. So also botany and zoology may be effectually studied without the aid of magnificent plates, which, indeed, are rather calculated to excite a taste for drawing, and to encourage a love of show and splendour, than to induce philosophical and studious habits. We can see no advantage to public education in attracting the pupil to quit the hard study, which can alone render him eminent in society, for the purpose of gratifying his taste in examining splendid folios, and admiring the productions of the arts of drawing and engraving.

III. But the law is said to be beneficial to general literature, by *affording to men of literary talents and industry the means of information*, and enabling them to accomplish works of the highest merit and utility.

This is too barefaced an excuse for injustice: it is robbing Peter, not to *pay* Paul, but to enable him dishonestly to live at the expense of Peter. The men of "literary talents and industry," who *have* accomplished works of merit and ability, are to be deprived of a large part of their profit, where any exists, in order that others may avail themselves of the results of their industry gratuitously. Surely, the fellows of these learned Universities, who favor the world with their collegiate lucubrations, and who set their own price upon them, should stand on the same footing as other literary men, and purchase the materials which they require in the course of their labors. It may be very convenient, but it cannot be just, that by the aid of these Universities a writer should possess himself of the property of his predecessors, for which no remuneration whatever has been made. And after all, there is not the plea of *necessity* in favor of the injustice; for it is the common practice of an author who is

engaged on a work, in the preparation of which he has occasion to refer to a variety of books, to obtain them from his publisher; and it is part of the understanding between them, that all the books which are necessary shall be lent him. Of course there is, of all others, the least difficulty in supplying the modern publications. And we presume, no one who is tolerably acquainted with the history and circumstances of literature, can believe that it has been, or is likely to be, benefited or improved by the doctrine, for the first time laid down in 1812, that the Universities are entitled to copies of every publication. We may venture to say, that if not the *best* authors of the present age, at least, as good as any others, are unconnected with the Universities, and derive no advantage whatever from the accumulations which have been made in their libraries, either since 1812, when *every* book has been supplied, or prior to that time, when the registered books only were delivered. Indeed, it is absurd to suppose that the intellect of the country is to be advanced by such paltry means, and the true friends of academical learning are no doubt as much ashamed of the folly of such an argument, as of the dishonesty of its principle.

Supposing, however, all these considerations set aside, let us inquire what is really the use of the single copy given to any one University? In general, the books are of no use whatever to any one in any of the colleges. Of the far greater portion, not a single page is ever read. It either is utterly useless, or is so considered for all collegiate purposes. Indeed, how can it be otherwise, when the libraries indiscriminately demand their copies of every publication---of all the trash, folly, and obscenity, which find their way out of the press.

But, suppose the work to be really valuable, either for its profound philosophy or learning, or for the popularity of the subject and the talent it indicates. Then every one becomes desirous to read it. Thousands of students apply for it; and what is the consequence? As but few can possibly obtain it, the work is either purchased or borrowed from the common circulating libraries, and the copy in each of the eleven libraries has precisely the effect of preventing purchases from the author, for the sole benefit of a few individuals, who can either do without the book, or afford to pay for it.

IV. Another benefit of the law, however, is said to consist in *preserving the books from the danger of loss*, some of which are valuable, and others will to future times prove curious.

The really valuable works there is no probability will ever be destroyed. The art of printing has disposed of all reasonable apprehension of that contingency, and we think it bad morality, on the coldest application of the doctrine of expediency, to do an act of positive injustice, for the sake of preserving something which may become *curious*. Certainly, many a production, intrinsically worthless, may, from its extreme rarity or antiquity, obtain an artificial value in the estimation of those who are pleased with such things; but it is not politic, (to say nothing of honesty,) to injure and discourage the writers of the present age, in order that a biblical antiquary may, some centuries hence, feed his idle vanity with the possession of a specimen of unique absurdity!

To meet, however, the object of preserving a copy of every kind of publication, whether the offspring of the talented or the foolish, the moral or the vicious, it would be sufficient to deposit a single copy in the British Museum as the *National Library*. To this, we are sure, no author or publisher would offer an objection, and this copy, so deposited, would serve the purpose, and render unnecessary the extra copy which every printer, by the 39th Geo. III. c. 79, sec. 27, 29, is obliged to reserve of every work he prints.

CHAP. II.

OF THE EFFECT OF THE TAX ON LITERATURE.

After having thus considered the nature of the claim of these favoured libraries, and the grounds on which it rests, we proceed to notice the evils which must necessarily attend its continuance.

The law has the effect of preventing the publication, both of valuable and expensive works; of those which require in their composition great learning and talent, and those which demand expensive illustrations and embellishments. The costliness of a work necessarily diminishes the number of its purchasers, and consequently the copies published are proportionally of a limited amount. It is well known, also, that the scarcity of a book increases its value in the literary market, and it is consequently material that as accurate a calculation as possible should be made of the expected demand. The skill and capital which are embarked in these expensive undertakings, cannot be rewarded without placing a high price upon each copy, and the exaction of eleven

copies out of fifty or 100, generally absorbs the whole profit. In some instances, the eleven copies amount to a tax of upwards of 40 per cent.; in others of 20; and in a very large proportion of cases, to 10 per cent.

Even in the most ordinary publications, the tax is sufficiently oppressive. The proprietor of the work, whether author or publisher, of course, forms the best estimate in his power of the probable extent of the sale. The custom of the printing-trade, it is well known, is to make the charge on each 250 copies, and the loss on eleven copies is exactly the price for which they would sell, or if that number of extra copies were printed, the loss would be equal to the printing of 250 copies, exclusive of the expence of paper. It is futile to say, that the printer might make his charge in a different manner —the custom of the trade has been long established, and we are not aware that the printer's remuneration is higher than it ought to be, or that it can possibly be reduced. On the contrary, we understand that journeymen taylors receive higher wages than the compositors in a printing office.

We have heard it argued, that where the work is popular and the sale extensive, the exaction becomes a mere trifle and is scarcely perceptible. Further, that when the work does not sell, the eleven copies may as well be placed in the public libraries as in the lumber-room of the publisher.

In considering this point, it must be borne in mind, that the majority of publications are not sufficiently successful to pay their expence, and although the publisher might afford to pay the tax on a work which met with great good fortune, yet it is only by these occasionally successful speculations that he is enabled to bear the frequent losses which he must necessarily sustain by other publications. This tax like every other, should be imposed according to general principles and in conformity with the rights and interests of the community at large. It is the language of heartless despotism to tell an author that if his book is not sold he may as well place it in a library as a lumber-room. Would this cruel mockery be endured by other classes of the community? If a man has more corn than he can sell, may the surplus be seized? Is the manufacturer liable to this sort of confiscating process when he cannot find a market for his wares? Can the land of the lordly proprietor be taken possession of when no profitable tenant can be found? Many of our monied men have larger incomes than they think proper to consume, and more capital than they can usefully employ—may we lay

hands upon a certain proportion of the surplus? We suppose not—yet wherefore should the unsold productions of an author be subjected to a different rule? Though not saleable now, they may sell at some future time, and if not at the price demanded at a lower one.—At all events they will fetch their weight as waste paper.

It may be observed also, that if the work is to be estimated as mere lumber, it cannot be valuable to the Universities, unless indeed (as we have heard it hinted) those patrons and promoters of learning increase their sufficiently ample revenues by selling the books which they do not think proper to dignify with a place on their shelves. We may classify works into good and bad, doubtful and indifferent. Those which are really valuable are not exceedingly numerous, and the Universities ought to pay for them. They used to do so, prior to the year 1812, when it was for the first time decided that they were entitled to a copy of every publication, whether entered at Stationers' Hall or not. Of works which are worthless, these great preceptors of the rising generation, surely need no copies; and such as are of a doubtful or indifferent character they ought not to require. Life is short—the season of youth is brief, and should not be wasted in the perusal of idle or questionable productions. Looking at the ample endowments of many, if not all, of the Colleges which constitute the several Universities, one should think that their funds could not be better employed than in bestowing part of them in the encouragement of valuable works, upon the publication of which, indeed, depends that great object of intellectual improvement, for the furtherance of which, the Colleges themselves were established.

Amongst other arguments, or rather pretences, in support of the policy, if not the justice, of the law, it has been strangely contended that the sale of valuable publications is favored by an opportunity being afforded by seeing such works in the public libraries, and thus awakening a relish for them! Nothing can exceed the puerility, untruthfulness, or misapprehension of such a suggestion. We take it, that, if the knowledge of the public with respect to new publications, were restricted to such information as they could obtain from their deposit in the libraries named in the Act of Parliament, very few of them would find purchasers. Indeed, a single advertisement or notice in a periodical work of extensive circulation, will evidently effect more in behalf of the work, than if it were bestowed upon every College in the Empire. We may be sure there is no lack of inclination to purchase able and useful publications, and if the supply

could be made at a cheap rate, it is scarcely possible to estimate the extent of the demand. It is perfectly childish to talk of the excitement produced by seeing books in a public library, when compared with the effect of their exhibition in the shops of the booksellers. In London there is one copy deposited in the British Museum, and another, for the benefit of the clergy in Sion College: compare the number of persons who look at books of any kind in those two repositories, with those who are attracted by their exhibition in other ways, and we shall be satisfied of the fallacy of the notion. The fact is, that the British Museum (to which no one would object that a copy should be presented) is resorted to generally, not for the purpose of reading new publications, but to consult those which are old and scarce, and it is to the periodical press, and to the activity of publishers, that an author can alone look for "awaking a relish" for any production that can now be offered to the public.

Another supposed reason in excuse of the exaction, is, that it cannot affect authors or proprietors, because the amount either is, or may be, charged to the public. But in this hypothesis it is entirely forgotten, that literary works do not form a necessary of life, and especially that the higher class of them, which need the greatest encouragement, are required by comparatively a small part only of the community. The tax on the means of subsistence must be paid by the consumer, although, even in that instance, the quantity consumed varies according to the price, and when the tax is high, the tradesman, if he throws the whole amount on the consumer, necessarily suffers by the diminution of his custom. Literary works are of the class of luxuries and the smaller the price, the more extensive the sale. There is a certain quantum of money expended in articles of this class —a taste for literature is fashionable—it excites admiration and gratifies vanity, whilst it also exercises far higher and better qualities.—If the tax upon paper and advertisements, as well as this library imposition, were removed or reduced, and the period of copyright extended, so that books might be published and made known, as they should be, for two-thirds of the present expence, the sale of them would then increase, not only in the proportion of that third, which is now consumed in preliminary expenditure, but in a much greater degree; for not only the same sum would naturally be expended, which has hitherto been applied in the purchase of literary works, and therefore the sale increased upwards of 30 per. cent; but the reduced price would as naturally

nduce a still greater number to become purchasers, who are now deterred by its present heavy amount.

It has been contended, that the University and other libraries cannot purchase expensive books, and therefore the tax does not injure the sale. Whatever may be the case with respect to some of the minor colleges, it is certainly not so in the case of others. Several of them, prior to the new construction of the statute in 1812, were in the habit of subscribing for copies of costly publications: such as Dibden's Typographical Antiquities, Nichols's Leicestershire, &c. These instances of encouragement, formerly numerous, obviously tended to increase the number of such undertakings, but the present law has clearly an opposite tendency. The names of eminent libraries in the list of subscribers, formed a strong recommendation, and probably contributed to its extension No such inducement can now exist, and in addition to which there is the loss of profit on the copies which they were accustomed to take.

It is *a direct tax upon industry*. Nothing can be more unprincipled than this anomalous taxation of literary property. No other class than the literary was ever proposed to be so taxed. There is, indeed, no instance in which any art, trade, or profession, was ever subjected to such an imposition.

It is also an odious *restraint upon the press*. We are told by the highest authorities that they anxiously desire to promote the just liberty of the press, but then their "just liberty" has a peculiar definition, and whatever is unpalatable is branded with the name of licentiousness; but apart from these differences of opinion on the limits to be set to free discussion, we conceive that the present state of the law of copyright, and the library impost, is a direct invasion of that great palladium of our rights,—a FREE PRESS; for it cannot be said to be free whilst its publications are subjected to such grievous restraints and exactions, from which other productions are wholly exempt. It is, in effect, instead of rendering it free, *tolerating only* its existence at a certain price, and under certain odious and oppressive restraints.

It is curious in the course of the discussions on this subject, to observe the expedients to which the opponents of justice have necessarily been driven. They reason in a circle of injustice and impolicy. The inventors of novel principles in machinery, or improvements and new applications of old ones, possess an exclusive property for a short term only. Then it is said, that literary works ought not to be better protected than those which are scientific. This we may grant, but we say they are *neither* of them sufficiently protected. The

injustice inflicted upon the one class is not mitigated by its imposition on the other. In taking the account, however, of the evils endured, both by authors and scientific inventors, it must be stated that the latter are not compellable to present eleven copies or specimens of their mechanical inventions or improvements. To make the cases precisely correspondent, in the measure of injustice, the man of scientific genius should present the Royal Society, the Society of Arts, and other institutions in the metropolis or the provinces, with eleven specimens of every instrument or engine, however expensive. And we ask what would be thought by the British public of the modesty of that man, who should venture to propose an enactment, to the effect that eleven of all future implements and machinery, from a penknife to a steam-engine, should be deposited in Somerset-House? We presume he would be set down as a curious specimen of the knave and madman, who ought neither to be trusted, nor left at large.

It would be too much to say that no invention, nor any improvement, will take place, if these restrictions and acts of injustice are continued; for we well know that genius is irrepressible, and will force its triumphant way, in spite of and amidst every obstacle; yet we also know that the liberal feelings of the public are decidedly in favour of affording ample justice to men of learning, ingenuity, and talent; and it is not enough to say, that literary men still devote their days and nights to intellectual labor, notwithstanding the disadvantages by which they are surrounded. We feel assured that the laws must be altered, whenever their impolicy and injusticy are sufficiently made known by those who are without the walls of parliament, because at last it must be taken up by those who are within them, if they wish to promote and maintain that influence and character, which ought to belong to the members of an enlightened senate, the representatives of a free and intelligent people.

The law in its present state is a disgrace to the country. It is an anomaly in our legislative system. Let men of letters be placed, at least, on equal terms with the commonest artizan. We think the tax on the "raw material" of paper might be diminished; but if that cannot be done, surely the manufactured article of books should be free from impost. Every principle of political economy demands it, and the more especially, when it is recollected that the tax is not imposed for the benefit of the state or the community, but in favour only of chartered bodies, whose wealth and immunities are already sufficiently abundant.

If our literature be equal to that of the continental states,

let us imitate their example: let us cease to injure and really encourage those to whom we are indebted for our eminence. If it be inferior, let us lose no time in removing every impediment from its way, and introducing every means that can facilitate its improvement, and promote its rise: let not Great Britain be the country in which literary property is burthened more oppressively, in a six-fold degree, than any other nation of the civilized world; rather let her abolish the imposition altogether, and surpass even the republics of the new world, as she undoubtedly might the monarchies of the old.

NOTES,

COMPRISING

AUTHORITIES

REGARDING

THE LIMITATION OF COPYRIGHT,

AND

THE LIBRARY TAX.

ARRANGED CHRONOLOGICALLY.

Notes.

In support of the views which have been taken of the injustice and impolicy of the laws, we deem it material to introduce some statements and reasonings taken from different sources, all of which importantly tend to confirm the positions in the text.

In making the selections for this purpose, we shall arrange them, in conformity with the general plan of the work, 1st. into the authorities which relate to the *extension of the term* of copyright, and 2dly, those on the subject of the *Library Tax*.

1. *ON EXTENDING THE DURATION OF COPYRIGHT.*

Milton, 1644.

Among the glosses which were used to colour this ordinance against unlicensed printing, and make it pass, was *the just retaining of each man his several copy; which, God forbid, should be gainsaid.*

For that part which *preserves justly every man's copy to himselfe*, or provides for the poor, I touch not, only wish they be not made pretences to abuse and persecute honest and painfull men, who offend not in either of these particulars.

Carte, 1735.

It cannot be amiss to obviate an objection founded on a mistaken notion, as if this privilege for old copies concerned only the booksellers; whereas, in fact, many authors are greatly concerned in it. Mr. Anstis and Mr. Browne Willis have printed their very laborious

collections at their own expense, and still retain the property thereof. It would be hard to let these gentlemen undergo the mortification of seeing their works (like those of Sir W. Temple) pirated and printed in the same letter and paper as Tom Thumb, besides the loss they would suffer through the hinderance given to the sale of their books, great numbers of which still lie upon their hands, and will do so for ever if they may be printed in weekly parcels, an evil which can never be effectually prevented but by securing the property of old copies as well as new, thereby depriving pirates at once of all their materials. The property of many books still remains in the heirs of the authors. Sir W. Dugdale left by his will the copy of the *Baronage of England*, and the right of reprinting the same (the best and most useful of all his works, and which points out more records serviceable to gentlemen, and relating to their estates, than all the books yet published in England) to his grandson Mr. W. Dugdale, whose son, Mr. John Dugdale, hath, in consideration of a sum of money, by a legal conveyance, assigned the same to me. In order to a new edition and continuation of that work, which Sir W. before his death had carried on to 1691, I have made various searches, and put myself to considerable expense, and particularly I have now by me receipts for sixty guineas, which I have paid for transcripts of Pipe Rolls relating to antient barons from King Stephen to Edward II. and as there are many mistakes in the marginal references, &c. in that work, they must be all examined anew with the records from which they were taken, the labour and expense whereof must be immense, and unfit for any body to undergo without a full security for his property in that old copy. It doth not lessen the unhappiness of authors to be wounded through the sides of booksellers, or out of prejudice to this last set of men (who, after all, have fairly purchased what right they have in such copies, and lose by some what they gained by others;) but it is certain that more authors are concerned in this privilege to old copies than is generally imagined, and were there fewer, they might still hope for such a privilege, if it be reasonable, in this case, to follow the Roman maxim in another—*that it is better to save one citizen, than destroy an hundred enemies.*

Bishop Warburton, 1747.(1)

It seemeth to me an odd circumstance, that, amidst the justest and safest establishment of *property*, which the best form of Government is capable of procuring, there should yet be one species of it belonging to an order of men, who have been generally esteemed the greatest ornament, and certainly are not the least support of civil policy, to which little or no regard hath been hitherto paid. I mean the *right of property in authors* to their works. And surely, if there

(1) In a collection of law tracts in the British Museum, there is *A Letter from an Author to a Member of Parliament, concerning Literary Property*, on which the following memorandum is made in the hand-writing of Mr. Hargrave:—"This pamphlet is "said to have been written by Dr. Warburton, now Bishop of Gloucester.—F.H."

be degrees of *right*, that of authors seemeth to have the advantage over most others; their property being in the truest sense their *own*, as acquired by a long and painful exercise of that very faculty which denominateth us *men*. And if there be degrees of *security* for its enjoyment, here again they appear to have the fairest claim, as *fortune* hath long been in a confederacy with *ignorance*, to stop up their way, to every other kind of acquisition.

History, indeed, informeth us, that there was a time, when men in public stations thought it the duty of their office to encourage letters; and when those rewards, which the wisdom of the legislature had established for the learned in that profession deemed more immediately useful to society, were carefully distributed amongst the most deserving. While this system lasted, authors had the less occasion to be anxious about literary property, which was, perhaps, the reason why the settlement of it was so long neglected, that at length it became a question, whether they had any property at all.

But this fond regard to learning being only an indulgence to its infant age; a favor, which in these happy times of its maturity many reasons of state have induced the public wisdom to withdraw; *letters* are now left like *virtue*, to be their own reward. We may surely then be permitted to expect that so slender a pittance should at least be well secured from rapine and depredation.

The great temptation to invade this property is while the demand for it is great and frequent, which is generally on the first publication of a book, and some few years afterwards.---While this demand continues, the proprietor hath need of all additional sanctions to oppose to the force of the temptation. But when, in course of years, the demand abates, and with it the temptation, the common legal security of natural rights is then sufficient to keep offenders in order.

Sir THOMAS CLARKE, Master of the Rolls, 1761.

It is not necessary to determine, whether authors had a property in their works before the statute of Queen Anne. *If they had not, it was a reproach to the law.*

Lord MANSFIELD, Mr. Justice BLACKSTONE, Mr. Justice WILLES, Mr. Justice ASTON, &c., 1769.

In the commencement of the Historical View(1), we have presented an outline of the luminous and powerful arguments by which these distinguished personages adjudged, in accordance with the principle of the common law—founded on reason and justice, experience and moral fitness—that the authors of literary compositions should have the exclusive right of publication in all time to come. We refer, therefore, to those parts of the work for the statement of the grounds on which that conclusion was established.

(1) Section I. and II. page 1 to 10.

The authorities thus referred to, are of the highest legal eminence. It may be important, however, on a question involving the interests of literature, as well as the principles of law, not to depend on professional authority alone, but to consult other writers who have investigated the nature and consequences of the present system. We shall therefore, in addition to some further legal opinions, avail ourselves of the learning and research displayed in various works of eminence; and our selections will consist, either of the lucid detail of essential facts, or the eloquent expression of important opinions.

Lord Monboddo, 1774.

That every author has a property in his own manuscript has not been denied; and it has been admitted, that in consequence of this property, he may, as the law now stands, print it if he pleases, and so far reap the fruits of his property. Let us then suppose that the author, instead of multiplying copies by the press, makes several in writing, and that he gives the use of one of these copies to a friend. This happened in the case of Lord Clarendon's History, and it was there adjudged, that the person who got the use of the copy had not a right to print it, though it did not appear that when he got it, he was laid under any restraint or limitation as to the use of it. It is true indeed, that the person in that case got the use of the MS. for nothing. But would it have altered the case if Lord Clarendon's heir in consideration of the expence or trouble, of transcribing the MS. had made him pay something for the use of it? Or suppose, that instead of transcribing it he had taken the more expeditious way of taking copies of it by the press? It appears, therefore, that by giving the use either of MS. or book, for hire or without hire, I do not give the liberty of printing or reprinting it, even where no such condition was mentioned.

I hold it to be part of the contract of emption, when a book is sold that it shall not be multiplied. In the case of a printed book, it is not only understood that the purchaser shall not reprint it, but it is expressed. For the title page bears that it is *printed* either *for* the author, or for some bookseller to whom he has assigned the copy, the meaning of which cannot be, that the author or the bookseller has a right to the copies already printed (for as they are in his possession such advertisement is altogether unnecessary) but to intimate that he has the sole right of printing: so that the selling a book with such a title is in effect covenanting that the purchaser shall not reprint it.

Mr. Dunning, 1774.

The statute of Anne, which professed to encourage learned men, was thus far realized, that so soon as protection to copyright was permanently afforded to the Courts of Justice, the price for its transfer increased. The supposed *additional security* given by the act, imme-

diately enhanced the value of copyright. After the repeated injunctions which were granted in Chancery, it seems that payments were made for copyright of an amount previously unparalleled. The instances of the sums paid for the historical works of *Hume* and *Robertson* are a sufficient proof of the important effects which follow the due protection of this kind of property.

The decision which took place in the Court of King's Bench, in the year 1769, produced a still more remarkable effect on the interests of authors. The price paid for *Dr. Hawkesworth's Voyages*, was still larger than in the former instances, and it is evident from the comcomparative superiority of the historical works referred to, that the increase of remuneration was occasioned by the better understood nature of the property(1).

We must consider the times which we examine, and the nature of the property in question. In ages wherein civility had made but small progress it would be absurd to look for litigations of a property so little valued and so seldom disputed. The want of precedents in such a case proves nothing. There are many unquestionable common law rights for which no precedent can be found so far back as Richard II. The nature of the property shews at first sight, that it would be in vain to look back for decisions in its favor, even supposing that from other circumstances the existence of it was unquestionable.

The Solicitor General WEDDERBURN, 1774.

Adverting to the application of the printers in *Prynne's* time to suppress the patents for printing the bible, he says, "that celebrated, lawyer declared that the most solid objection against the printers was the *inherent common law-right* of an author to multiply copies. This he observes, is one strong proof, that in the worst of times the *jus naturale* respecting literary property was not forgot. He adds, licences in general prove, not that the common-law right did not exist, but were the universal fetters of the press, at the times in which authors were obliged to obtain them.

Authors, both from principles of natural justice and the interest of society, have the best right to the profits, accruing from a publication of their own ideas, and it is absurd to imagine, that either a sale, a loan, or a gift of a book, carries with it an implied right of multiplying copies: so much paper and print is sold, lent, or given, and an unlimited perusal is warranted from such sale, loan, or gift; but it cannot be conceived that when five shillings are paid for a book, the seller means to transfer a right of gaining one hundred pounds: very man must feel the contrary, and confess the absurdity of such an argument.

(1) We have presented the substance of this part of Mr. Dunning's speech in the case of Donaldson v. Becket. It is a sufficient answer to the assertion that booksellers alone would be benefited by an extension of the term. It would be equally advantageous to authors, and indeed it is manifest that nothing but justice can ever be generally beneficial to any class of persons.

Mr. Hargrave, 1774.

On the practicability of ascertaining the right of literary property.

I might urge that facts are conceded sufficient to render the discussion of this point wholly unnecessary; that it has been the practice to appropriate the right of printing books in all countries, ever since the invention of printing; that it subsists in some form in every part of Europe; that in foreign countries it is enjoyed under grants of privilege from the sovereign; that in our own country it is admitted to be legally exercised in perpetuity by the crown and its grantees over particular books; and even the legislature has protected such a right over books in general for a term of years, and has repeatedly called it a property, and those in whom it is vested proprietors. These facts, however inconsistent they may seem, and really are with the argument against the practicability of asserting the claim of literary property cannot be denied; but this is not the proper place for urging them. I shall therefore for the present wave the authority of examples, and shall reason wholly from the nature of the subject in which the property is claimed.

The subject of the property is a written composition; and that one written composition may be distinguished from another is a truth too evident to be much argued upon. Every man has a mode of combining and expressing his ideas peculiar to himself. The same doctrines, the same opinions never came from two persons, or even from the same person at different times, cloathed wholly in the same language. A strong resemblance of style, of sentiment, of plan and disposition, will frequently be found; but there is such an infinite variety in the modes of thinking and writing, as well in the extent and connection of ideas, as in the use and arrangement of words, that a literary work really original, like the human face, will always have some singularities, some lines, some features, to characterize it, and to fix and establish its identity: and to assert the contrary with respect to either, would be justly deemed equally opposite to reason and universal experience. Besides, though it should be allowable to suppose that there may be cases, in which, on a comparison of two literary productions, no such distinction could be made between them, as in a competition for originality to decide whether both were really original or which was the original, and which the copy; still the observation of the possibility of distinguishing in all other instances, and the arrangement in its application to them would still have the same force.

Whether publication destroys an Author's property.

It is asked, how an author, after publishing his work can confine it to himself, and exclude the world from participating of the sentiments it contains? This objection depends on this supposition, that the exclusive right claimed from an author is to the ideas and knowledge communicated in a litterary composition. An attempt to appropriate

to the author and his assigns, the perpetual use of the ideas contained in a written composition, might well be deemed so absurd and impracticable, as to deserve to be treated in a Court of Justice with equal contempt and indignation; and it would be a disgrace to argue in favor of such a claim. But the claim of literary property is not of this ridiculous and unreasonable kind; and to represent it as such, however it may serve the purposes of declamation, or of wit and humour, is a fallacy too gross to be successfully disguised. What the author claims, is merely to have the sole right of printiug his own own works. As to the ideas conveyed, every author, when he publishes necessarily gives the full use of them to the world at large. To communicate and sell knowledge to the public, and at the same time to stipulate that none but the author or his bookseller shall make use of it, is an idea, which avarice herself has not yet suggested. But imputing this absurdity to the claim of literary property, is mere imagination; and so must be deemed, until it can be demonstrated that the printing a book cannot be appropriated without, at the same time appropriating the use of the knowledge contained in it; or in other words, that the use of the ideas communicated by an author cannot be common to all, unless the right of printing his works be also common. If the impossibility of proving such a proposition be not self-evident, I am sure, that there is not any argument I am furnished with, which would avail to evince the contrary.

On the expediency of confining the right of printing particular books to certain persons.

It is apprehended by many, that if there were not any such thing as property in the printing of books, the art of printing would be more beneficial to the public in general, as well as to those who practice the art, or are connected with it in particular. But the truth is, that the opinion, however popular it may be, is without the least foundation. How would making the right of printing every book common, be advantageous to those concerned in printing or manufacturing books, or in bookselling? Every impression of a work is attended with such great expences, that nothing less than securing the sale of a large number of copies within a certain time can bring back the money expended with a reasonable allowance for interest or profit. But is this to be effected, if immediately after the impression of a book by one man, all others are to be left at liberty to make and bend impressions of the same work? A second, by printing with an inferior type, on an inferior paper, is enabled to undersell the printer of the first impression, and defeats him of the benefit of it, either by preventing the sale of it within due time, or perhaps by totally stopping it. The second printer is exposed to the same kind of hostility; and a third person, by printing in a manner still worse, still more inferior, ruins the second; a fourth, the third; and so on it would be in progression, till experience of the disadvantages of a rivalship so general would convince all concerned, mediately or immediately, in the trade of printing, that it must be ruinous to carry it on, without an appropriation of copies to secure a reasonable profit on the sale of each impression.

Having thus explained the disadvantages, which would accrue to those concerned in printing, if copies were common, I will now ask, how making them so could produce the least benefit to the public in in general? Would lessening, or rather annihilating the profits of printing, tend to encourage persons to be adventurers in the trade of printing? Would it make books cheaper? So long indeed as the least legal idea of property in copies remains, most persons will probably hold it both dishonorable and unsafe to pirate editions; and so long only can the few, who now distinguish themselves by trafficking in that way, afford to undersell the real proprietors. Such persons at present enjoy all the fruits of a concurrent property without paying any price of it; and therefore it is not to be wondered at, that they should undersell those who have paid a full and valuable consideration for the purchase of their copies. But if the right of printing books should once be declared common by a judicial opinion, the advantage which enables particular persons to undersell those who claim the property, would cease; pirating would then become general; and perhaps those who now practice it would themselves be sacrificers to their own success in the cause they support. Whilst the question of literary property is in a suspended state, they have the harvest to themselves; but if they should gain their cause, like other Samsons, they would be crushed by the fall of the building they are pulling down.

On the supposed resemblance between the Inventor of a machine and the Author of a Book.

In my opinion, the principal distinction is, that in one case the claim really is to an appropriation of ideas; but in the other, the claim leaves the use of the ideas common to the whole world.

Lord Lyttleton, 1774.

I own I have no acquaintance with the quirks and quibbles of the law. I speak to the matter merely as a question of Equity; I cannot enter into delusive refined metaphysical argument about tangibility, the materiality, or the corporeal substance of literary property; it is sufficient for me that it is allowed such a property exists. Authors I presume will not be denied a free participation of the common rights of mankind, and their property is surely as sacred and as deserving of protection as that of any other subjects. It is of infinite importance to every country that the arts and sciences should be cultivated and encouraged. Where men of letters are best protected, the people in general will be most enlightened, and where the minds of men are enlarged, where their understandings are equally matured in perception and in judgment, there the arts and sciences will take their residence. The arts and sciences had their origin in Italy, from thence they fled to a remote corner of Asia, at length they returned companions of the all conquering arms of the Roman Republic, and at last they were happily seated in this free country. I am of opinion that there are at present but two monarchs in Europe who are encouragers of the arts and

sciences, and are themselves men of letters, the King of Prussia and the King of England. It hath been urged that authors write for fame only; that glory is the best reward, and that immortality of renown i an ample recompence for their labors; they therefore do not stoop to claim a further right than that of a first communication of their ideas to the public. This is in a confined sense a proper and a noble observation, but it will not hold generally. I beg your Lordships to remember that genius is peculiar to no climate; it belongs to no country; it is more frequently found in the cottage than in the palace; it rather crawls on the face of the earth than soars aloft; when it does mount its flight should not be impeded. To damp the wing of genius is, in my mind highly impolitic, higly reprehensible, nay, somewhat criminal. If authors be allowed a perpetuity, it is a lasting encouragement; making the right of multiplying copies a matter common to all, is like extending the course of a river so greatly as finally to dry up its sources.

Mrs. Catherine Macaulay, 1774.

The Romans even in their degenerate days, had that high sense of merit in general, and of services rendered the public, that according to Pliny and other writers, in proportion to a man's character for literary abilities and virtues, in proportion to his power of rendering himself useful to his country and fellow citizens, and in proportion to his exertion of this power, he was sure of meeting from the generous hands of individuals an equal reward.

Pliny, if I remember right, in speaking of his own success in life, and that of one of his cotemporaries, mentions the leaving legacies to learned and good men, as a practice common and familiar. We were of the same age, said he; we entered into life together, and we had the same number of legacies bequeathed us. This being the custom among the Romans, with what ardor must it inspire every youthful breast, to deserve such grateful, such useful returns of bounty!

An Englishman persuades himself he is acting with propriety, when he bequeathes the whole of his estate to a blockhead he despises in the fiftieth degree of relationship, though he leaves behind him many worthy ingenious friends, whom a small legacy would help out of very intricate circumstances.

That watchful guard selfishness, is a never failing check to any generous sally of the mind, or to any benevolent inclination in the human breast; and the means of obtaining wealth from the good opinion of his country or his friends being thus barred from a man, whom fortune has denied to favor, yet of merit, of genius, and of virtue sufficient to instruct and enlighten mankind.—If such a man be deprived of the necessary lucrative advantage by the right of property in his own writings, is he to starve, or live in penury, whilst he is exerting, perhaps vain endeavors to serve a people who do not desire his services? Supposing this man has a wife and children, ought he, for the mere whistling of a name, to exert those talents in

literary compositions, which were much better employed in some mechanical business, or some trade, that would support his family? Will not such a man, if he have the tender feelings of a husband and a father,—if indeed he have the conscience of a religious or a moral man; will he not check every incentive arising from vanity, which would tempt him, for the purchase of an ill bought fame, to expose to poverty and contempt those who, by the law of religion and nature, he is bound to cherish and protect

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The author's and booksellers interests are inseparable. If booksellers ask sufficient prices for their books, authors will insist on a sufficent price for copyright; but when books are sold as drugs, authors must lower their demands.

Archbishop Tillotson died in mean circumstances, and if it had not been for a copy of his sermons sold to the booksellers, his family might have been under the necessity of perhaps applying in vain for relief to their country.

Dr. Enfield, 1774.

The right of authors to the exclusive possession of their own works is founded in nature; and unless any sufficient cause appears for depriving them of it, ought to be secured and guarded by law. To grant them this security, is neither impracticable in the nature of the things, nor inconsistent with the interests of the public. The inconveniences which are apprehended from a perpetual exclusive right, are trifling, and in a great measure imaginary. The advantages which would arise from the encouragement which such security would give to philosophical and literary pursuits, are obvious and important. Since no good reason can be assigned, why authors should be deprived of their right of property, they have a just claim upon government for protection and security in the enjoyment of this right. The interests of the public, instead of opposing, concur with this claim. On the same principles, therefore, that a perpetual right to any other kind of estate, real or personal, is secured to individuals, an author may reasonably expect that his property in his own work should be accured to him and his posterity. Such security is by no means at present enjoyed. The provision which hath been already made for a temporary security, in the statute of Queen Anne, and the favorable attention which is at present paid to this subject by the legislature, do, however, afford encouragement to hope, that authors will at length obtain a legal grant of perpetual copyright; a grant which they have sufficient ground to request. When authors desire permission to communicate their thoughts to the public with freedom, on every subject which is of importance to individuals or society, and the secure possession of the fruits of their own genius and labor, they ask nothing of government, but what every Englishman hath a right to expect from it, *liberty and property*.

Monthly Review, 1774.

We shall suggest a few hints relative to Judge Yates's labored attack upon copyright. Almost all his reasonings proceed upon abstract definitions of property. Now if the maxim be just, that nothing can be an object of property which has not a corporeal substance, then no man can truly say *his soul is his own.* He has no property in the knowlcdge he has gained, the title he inherits from his ancestors, or the good name he has acquired: slander only robs him of a nonentity, and therefore ought not to be punished by law.

Every man's ideas are doubtless his own, and not the less so because another person may have happened to fall into the same train of thinking with himself. But this is not the property which an author claims; it is a property in a literary composition, the identity of which consists in the same thoughts ranged in the same order and expressed in the same words.

This object of property is not, indeed, visible or tangible, but it is not therefore the less real. A man who has composed a poem, though he has never committed it to writing, has a clear idea of the identity of the work, and justly calls it his own. If property can arise by labor, the poem is his, and the copyright really exists, though it is not visible, nor has any substance to retain it.

When he sells copies of his work, he does not necessarily part with his original right of multiplying copies: this being a thing entirely distinct from a printed copy, cannot be given up without his consent; and this consent ought not to be taken for granted without some explicit declaration. When an author sends his work into the world, he gives the purchaser a natural *power* to reprint it, and in this sense "suffers the bird to escape;" but this cannot imply a *right* of reprinting, unless such a premium is given him, as he shall acknowledge to be a sufficient compensation for the profits arising from the exclusive sale of his work.

All that is advanced concerning an author's claim to an adequate recompense is trifling, till it be made apparent that he has no property in his works after publication. If he have a right of sale arising from property, why should he ask a reward? or why should the use of the right be branded with the opprobrious appellation of a monopoly.

Quarterly Review, 1819.

Upon what principle, with what justice, or under what pretext of public good are men of letters deprived of a perpetual property in the produce of their own labors, when all other persons enjoy it as their indefeasible right—a right beyond the power of any earthly authority to take away? Is it because their labour is so light, the endowments which it requires so common, the attainments so cheaply and easily acquired, and the present remuneration so adequate, so ample, and so certain?

The last descendants of Milton died in poverty. The descendants of Shakspeare are living in poverty, and in the lowest rank of life. Is this just to the individuals? Is it grateful to the memory of those who are the pride and boast of their country? Is it honorable or becoming to us, as a nation, holding (the better part of us, assuredly, and the majority affecting to hold) the names of Shakspeare and Milton in veneration? To have placed the descendants of these men in respectability and comfort; in that sphere of life where, with a full provision for our natural wants, free scope is given for the growth of our intellectual and immortal part, simple justice was all that was required,—only that they should have possessed the perpetual copyright of their ancestor's works,—only that they should not have been deprived of their proper and natural inheritance.

It has been stated in evidence that copyright, in three cases out of four, is of no value a few years after publication: at the end of fourteen years scarcely in one case out of fifty, or even out of a hundred. Books of great immediate popularity have their run, and come to a dead stop. The hardship is upon those which win their way slowly and difficultly, but keep the field at last. And it will not appear wonderful, that this should generally have been the case with books of the highest merit, if we consider what obstacles to the success of a work may be opposed by the circumstances and obscurity of the author, when he presents himself as a candidate for fame, by the humour or the fashion of the times, the taste of the public, (more likely to be erroneous than right at all times,) and the incompetence or personal malevolence of some unprincipled critic, who may take upon himself to guide the public opinion, and who, if he feel in his own heart that the fame of the man whom he hates is invulnerable, endeavours the more desperately to wound him in his fortunes. And if the copyright (as by the existing law) is to depart from the author's family at his death, or at the end of twenty-eight years, from the first publication of his work, if he die before the expiration of that term, his representatives, in such a case, are deprived of the property, just when it is beginning to prove a valuable inheritance.

The decision which time pronounces upon the reputation of authors, and upon the permanent rank which they are to hold, is unerring and final. Restore to them that perpetuity in the copyright of their works, of which the law has deprived them, and the reward of literary labor will ultimately be in just proportion to its deserts. If no inconvenience to literature arises from the perpetuity which has been restored to the Universities, (and it is not pretended that any has arisen,) neither is there any to be apprehended from restoring the same common and natural right of individuals, who stand more in need of it.

However slight the hope may be of obtaining any speedy redress for this injustice, there is some satisfaction in thus solemnly protesting against it; and believing, as we do, that if society continue to advance, no injustice will long be permitted to exist after it is clearly understood, we cannot but believe that a time must come when the wrongs of literature will be acknowledged, and the literary men of other

generations be delivered from the hardship to which their predecessors have been subjected by no act or error of their own.

PHILOMATHIC JOURNAL, 1825.

Man has a natural right to the fruits of his own labour. That which he calls into existence by the exercise of his limbs or faculties is as much his own as the limbs and faculties themselves. Who else, indeed, can claim any right to it? Why should a stranger possess himself of the beneficial produce of the labour of another? Would not every one feel this to be unjust in his own case? The labour of one man cannot be the labour of another. The produce is the reward of the labour, and ought to remain with him who has laboured, unless he consent to part with it by compact or donation. If this be true with regard to *bodily* labour, must it not be so with regard to that which is *mental?* Are the operations of a man's mind not his own? Is the result of those operations not his own? And shall not the beneficial recompense be his own also? The property which a man has in the produce of his own mind is founded in the very constitution of nature. It has a more solid foundation than property of any other kind. It has a great advantage over property gained by occupancy, which was at first common, and required some act to render it the property of an individual. This was *originally* the author's; it never was common, and never ought to become so, but with the full consent of the natural proprietor.

Literary property, then, has its origin in reason and justice. The right of property of course implies the sole right of using and disposing of it; and this right is, in fact, acknowledged by the law, so long as the author refrains from publishing his manuscript. He may withhold it altogether if he will, and his descendants may retain it in their possession for ever, and no one can compel them to publication; nor can any one lawfully publish it without their consent. What difference can the fact of publication make, or rather what difference *ought* it to make? It has been said, that an author, by publishing his work, abandons the possession of it,—an assertion almost too idle to deserve notice. A man who lends his horse does not abandon his right in him. Because, for a time, his corporal possession has ceased, we do not conclude that he never intends to resume his property. But then it has been said, that the author *cannot* reclaim that which he has parted with. The reader has absolutely purchased the book, and has a right to do what he will with it. The reader has indeed purchased a certain copy of a work, and the author cannot demand it back. It is impossible for him to repossess himself of the ideas which he has imparted to the mind of the reader; and, if possible, he would have no right to do it; because the reader has honestly bought and paid for them: of all the knowledge that the book contains, he may avail himself for improvement or delight. But, because he has a right to the full use and enjoyment of his own copy, can it be inferred that he has therefore a right to multiply copies for his own pecuniary emolument? A

man who has a right of walking in the garden of another, may exercise this right according to the conditions upon which he holds it. He may walk in the garden for his health or pleasure: he may possibly be entitled to introduce his friends; but the garden is not his, and he must not dispose of the produce of the trees for his own advantage, or in any other way injure the pecuniary interests of the proprietor. A man who has a spring of water upon his ground, may give or sell water to his neighbours; but, by so doing, he does not dispossess himself of the spring. The houses in the metropolis, and other large towns, are supplied with water by public companies. Upon condition of the payment of a certain sum, the occupants of the houses are entitled to as much water as they can consume; but they must not make it a source of profit. Although they may use as much water as they will, they must not sell the smallest portion. A man who has a ticket of admission to a theatre, has a right to enter the theatre; he has a right to all the entertainment which is there to be met with. If the ticket be a transferable one, he may lend or let it for hire; but he must not multiply tickets, and vend them for his own profit. He who has access to the garden of another; he who has the privilege of fetching water from a spring, or has it delivered at his house; he who has admission to a place of amusement, and all other persons in similar circumstances, must enjoy their benefits and advantages according to the terms upon which they were granted by the proprietor who had originally the sole right of using and disposing of them. We must look at *his* intention. We must not conclude, that he has parted with more than he evidently intended to part with. To suppose that, without some cause, a man will abandon his property, is unreasonable. To determine, in the teeth of evidence, to the contrary, that he *has* done so, is unjust. Now, when a man writes, prints, publishes, and sells a book, so far from intending to abandon the pecuniary emoluments arising from its publication, he manifests a directly contrary intention. He does not give his book away. He does not charge the mere cost of the paper and print. He charges something beyond this, which is the reward of his labour of literary composition. It is he who has laboured. It is he who is entitled to the reward of the labour. It is he who, by demanding this reward, asserts his right to it. The same act cannot be the assertion of a right, and the abandonment of it. The act of publication for money *is* an assertion of the right of property; therefore, it is not an abandonment.

Again, publication is not merely a declaration of the intention of the author to appropriate the profits of the work to himself, but it is the only means of making it profitable at all. Until published, the world can derive from it no intellectual improvement, the author no pecuniary advantage. Publication is the necessary act to make the work useful to mankind, and beneficial to the owner. To discourage learned and ingenious men from benefitting the public by their works, is impolitic and unwise. To construe the necessary act by which alone a literary work can be rendered profitable, to be destructive of the right of the author, is not only harsh and cruel, but unreasonable.

Previous to publication, the work is the property of the author, and of course he is entitled to its profits. But it can only be made profitable by publication. If publication, then, be a forfeiture of the right of the author in his own production, the very act which is necessary to render the property a source of profit, divests him who is entitled to the profits of his right to enjoy them; which is absurd.

It was thought necessary to urge thus much, to prove that a man had a natural right to the profits arising from the productions of his mind, and that this right was not abandoned by publication. These points being established, it follows, that literary property is not *created* by the law, but *restrained* and *limited*. The right to this species of property is a *natural* right; and as no natural right should be abridged without good cause, it behoved the advocates for the present law to show that good cause existed for its enactment.

Now, what is the pretence usually set up to justify the law in its non-protection of the rights of literary men? It is this, that if copyright were made perpetual, authors, or their representatives, would fix an unreasonable price upon books, and the public would thus be deprived of the benefit of cheap editions of valuable works. There is no reason to suppose that this would be the case. A literary proprietor would find, as the bookselling trade now do, that his interest would be more promoted by a small profit, upon a rapid and extensive sale, than by a larger profit upon the slow sale of a smaller number. Besides, if he were so far blind to his own interest as to fix such a price as should nearly withdraw his work from circulation, the public could rarely be injured. Works of imagination might, indeed, be thus suppressed, but here the evil would end. All historians must relate the same facts. The phenomena of nature are open to all enquirers. The principles of art are not the inheritance of a single individual, but are possessed by numbers. If, therefore, the imbecile cupidity of authors or publishers suppressed certain works of history or science, others, as good, would make their appearance, and by being sold at a moderate price, would obtain universal circulation. Even if the want could not be readily supplied, the evil is not irremediable. The proprietor would not be allowed to demand for his books a price that was altogether unreasonable. He who offers his goods for sale, must be contented with a market-price. He may demand the highest market-price, but he has no right to more. In this principle is the protection of the public from imposition: and even if the worst came that possibly could, and the proprietor were to refuse to reprint his book, when necessary, the fact of its having been a certain number of years out of print, might, without injustice, be regarded as an abandonment of the property, which would then become common. No one would be able to recover damages for infringement of copyright, without the verdict of a jury; and he who seeks redress for an injury done to his property, must be prepared to shew that he has taken reasonable care of it.

The objection to the rights of literary property, which has just been answered, proceeds, it should be observed, not upon fact, but upon vague and unwarranted suspicion. In effect, it says, "we dare not

trust you with your rights, because we suspect that you would make an ill use of them." Why *should* this be suspected? No good reason can be assigned why the descendants of literary men should be less honest or less liberal than other persons. Surely, then, the objection is of a most ungracious character.

If it be desirable to encourage literature in a state, the easiest, as well as the most equitable, way of doing it, is by securing the rights of literary property. An author has sometimes been compared with the inventor of an ingenious machine. The latter must secure the property of his invention by a patent, and it can be thus secured only for a limited number of years. It has been argued, that an author stands in the same situation as the inventor of a machine, and is only entitled to the same protection. Now, in the first place, the ingenious mechanic has a better chance of immediate success. If his machine tend to shorten labor, or to perform it with greater accuracy, its effect will be immediately perceived, and within the limited term secured by a patent, he will, most probably, be remunerated. With regard to literary works, (more particularly when the subject is a heavy one,) this probability does not exist. Secondly, the cases are not parallel; because the imitation of a machine is not the original machine itself, but only one resembling it. The wood, metal, or other materials constitute the machine. There is nothing else necessary to its existence. The second machine is, therefore, not the same as the first. It is a perfect imitation of it, and that is all. Whereas the pirated book is the identical production of the author. It is the very same *in substance* with the genuine book; because its doctrines, sentiments, and language are its *substantial* and *essential* parts. The paper and ink are only *accidents*. They constitute the vehicle of conveyance from the mind of the author to the mind of the reader; but they are not of the *substance* of the thing conveyed. Lastly; is it quite certain that ingenious mechanics are, under the existing law, sufficiently protected? If they are not, is it meant to defend one wrong by another? Men will be industrious when the fruits of their industry are secured to them; but, when this is not the case, why should they toil? Why should any one devote himself to any great literary labor, which will require the sacrifice of the better part of his life, when the reward of his labor must cease *with* his life, and he can preserve no portion of it for his family? Will he not be tempted to apply himself to the production of works of temporary interest, which require little or no mental exertion, and which will immediately become a source of emolument? The tendency of the law is, therefore, injurious to sound literature, by discouraging men from undertaking works of great dignity or lasting utility, and seducing them by the prospect of gain to become mere manufacturers of the trashy production of the day.—Works of standard merit not only require immense labor in their production, but they make their way slowly in the world. Years generally elapse before they will even repay the expences of publication; and, when their value begins to be known and appreciated,—when their reputation is extending, and they are about to become as valuable in a

commercial as in an intellectual point of view, the law steps in to snatch from the children the bread for which the father has labored, and to consign to penury the posterity of him who has given his days and nights to his fellow men, in administering to their most refined pleasures, and promoting their noblest interests. This is not a representation of the mere possible effect of the law. Again and again has it occurred, that the families of literary men have languished in indigence, while others have been enjoying the profits which in nature, reason, and justice should have been theirs. About the middle of the last century, the grand-daughter of Milton was so far reduced, that Dr. Johnson solicited and obtained from Garrick a charitable benefit for her at Drury Lane Theatre. Within a very few years, a member of the family of Shakspeare was working as a day-laborer, in M'Adamizing the roads of Warwickshire. Are these things as they should be? Is it right that the natural representatives of men of genius should be left to starve, while strangers are amassing fortunes from works, upon which neither they or their fathers have labored? The lives of literary men are too often passed amidst disappointment, and penury, and sorrow. Would it not be a consolation to them to reflect, that though the reward of their labors was postponed, and in their own persons they should never enjoy it, yet that posterity would do them justice, and would not only soothe their memory with fame, but repay their descendants with wealth? Would it not add to the gratification of him who enriched his library with a copy of Shakspeare, or of Milton, to know that he was contributing to the benefit of the families of the illustrious men, whose names are the proudest in the annals of their country's glory?

In France, the term of copyright is fifty years. In Germany, it is perpetual. In those countries there is no want of books. On the contrary, they abound. Dr. Johnson observed long ago, that the French had a book upon every subject. In Germany, this is even more extensively the fact. It is not found, either, that the proprietors put upon their works a prohibitory price. Books are, in those countries, remarkably cheap. A comparison of the state of literature in France and Germany, with the state of the law, will strikingly illustrate the truth of the homely adage, that "honesty is the best policy."

While authors in this country have been deprived by the statute law of the full property of their works, they have been called upon to contribute to the public convenience by presenting a considerable number of copies to public libraries. In large and expensive works, this is a heavy drawback upon their profits. It may possibly make the entire difference between gaining and losing. It is, at any rate, both unjust and cruel, at the same time, and by the same act, to impose a heavy tax, and to diminish the means of paying it.

Let the laws relating to literary property then be amended. If it be not thought advisable to render copyright perpetual, let the term be considerably extended. Let not the *literary* laborer be the only one excluded from the full enjoyment of the beneficial produce of labor. Rarely, indeed, can he enjoy it himself; but let him bequeath it as an estate to those he loves, and when *he* shall no longer be sensi-

ble of our attention or our neglect, let us pay his children, and his children's children, the debt of gratitude which we owe to him.

Library of Useful Knowledge, 1828.

Commencement of Printing.

The art was commenced soon after the murder of Henry VI., and carried on during the remainder of the reign of Edward IV., and the reigns of Edward V. and Richard III., when the minds of those most likely and able to encourage printing were seldom free from alarm for their own safety, their time much occupied, and their means necessarily reduced by the distracted and wasted state of the country, and when little attention or money could be spared for literature. England at this period was much behind France. Caxton was obliged to have recourse to the French language for most of the works which he printed.

It is supposed that Caxton returned to England about the year 1472, and brought with him the unsold copies of the translation of Recueill. His first patron was Thomas Milling, Bishop of Hereford, who held the abbotship of St. Peter's, Westminster, *in commendam*. Caxton took up his residence, and established his printing-office, either in the immediate neighbourhood of the abbey, or in one of the chapels attached to it.

That Caxton introduced the art of printing into England, and first practised it here, was never doubted till the year 1642: a dispute arose at this time between the Company of Stationers and some persons, respecting a patent for printing; the case was formally argued; and in the course of the pleadings, Caxton was proved, incontestably, to have been the first printer in England. Soon after the Restoration, a book was discovered in the public library at Cambridge, the date of which was Oxford, 1468. The probability is, however, that the date of this book is incorrect, and that it should have been 1478, not 1468; this is inferred from its being printed with separate fusile metal types, very neat and beautiful, from the regularity of the page and the appearance of signatures; and, moreover, from the fact, that no other production issued from the Oxford press till eleven years after 1468, it being highly improbable that a press connected with a University should have continued so long unemployed.

Between the years 1471, when Caxton began to print, and the year 1540, the English press, though conducted by industrious, and some of them learned printers, produced very few classics. "Boethius de Consolatione," in Latin and English, three editions of "Æsop," "Terence," the "Bucolics" of Virgil twice, and "Tully's Offices," were the only classics printed. From Cambridge no classical work appeared; and the University of Oxford produced only the first book of "Cicero's Epistles;" and that at the expense of Wolsey.

II. *ON THE LIBRARY TAX.*

The comments of writers on the subject of the library tax are principally to be met with subsequently to the year 1812. The additional remedy, in the shape of fine and forfeiture, for pirating copyright, was confined by the statute to *books registered* at Stationers' Hall; we find therefore no complaint of the exaction where the protection of the penalty was sought for. When, however, it was determined that copies of all books, whether registered for the sake of the protecting penalties, or not, must be delivered, a general feeling was very naturally excited against the exaction.

Mr. Sharon Turner, 1813.

As the delivery of copies cannot be contended for, as a matter of right, independent of the statute, the expediency of the delivery must rest on one of the following grounds: either that it is unjust to take away from the libraries a benefit which they have so long enjoyed; or that it is useful to the public that it should be continued.

On the first of these arguments it may be observed that this is not a benefit which these libraries have actually enjoyed. They have, from the time the act of Anne passed to the present day, received copies of no books but such as the proprietors chose to register; they have never received copies of those which were not registered.

The registered books for at least forty or fifty years were but a small proportion of those which were actually published. Therefore the question really is not whether the libraries shall be divested of a benefit which they have long enjoyed, but whether literature shall be subjected to a burthen which it has never yet borne.

It cannot be unjust to divest them of a more theoretical right, grounded solely on an enactment which was not founded on any right, rather than to intrench on that sacred right of property which appertains to all individuals; for in considering this subject no one ought to lose sight of the important principle that the rights of private property are sacred, and ought never to be intruded upon without the last necessity. The *salus publica* is an imperious dictator, to which every well regulated mind will cheerfully bow: but no consideration less than the necessity of supporting the general welfare can sanction the intrusion upon individual property. Unless this is upheld as a firm and sacred principle in legislation, all personal security is endangered, and one of the best foundations of public prosperity is shaken.—If this principle ought ever to be maintained in one case more strictly than in another, it should be in that property, and towards those individuals who have most signally benefited society. In this respect the author yields to none. England, as it is, compared

with England as it was, before literature was cherished in it, demonstrates the blessings which it owes to its intellectual benefactors.

But in taking eleven copies of every work compulsorily from its author or proprietor, his right of property is directly invaded; it is invaded as completely as if it were to be enacted that a silversmith should give to these public bodies eleven silver candlesticks. So long as the act of Anne was construed to enforce a delivery of those copies only which the owner chose to register, the objection would not so fully attach. The proprietor had then an option—of that he is now deprived, and therefore the compulsory delivery of eleven copies becomes a direct infringement on that right of property which ought never to be violated, unless the welfare of the nation requires the sacrifice.

Does the *salus publica* make this violation necessary? Does it exact this sacrifice?

Let the extent of this sacrifice be first considered. The act of Anne directs the best paper copies to be delivered. Now the actual amount of eleven best paper copies of the following eleven works would, at their selling price, be £5,698: 1*s*.

		£	*s.*	*d.*
11	Daniel's Oriental Scenery, 6 series, 200 guineas -	2,310	0	0
11	Lord Valentia's Travels, 3 vols. largest paper, 50 guineas (N.B. only 50 of such printed) -	577	10	0
11	Salt's Views, 26 guineas - - - - -	300	6	0
11	Bloomfield's Norfolk, 11 vols. 4to. 22 guineas (N.B. only 120 copies printed; 2 copies only printed on large paper, worth 100 guineas each) -	254	2	0
11	British Gallery of Engravings, large paper - -	1,065	13	6
11	Costumes of the World, 7 vols. - - -	532	2	6
11	Dryden's Works, 18 vols. - - - - -	138	12	0
11	Sir R. Hoare's Ancient Wiltshire (only 60 printed) -	207	18	0
11	Giraldus, 2 vols. 4to. - - - - -	127	1	0
11	Perry's Conchology - - - - -	184	16	0
		£5,698	1	0

Numerous lists might be added to these. We will only mention a few striking individual cases.

A new edition of Wood's Athenæ Oxonienses is preparing with additions. The price of each copy of this, on the best paper, will be seventy-two guineas. If the editor be compelled to give away eleven copies of this work, it will be a loss to him of £830.

A new edition of Dugdale's Monasticon is preparing with additions. The subscription price of this on the best paper is 130 guineas for each set. This will be a very expensive work to the reverend gentleman who has undertaken it, from the number of plates which it will contain. If he should be compelled to give eleven copies of this, it will be a loss to him of £1,500.

The Rev. T. F. Dibden is well known to be publishing a new edition of Ames's Typography, with many valuable additions, the fruit of his

active and unwearied researches. This work will be completed in six volumes, of which the price is six guineas each volume for the best paper. The loss to him, if he must give eleven copies, will be above £400.

Eleven copies of Mr. Nichols's History of Leicestershire would be to him a loss of £288: 15s.

Eleven copies of his "Bibliotheca Topographica Britannica," ten volumes quarto (of which in the whole only 250 copies were printed, and all on small paper), £231.

Eleven copies of Mr. Gough's Sepulchral Monuments (only 250 printed), £277.

Several works are now in the press that will cost from fifty to seventy guineas each, of which the value of eleven copies will be from £500 to £700.

These individual cases (and a greater number of others precisely similar at this moment exist, and might be mentioned) are not the cases of gentlemen with large fortunes publishing books. Indeed, instances are rare of gentlemen of fortune risking any part of that in expensive publications. These, and such like, are the cases of public spirited authors, who, with a laudable zeal for literature, and an honorable desire of an honorable remuneration from the public for their labors, undertake these arduous, troublesome, and expensive works. But shall they not be protected from attacks which tend so directly to take from them a large portion of the profit which they are entitled to expect?

Thus stands the case as to large paper copies, and it is probable that every one will feel that the delivery of these ought to cease.

We will now state the case on the delivery of eleven *common paper* copies.

One most respectable publisher took the trouble to make an accurate calculation of the sum to which the delivery of eleven copies, on common paper, of all the books he had published for the last three years would have amounted, and he found that the amount would have been £1,436: 9*s.* 3*d.* Another highly respectable publisher has stated, that on the average of his publications for the last ten or twelve years, the eleven copies would have been to him a taxation of above £300 a-year, exclusive of works in which he was but a partner. If there had been time to have collected from every publisher the amount of the sacrifice which he would have made by the delivery of eleven copies of all books published by him, the aggregate of the whole would have surprised the reader. But from these two instances the total amount of eleven copies of every work, even on common paper, that is published in Great Britain and Ireland, may be conjectured; and it may be fairly asked, if a taxation so heavy as this ought to be imposed on the authors and owners of literary property?

A few instances will show how heavy the burthen will be on the common paper copies. The delivering of eleven copies of the following fifteen works, on common paper, would have cost the publishers £2,699: 8*s.* at their selling price.

	£	s.	d.
Johnson's Poets, 21 vols. 8vo. by Chalmers - - -	275	0	0
British Essayists, 45 vols. 18mo. - - - - -	115	10	0
——— Novelists, 50 vols. 18mo. - - - - -	138	12	0
Bowles' Pope's Works, 10 vols. 8vo. - - - -	57	15	0
Wakefield's Pope's Homer, 9 vols. 8vo. - - - -	44	11	0
Dryden's Works, by Scott, 18 vols. 8vo. - - - -	103	19	0
Swift's Works, by Nichols, 19 vols. 8vo. - - - -	99	0	0
Camden's Britannia, 4 vols. folio. - - - - -	184	16	0
Miller's Gardeners' Dictionary, 2 vols. 8vo. folio. - - -	161	14	0
Buffon's Natural History, 20 vols. 8vo. - - - -	132	0	0
Aiken's Biography, 10 vols. 4to. - - - - - -	173	5	0
Inchbald's Theatre, farces and modern Theatre, 42 vols. 18mo.	121	16	6
Somers's Tracts, 10 vols. 4to. - - - - - -	346	10	0
Harleian Miscellany, 10 vols. 4to. - - - - -	381	3	0
State Trials, 21 vols. royal 8vo. - - - - - -	363	16	6
	£2,699	8	0

Those gentlemen who have attended to the nature of the publications that perpetually issue from the British press, will know that this list might be made very extensive. So that it is clear that to emancipate literature from the delivery only of the best paper copies, will not be a sufficient relief. Unless Parliament also extend the relief to the common paper copies, the burthen will still be severe, and will frequently operate to prevent the publication of many works, on which the chance of their sale is uncertain.

Sir Egerton Brydges, Bart. M.P. 1818.

I am bound to ask (though some of the public bodies may affect to repel the question indignantly) what do they do with this indiscriminate mixture of expensive and useful works and contemptible trash? Where do they deposite them? Do they keep them in order? And do they bind them? *If they do*, would not the funds expended in paying the binder, the house room, and the librarians for thus dealing with the mass of rubbish, be more generously and more usefully expended in paying some small portion of the price of the valuable works? *If they do not*, what becomes of the alleged color of their claim—that of public use?

The copyright act, as now put into force, is the most perfect instrument of collecting and disseminating all the mischiefs flowing out of an abuse of the liberty of the press, which human ingenuity has ever yet contrived. Thus is brought together in each of eleven public libraries dispersed in the three great portions of the empire all that is silly and ignorant, all that is seditious, all that is lascivious and obscene, all that is irreligious and atheistical, to attract the curiosity, and mislead the judgment and passions, of those for whose cultivation of solid learning and useful knowledge these gratuitous supplies are

pretended to be enforced. Nothing short of such a law could have brought many of these contemptible, disgusting, and contagious publications out of the obscurity in which they would otherwise soon have perished. Here they remain registered in catalogues preserved on shelves and protected for posterity, with all the care and trustiness of public property.

How are they to be separated from the valuable matter with which they are intermixed? To whom is such a discretion to be confided? If once they are allowed to make waste of what they do not want, where is it to end? Abuse will creep upon abuse: from waste it will come to gift or sale!

But if every thing be kept, the room, the trouble, and the expense will soon become overwhelming. Already the libraries begin to complain heavily of the inconvenience.

In thirty years the united catalogues of the books thus claimed by the eleven libraries will amount to ten folio volumes of 600 pages each, eighty-two articles in a page. The whole number of articles will not be less than *half a million*.

Evidence before the Committee of the House of Commons, 1818.

Mr. Owen Rees.

Have the goodness to inform the Committee what sum has the delivery of the eleven copies, under the copyright act, cost your house since July, 1811? I presume you mean from the date of the passing of the act in 1814. From the nearest calculation we are enabled to make, the actual cost of the books delivered upon the whole, since the passing of the act, is about £3,000.

Have you, in consequence of the burthen of this delivery, declined printing any works which you would otherwise have undertaken? Yes; we have declined printing some works, particularly a work of Non-descript Plants, by Baron Humboldt, from South America; being obliged to deliver the eleven copies, has always weighed very strongly with us in declining other works.

Have the libraries demanded all books promiscuously printed, or have they made any selection? Every book entered at Stationers' Hall has been sent to them. No selection has ever been made; nine copies of all books have been demanded, and eleven of all, with the exception of novels and music, which have not been demanded by two of the libraries.

What duty do you pay upon paper? The duty for paper used for printing is from 20 to 25 per cent. on the value of the paper.

Was it not usual, before the passing of this act, for the public libraries to subscribe to, and frequently to purchase, learned and very expensive works; and did not authors calculate on the Universities as probable purchasers of the work they were about to bring forward? They certainly have looked to the Universities as subscribers or purchasers of these books; and upon examination I find it was the custom of some of the libraries, who can claim books under the act, to sub-

scribe to expensive works, and that within fourteen years after the passing of the act of Anne.

Have not some valuable books been discontinued from want of sufficient subscribers? Yes, there have been important works, which have been abandoned for want of sufficient encouragement:—

Rev. Mr. Bourchier's Dictionary of Obsolete and Provincial Words.

Dr. Murray's (the Editor of Bruce's Travels) History of Languages.

Translations of Matthew Paris, and other Latin Historians. William of Malmesbury only published. One more has been translated, but not published.

An extensive British Biography, arranged in Periods. A considerable portion of this work has been written by some of the first writers of the present day.

The collected Works of Sir Isaac Newton.

Hearne's (the Antiquary) Works.

Collections of the Irish Historians.

Bawdwen's Translation of the Doomsday-Book, after the Translation was finished, and one volume and a half printed.

What do you apprehend to be the effect of the delivery of these copies to the public libraries? The effect I conceive to be that they interfere with the sale of books from persons who would otherwise be purchasers, having access to the libraries, and being enabled to borrow the books, some of them being circulating libraries, as is the case with the Advocates' Library at Edinburgh, and the Aberdeen Library. From Aberdeen, I have had complaints from booksellers that they find their trade considerably injured by such books being in circulation, and that formerly they supplied the King's College with books to a considerable amount; that their accounts at present are a mere trifle, and that some of their books have been sold to a circulating library.

Can you state in any given period what you have paid for advertising books? In the last twelve months we have paid for advertising in newspapers alone £4,638 : 7*s.* 8*d.*

Do you know what proportion of that goes to Government? I should conceive about £1,500 of that goes to Government.

In point of fact, according to the act in 1814 having been passed, have you not been obliged to deliver some very expensive works of old English literature, which otherwise would not have been demandable? We have.

Has not that demand had an effect, among other reasons, of inducing you not to embark in other reprints of the same nature? It has.

Mr. Richard Taylor.

What description of books do you apprehend to be principally affected by the delivery of the eleven copies to the public libraries? State the different kinds of books that you think are most affected by this law. I think that all the most important works, which furnish the materials for the advancement in the sciences, are those by which

the least is gained; or I should say, rather the most is lost by those who undertake them; such as records of experiments in chemistry and other branches of physics. Astronomical observations, such works as Bradley's Observations, and Dr. Maskelyne's, if they had been published at private expense, must have been published at a loss; because the demand for them is very limited, and the expense of printing would be very great. Bradley's Astronomical Observations are published in two volumes, folio, and Dr. Maskelyne's, in four or five volumes. I should observe, that all table and figure work costs twice as much as common printing, on account of the greater trouble in composing such work. Such works as these furnish all the materials from which the science of astronomy can be advanced. All these works are of infinite value to science, and cost the authors an immense deal of labor, as they are frequently the result of their observations during a great portion of their lives. Elementary, or popular works of astronomy, may be objects of gain to the booksellers; but no bookseller could be induced to publish the astronomical observations of any gentleman, who might have an observatory of his own, and who might have been making observations for many years. Of mathematical works, the most profound are the least likely to attain a considerable sale. A gentleman, whom I have known for many years as one of the most munificent patrons of science, who has expended perhaps more than any man in publishing, and enabling others to publish, valuable mathematical treatises, I mean Baron Maseres, the Cursitor-Baron of the Exchequer, once told me that the produce of the whole sale of his *Scriptores Logarithmici*, (which is a collection of the most valuable mathematical tracts, reprinted at his expense) did not pay for the binding of the presentation-copies which he gave away.

Mr. John Clarke.

Have you lately declined the publication of any law-books with the improvement of notes? I have.

What are they? One of them was Mr. Anstruther's Reports.

Any others? Not immediately that I recollect. I have made reprints of law-books, without the addition of notes or improvements.

Why did you decline the publication of them with improvements? Because if I had added the notes, I should have been necessarily obliged to deliver the eleven copies to the public libraries.

If you merely published the reprint of any book without addition or improvement, you would not be liable to deliver the copies to the Universities? I should not, having delivered them before.

Should you decline republishing a book with notes for that reason? I should in some instances.

Mr. Robert Baldwin.

What do you apprehend to have been the effect of the regulation for the delivery of the eleven copies to the public libraries, upon the bookselling trade in general? I think it has been a heavy loss to the bookselling trade, and, in some instances, it has operated to check

the publication of books, and particularly to prevent additions and improvements to old editions of books.

In the demand made by the public libraries to the bookseller, has any regard been paid, either to the utility of the respective books demanded, or to the books previously delivered by the publisher? None at all; they have been taken indsicriminately. I should suppose that if a sum of money was allotted to the Universities to purchase books, they would not purchase one in ten of what are published, perhaps not one in twenty.

Do you think that the depositing of the eleven copies in these public libraries, has any tendency to take away private purchasers? Certainly, I think it must.

Does it not, in your opinion, supply gratuitously many people who would otherwise be purchasers? I should think it would.

Do you conceive the evil is to be at all counteracted by any supposed notoriety given to those publications, by the depositing of such copies in the public libraries? Not by any means.

Do you conceive that your publications acquire any advantage by any such supposed notoriety? We do not consider the supposition of notoriety arising from the depositing of the books, to be well founded, or productive of any advantage; if we did, we should send the books to the public libraries without any compulsion.

Mr. John Murray.

Did you not publish the Costumes of various Countries? Yes.

Was that an expensive work? It was very expensive.

Should you now hesitate in the publication of such a work, knowing that you would be compelled to deliver eleven copies to the eleven public libraries? Certainly I would.

Were you not concerned in the publication of the Harleian Miscellany, Lord Somers' Tracts, and Piers Ploughman's Visions? Yes.

Would you, knowing that you are compelled to deliver eleven copies of all works, be disposed to engage in the publication of such books? In the publication of Piers Ploughman's Visions, I think I should not have engaged in it, if I had to deliver the eleven copies; but as to the other two books, it might, perhaps, be matter of consideration.

But would the delivery of those eleven copies make you hesitate? Certainly; the number to be printed being so limited, even of those, and the expense of the Harleian Miscellany and Lord Somers' Tracts so great, I think I should hesitate.

The wholesale price of these eleven copies would amount to a very large sum? It would be a very serious object.

What may be the amount of the books which you may have delivered at Stationers' Hall since the passing of the Act of 1814? The amount of the sale price to the public is about £1,700, and as those books had a very swift sale, I consider that I am the loser of that sum, deducting 25 per cent., which would be the sum at which the greatest part of those works would have been sold, I would deduct about £420, the whole loss then would be about £1,275.

Do you not consider the compulsory delivery of eleven copies of every book that is published, as a very heavy tax on those who speculate in the publication of books, in addition to the very high duty on paper and advertisements? Very much indeed.

In making the demand, do the libraries omit the reprints of such works as they may already have in their libraries, or is their demand a sweeping one of every book entered at Stationers' Hall, whether it be a reprint, or an entirely new book? According to my observation, they make a sweeping demand of every book.

Did you not publish Mr. Duppa's Life of Michael Angelo? Yes.

Was not that a work in which the delivery of the eleven copies would have been a great injury and inconvenience to you? Yes.

You also published D'Israeli's Character of James the First? Yes.

What number of that book did you publish? I published 250.

After the sale of the whole of that edition, were you not obliged to buy up or collect some copies of that work, to make up the eleven to be delivered to the public libraries? I was.

Upon the whole, you consider the gratuitous delivery of eleven copies to the public libraries as a great grievance? Yes.

Mr. William Daniel.

Has the act, directing the delivery of eleven copies to the public libraries, had any effect upon any publications which you have made, or which you had intended to make? Checking many.

Will you be so good as to state what effect it had upon you individually? It has prevented the continuation of a large folio work, intituled Oriental Scenery. It has prevented also a reduced edition of an African work, another of Ceylon, "A Series of Scenes and Figures, illustrative of the Customs of India, and of Persons and Animals peculiar to that Country." I believe these are the chief works which the act has checked me in proceeding with.

Mr. William Bernard Cooke.

Are you not publishing a work upon the ruins of Pompeii? I am.

What would be the price of a complete copy of that work? A complete copy would be sixteen guineas, and the price of the copies upon India paper 32 guineas.

Is that the retail price? Yes; the retail price to the public.

Then what will be the amount of eleven copies at the retail price? £201 : 12*s*., because the finest copies are claimed by the British Museum.

If the act of 1814 had not passed, should you have expected any of the libraries to have been subscribers to the work? I certainly should, because the British Museum had purchased the first edition of the Thames, and have discontinued purchasing any other work since.

Has the delivery of the eleven copies, in your opinion, operated to discourage such publications? Most certainly.

Had you any hesitation in undertaking the work of Pompeii? I certainly had, in consequence of those eleven copies.

Mr. Joseph Harding.

Are you a bookseller? Yes.

And a partner in the house of Lackington, Hughes, Harding, Mavor, and Jones, in Finsbury-square? Yes.

Are you at present engaged in the publication of any works of considerable expense? Yes.

What works are you publishing of that description? We are publishing an edition of Dugdale's Monasticon Anglicanum, in four or five folio volumes; Dugdale's History of St. Paul's Cathedral; Portraits of Illustrious Personages of Great Britain, in two folio volumes, with 120 Portraits and Memoirs; Ormerod's History of Cheshire; Wood's Athenæ Oxoniensis, in six volumes quarto; they are the principal works we are publishing at this time.

What will the delivery of eleven copies of these works amount to? The delivery of eleven copies of these works will amount to £2,198: 14*s*.

Can you state *the comparative prices of English books printed in London, and the same books printed abroad*? I have the prices of some English books, printed on the Continent which may throw light upon that question: Gibbon's Miscellaneous Works, with his memoirs, printed at Basle in seven volumes octavo, are sold retail for twenty-five francs, which amounts to about a guinea. The price of the London edition of the same book in five volumes octavo, is £3: 5*s*.; Hume's History of England, from the Invasion of Julius Cæsar to the Revolution in 1688, published in twelve volumes octavo, is sold at forty-five francs retail price, which is about thirty-eight shillings; the price in London is £3: 12*s*. small paper, and £5: 12*s*. if printed on large paper; Robertson's History of Scotland, published in three octavo volumes, is printed, and sells for twelve francs, about ten shillings, the price of the London edition in three octavo volumes is £1: 1*s*.; Roscoe's History of the Medici Family, published in four volumes octavo, is sold for sixteen francs, about 13*s*. 4*d*., the London price is £1: 11*s*. 6*d*.; Pope's Works, with notes by Warton, published in nine octavo volumes, are sold for twenty-five francs, about a guinea, the London price in ten volumes octavo is five guineas; the price of Johnson and Stevens's Shakspeare, published in twenty-three volumes octavo, with sixty plates, is sixty francs, about £2: 10*s*., the London edition, published in twenty-one volumes octavo, without any plates at all, is sold at twelve guineas on small paper, and on large paper for eighteen guineas.

Have you declined publishing any works from the pressure of delivering eleven copies, besides Mr. Ruding's "History of the Coinage?" Yes, we have.

Is there any inconvenience in stating what they are? We have declined republishing Alexander Barclay's "Ship of Fools," a folio volume of great rarity and high price. Our probable demand would not have been more than for one hundred copies, at the price of twelve guineas each. The delivery of eleven copies to the public libraries decided us against entering into the speculation. There is another work which we have declined printing, materially from the pressure of the eleven copies, which is a work of great value: it is "A Series of

Views relating to the Architectural Antiquities of Normandy," by Mr. Cotman of Yarmouth; it is a work peculiarly interesting to antiquaries and to architects, but to few other classes of society.

Mr. John Martin.

Are you not engaged in the publication of Mr. Dodwell's Scenes and Monuments of Greece? We are.

What would be the price of a complete copy of that work? About thirty guineas.

Should you expect any of the eleven libraries to be subscribers to this work, if the copies were not delivered in pursuance of this legal obligation? I should expect they would. I see by a reference to a book on the same subject, Mr. Mills's "Magna Græcia," that there are entered amongst the subscribers, the University libraries of Cambridge; Trinity College, Dublin; and several other colleges.

Does the placing eleven copies in these eleven libraries in your opinion benefit or injure the sale of the work? I should conceive that any work so expensive as this would be materially injured by such delivery. It would have an injurious tendency.

If the law which requires the delivery of eleven copies to the public libraries continues, do you propose to publish the work without letter-press? If that provision for the delivery continues, we shall publish it without letter-press.

Was any and what application made to you on the part of the French Government to have this work to publish at Paris? The proposition was made to the author when he was in Paris; and on his return home, the work was shown, at the request of the French Institute, to the French Princes, to the Officers of the French Government, &c., and by them an offer was made to publish the plates in four volumes folio, each volume to contain one hundred plates, with accompanying letter-press; but the author wishing it to be published in this country, declined the proposition.

Would it have been more beneficial to the author to have published at Paris? I should conceive it would certainly.

Mr. Charles Stothard.

You are publishing the Monumental Effigies of Great Britain? Yes.

The price is twenty-eight guineas the large paper, and twenty-guineas the small? Yes.

Do you publish the work on your own account? Certainly.

Do you conceive that the delivery of the eleven copies to the public libraries is a great grievance? A very great one indeed, for I believe that if I had known it when I commenced the work, I should not have begun it.

Do you conceive, that subject to the delivery of the eleven copies that work could have been published by a bookseller? No, certainly not, nor at its present price. Indeed at its present price it is impossible, when the work is completed, that I can sell it at that price. In order to sell it, I must raise it one quarter above its present price.

Mr. Samuel Lysons.

For twenty-five years I have been preparing for publication an extensive work on the Roman Antiquities of England, entitled "Reliquiæ Britannico Romanæ," consisting of more than 160 plates in folio, many of them forty inches by twenty-three, on which work I have already expended £6,000. From the nature of this work, which requires that the greater part of the plates should be colored to render them intelligible, it is not probable that more than a hundred copies will ever be completed; and if the whole of that number should be sold at fifty guineas a copy, I should not reimburse my expenses. In the two first volumes of this work already published, I have given a short letter-press description of the plates; but finding under the last Act of Parliament for the encouragement of learning, my continuing to give such printed explanations would subject me to the heavy tax of eleven copies of my work for the public libraries, and deprive me of several of my purchasers, some of those libraries having bought my two first volumes, I have determined to omit any letter-press, and have engraved my title pages and list of plates. I am convinced that few books of antiquities or natural history, consisting chiefly of plates, which are attended with a very heavy expense, and especially those which require to be colored, can be published in this country with letter-press, if the editors are thereby liable to be taxed with the delivery of the eleven copies for the public libraries; and that the publishers will be under the necessity either of omitting any printed description, or having them printed on the continent, where much would be saved in the article of paper alone, the price of the larger sorts of which in this country is extremely high, in consequence of the heavy duty on them.

You are Keeper of the Records of the Tower of London, and greatly acquainted with works of English History in every department; do you consider that the eleven copies demandable by the public libraries are a great discouragement to such persons as would otherwise adventure the publication of ancient English documents? I can hardly venture an opinion upon that; generally speaking, it is a very great discouragement to literature; to books of a certain expense, or to books of which very many large impressions are printed, and that are like to have an extensive sale, it might be of very little importance; but certainly in large quarto volumes attended with heavy expenses, and which take many years before their expenses are repaid, the giving up eleven copies in the first instance is certainly a very heavy taxation.

Mr. Samuel Brooke.

What is your line of business? Printing and publishing.

In what peculiar line? Particularly in the law line.

Have you experienced any inconvenience or injury from the provisions of the Copyright Act? I am very much aggrieved by the necessity of delivering eleven copies of the works which I publish, principally law works, on which it falls very hard.

In what manner do you conceive law works are particularly affected by the delivery of the eleven copies? The temporary nature

of their matter makes it necessary to confine their editions to a comparatively small number of copies, and the expences of printing and editing are so great, that the deduction of eleven copies is a very serious evil as attaching to every new edition.

Mr. Robert Harding Evans.

In very expensive works, particularly of scientific illustration, can you speak to the operation of the act of 1814? I conceive it to be a very heavy and very grievous imposition upon the bookseller, and such as is not levied by any other country in Europe.

Have you found from your own experience that, that act, has operated to the discouragement of any literary production to which you refer? Certainly it has prevented the printing and publishing of several editions of the classics, which were about to be printed at the time the act passed, but which were laid aside by the booksellers in consequence.

Specify a few of those books to which you allude that happened to be within your recollection? For instance, Damm's "Lexicon to Homer and Pindar," and a reprint of "Brotier Tacitus." These were laid aside.

In making a contract with the author of a book, would the eleven copies that are to be delivered to the public libraries be taken into the account, and charged against the author. Suppose you were to reprint an old book, such as "Corpus Rerum Anglicanum," should you take the eleven copies into account and charge them against the author? Certainly I should take it into the account; and I should conceive, that literature would be injured by the operation of this obligation, because the author must participate in that loss.

Mr. Thomas Fisher, 1817.

Observing myself publicly called upon to explain, why, a publication, which was commenced in the year 1808, upon paintings discovered at Stratford-upon-Avon, in Warwickshire, has not yet been completed in the manner then proposed, I feel it to be a duty which I owe to the public to afford the required explanation.

The work in question, was undertaken at a period, when the practical interpretation of the Copyright Act of the 8th year of Queen Anne had, *for exactly a century preceding*, left authors and publishers at liberty to judge for themselves, how far the protection held out in that act, was desirable to them at the price they were called on to pay for it, *viz. eleven* copies; and, according to the decision of their own judgment, it was optional with them, either to register their works under the provisions of this and a subsequent act, and thus to sacrifice eleven copies, or to omit such registration, and leave their works open to piracy.

Estimating, from the character of my work, its probable circulation at a very small number, and considering the laborious manner in which every copy was to be finished in colors; convinced also, of

the impossibility of any profitable piracy under these circumstances (and I conceive nothing but the hope of profit will induce piracy), I resolved on executing an impression of only 120 copies of the paintings at a *polyautographic* press; by the eventual sale of which impression, chiefly amongst students in antiquity, I expected to obtain a very small remuneration for my labor.

For the accomplishment of my design, I had obtained access to materials, original and interesting, beyond the general run of topographical publications; and, in the confidence of success, I certainly did intimate a purpose of completing the work, by the addition of copper-plates and *copious letter-press*, thereby intending a memoir of the ancient fraternity or Guild of Holy Cross at Stratford-upon Avon, at whose cost these paintings were executed, to be compiled from the authentic records of the Corporation.

But, unfortunately, while the materials for the fourth part were in a state of considerable progress, a question was brought under legal discussion, arising out of an *unconditional* claim, made by one of eleven privileged bodies, to receive from the proprietors of all works, without *purchase*, and without *exception*, one copy of every literary performance, even although it might not be deemed expedient by the author to claim the protection of the Act of Queen Anne for the copyright.

Mr. Brougham's arguments against this claim in the Court of King's Bench appeared to me at the time, and have ever since appeared to me, just and convincing; those of the opposite party had this obvious defect, that they led to a result prejudicial to that literature which the Act of Queen Anne, in its preamble, expressly professed to befriend. A decision, however, was obtained, favorable to the claim; on the legal validity of which there could be no question, whatever doubts might exist as to its accuracy.

Under these altered circumstances, I conceive myself justified in declining either to involve myself in the predicament of attempting to evade the law, which is repugnant to my feelings—or of submitting to an unreasonable loss of property, which I have a right to avoid,—or, as a remaining alternative, to involve myself in legal disputes with powerful and wealthy bodies, who, *with ample funds, and a host of legal retainers*, have, by an extraordinary plea of *poverty*, obtained the sanction of the legislature to their claim.

To the yet unpublished plates of my Stratford-upon-Avon, the subscribers will be welcome, as soon as I can put them together; and I am not yet so far advanced in life, but that I entertain a hope of being enabled to complete my original design, when the legislature shall have perceived, as it unquestionably must in a very few years perceive, the prejudicial consequences to literature and science of the law as it now stands.

REPORT OF THE COMMITTEE OF THE HOUSE OF COMMONS, 1818.

In no other country, as far as the Committee have been able to procure information, is any demand of this kind carried to a similar extent;—in America, Prussia, Saxony, and Bavaria, one copy only is required to be deposited; in France and Austria, two; and in the Netherlands, three; but in several of these countries the delivery is not necessary, unless copyright is intended to be claimed. They are of opinion, that one copy should be delivered in future to the British Museum; and that in lieu of the others, a fixed allowance be granted to such of the other public libraries as may be thought expedient. Upon an average, it appears that the price of one copy of every book entered at Stationers' Hall would be about £500. If it should not be thought expedient by the House to comply with this recommendation, they think it desirable that the number of libraries entitled to the claim should be restricted to those of Oxford, Cambridge, Edinburgh, and Dublin Universities, and the British Museum. They advise, also, that books of prints, wherein the letter-press shall not exceed a certain very small proportion to each plate, shall be exempted from delivery, except to the Museum, with an exception of all books of mathematics; that all books, in respect of which claims to copyright shall be expressly and effectually abandoned, be also exempted; and that the obligation imposed on printers, to retain one copy of each work printed by them, shall cease, and the copy of the Museum be made evidence in lieu of it.

QUARTERLY REVIEW, 1819.

It is argued that the bookseller may and will increase the price of a book in consideration of the tax. The reply to this is, that books are already too dear—so dear, that their sale in a foreign market is diminished by this cause to a very great degree, almost indeed destroyed. And this is one reason why our literature is so little known on the continent. Such works as happen to have a reputation there, are printed there, and sold for less than half the selling price of the same works in England. The Americans continually complain of the dearness of our books, and it operates in their country to lessen the sale of those which they do not print for themselves. With the tax upon advertisements, with the duty upon paper from 20 to 25 per cent., books are necessarily dear, and they can bear no additional tax. It must be also remembered that every English book printed abroad is a loss to the revenue of so much duty on paper. Hence, whatever tends to induce publishers to print English works on the continent, is an injury to the country at large.

The most amusing part is, that the advocates of the Universities take credit for promoting the interests of literature, and especially for having originally suggested an extension of copyright in favor of authors or their assigns. They are indeed notable friends to authors,

and have treated them as lovingly as Isaac Walton's Piscator instructs his pupil to handle the frog:—"Put your hook into his mouth, which you may easily do from the middle of April till August, and then the frog's mouth grows up, and he continues so for at least six months without eating, but is sustained; none but he whose name is Wonderful, knows how. I say, put your hook through his mouth and out at his gills, and then with a fine needle and silk, sew the upper part of his leg with only one stitch to the arming-wire of your hook, and in so doing, use him as though you loved him." But unlike the frog, the author cannot subsist for six months without eating; and there is also another point of dissimilitude, that as his mouth does not grow up, he is sometimes able to express his sense of the loving usage which he receives.

Pamphleteer, 1821.

I will first remark on the original idea, that the *eleven* copies to the libraries is for the encouragement of literature. If this were granted, it would be an argument for the extension of the gift to *all* the public libraries; in which case it would surely better become Government to furnish them at the public expense; and not, as at present, render the tax so partial, that it has checked, and must often check, the publication of many works of taste and importance.

It is urged, that the privilege is merely a quid pro quo, i.e. the security of the copyright. Surely literature should not be the only shackled patent; for copyright is another term for patent. Who, indeed, would have invented a steam-engine, if he had been obliged, *before* he could sell *one*, to give *thirteen* to public buildings?—(for the large paper copy to the British Museum, and one to the printer, make the number *thirteen*.) As well might coals and candles be thus *given* to the libraries for the encouragement of literature. At all events, the stationer should be obliged to furnish the paper gratis, and Government should allow the draw back on the duty.

It has been argued in favor of the claim, that it was enacted and exacted in former times; but to this I should answer, that before the diffusion of literature became general, an apprehension might exist, that works of merit and information might be lost; that in the mode of printing which prevailed at that time---crowded pages and on common paper—the expense was trifling: but inconsiderable as it was then, the good sense of the directors of the libraries had induced them to forego and abandon the claim.

It cannot be urged that the public pay for it, because it is not certain that the other 487, out of the 500, will sell; if it were, the author, *so* situated, would be indemnified: but it will readily occur, that in such a case, the price of 487 must be raised, and consequently the sale become more slow and precarious. Besides, the answer to that argument is easy,—the thirteen copies should only be taken AFTER the sale of the 487, by which means authors would lose less, and the libraries preserve their privilege. To confirm this posi-

tion, it might be added, if the book is worth any thing, it will be certain of sale, and they of their copies; if otherwise, it will not be worth a place on their shelves.

There are, however, great objections to this increase of price, necessarily incurred by this gift, or rather extortion.—1st. That our continental rivals are enabled to undersell us in our own market, even without the weight of this additional tax, in consequence of the high duty on paper, metal, rags, leather, &c. used in the manufacture of a book:—ex. gr. *Porsoni Adversaria, P. Knight's Prolegomena,* and the *School Gradus,* reprinted on the continent, are sold cheaper in this country, with all the burthen of the import tax, than our own editions—besides most of our popular English authors.—2nd. That poor authors, who are most to be considered, are miserably discouraged, since publishers reject much of their labors, owing to the operation of the act.—3rd. That the revenue itself suffers in a variety of ways by this check to publication, from decreased consumption of paper, &c., and the consequent diminution of employment to artists and mechanics. Indeed, I am sure that the present loss to the revenue would amply enable Government to grant 300*l.* per annum to each of these libraries; which would more than purchase all the useful books published in the year, for I believe 400*l.* would pay for a copy of every work printed within each year. The duty on the paper alone, of a work value one hundred guineas, would repay Government for such a grant to these libraries.—But it is well known that they are sufficiently rich to supply themselves with the works they want.

It is notorious that the minor productions sent to the Universities are not immediately shelved, but *lent through* the University, to one after another. This, no doubt, encourages the *reading* of many works; but as the reading *so* obtained *cannot* increase the sale, what chance of remuneration is left to the author? If it were supposed that persons would, by seeing such works, become purchasers, then the act should rather oblige the libraries to buy, or, at any rate, only have the books lent them for a certain time; which might thus induce the libraries to purchase, in order to keep them, after having discovered their value.

NEW MONTHLY MAGAZINE, 1826.

Among the serious inconveniences, or rather losses, which the public sustains from the present oppressive enactment of presenting eleven copies of all published books to certain public and private libraries, we may instance two recent works, which consist only of a series of engravings, without any letter-press, and which are thus published to obviate this literary tax—*Illustrations of the Pavilion at Brighton;* one of these is an expensive production of prints, beautifully drawn, engraved, and colored, but without a line of historical or descriptive information accompanying them. Thus the stranger, viewing them, may *fancy* the engravings the chimera of the architect's and painter's fancy, *or* the "country palace" of its monarch. Should he be told this is the fact---that it has been crowded with princes, lords,

and ladies, and is now deserted, he will be more than commonly inquisitive to learn something of its history---when and by whom it was designed, built, and fitted up.—On this, and on all other points, he is left to ruminate, and probably draw erroneous conclusions, for no information is afforded; and we are credibly informed, that the *King's architect,* who has just published these prints, was induced to avoid giving any letter-press to save himself from the unjust tax of presenting eleven copies of a twenty guinea volume, or throwing away 220 guineas in copies, but one of which (namely, that to the British Museum) is purely devoted *pro bono publico*—the only excuse which could sanction such an appropriation and sacrifice of private property. Robson's *Picturesque Views of all the English Cities* (one number of which has just appeared, containing a very interesting and beautiful series of engravings), is another example of the workings of this oppressive act. In the prospectus, the editor, who has been a staunch and zealous defender of "the rights of literature," says, "The reader will see that it is not proposed to give letter-press with these plates." Historical and descriptive accounts of the cities" treated and illustrated in a novel style," will be published; but this will form a separate and distinct work, in order to obviate the very *unjust, oppressive, and vexatious tax* of giving eleven copies of an expensive series of illustrations to public and wealthy institutions, which ought to *encourage* art as well as literature,—which have ample funds of their own, and the benefits of which are of a private and exclusive nature; for it cannot be denied, that even the advantages of Oxford and Cambridge are sealed against one half the population of England, that is to say, against all who dissent from the established church, and they form a fair half of her population, to say nothing of nine-tenths of the population of Ireland, which consists of catholics and protestant dissenters—Scotland alone having Universities open to all her population.

TABLE

OF

CASES

CITED OR REFERRED TO,

AND

WORKS OR SUBJECTS LITIGATED.

INDEX.

J. EVANS, PRINTER, 91, BARTHOLOMEW CLOSE, LONDON.

ERRATA.

Page xviii, line 9, for *o* read *of* literary.
6, 25, for *underwritten* read *unwritten.*
11, 29, for *process* read *progress.*
71, 7, for *where* read *were.*
120, Note (1) for 55 read 65.
173, 2, for *implied* read *impliedly.*
182, last line, insert "is said."
187, 2, for *mere* read *merely.*
196, 37, for *Augustine* read *Augustan.*
206, 30, for *injustice* read *injustice.*

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