of works criticised by them.[1] But the case viewed by his lordship was that of an encyclopædia, which had taken from the plaintiff's book and reprinted seventy-five of the one hundred and eighteen pages of which it consisted. Said he: 'The question is, whether the defendant's publication would serve as a substitute for the plaintiff's? A review will not, in general, serve as a substitute for the book reviewed; and even there, if so much is 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."

Upon the appearance of Dr. Johnson's "Rasselas," it was seized upon by "The Gentleman's Magazine," which printed the story, leaving out the "moral reflections." Now this was claimed to be an abridgment only; and the court held, with a reasoning that later decisions can hardly be said to sustain, that an abridgment was an advantage to the author, as being not only, perhaps, a testimonial to the value of his work, but as serving the end of an advertisement.[2] This reasoning of the Master of the Rolls was very much the same as saying, If your goods are stolen, it is testimony that they are worth stealing; and the gratification of the compliment should compensate you for your loss. And perhaps it might, if writers wrote for "glory," as we have seen, unhappily for this line of argument, is not the case. "This latitudinarian right," said Chancellor Kent, in commenting upon this case, "is liable to abuse, and to trench upon the copyright of the author. The question as to a *bona fide* abridg-

[1] Roworth v. Wilkes, 1 Camp. 94.
[2] Dodsley v. Kinnersley, Aub. 403.

ment may turn—not so much upon the quantity, as the value of the selected materials."[1]

Somewhat later, in the case of Charles Dickens's "Christmas Carol," where the defendant had taken the story, and without altering incident, character, scene, or name, had set out the narrative in somewhat fewer words; the court would not permit the defense, of abridgment to be set up, saying that it "was not aware that one man had the right to abridge the works of another; that—although it would not pronounce that such a thing as a lawful abridgment was impossible—to say that one man had the right to abridge, and publish in an abridged form, the work of another, without more: was going much beyond his notion of what the law of this country was.[2]

And so an injunction was granted against the sale of a work entitled "An Abridgment of Cases," &c., which appeared to be a *verbatim* copy of a preceding work of the same name, except that the former work left out certain portions of the cases, such as the arguments of counsel. The injunction was granted.[3]

Where the publication of the quotation is a substitute for the quoted work, or for so much of it as may be, the quotation is an infringement. As to the "giving of credit," that goes merely to the question of the intention of the quoter, and is mainly immaterial; for, as an injury may be inflicted without in-

[1] 2 Com. 382 (note), and see Gyles v. Wilcox, 2 Alk. 141.

2 Story Eq. Jur. § 939; Campbell's Lives of the Chancellors, v. 56.

[2] Dickens v. Lee, 8 Jur. 183.

[3] Brellerworth v. Robinson, 5 Ves. 709; and see Bell v. Walker, 1 Bro. C. C. 451, and see also Sweet v. Shaw, 1 Jur. 212; Whittingham v. Wooler, 2 Swanst. 428; Mecklin v. Richardson, Amb. 694.

tention, so no injury may result from an intention to injure. The law will look at the effect, as we have said before, whether intentional or unintentional.[1] This question, and the questions arising in the cases of abridgments, are often so inseparable as to be practically identical.

167. To constitute a true and proper abridgment of a work, the whole must be preserved in its sense. The act of abridgment thus becomes an act of the understanding, employed in carrying a large work into a smaller compass, and, by rendering it less expensive, and more convenient both to the time and use of the reader, making the abridgment a new and meritorious work. In the case of an abridged edition of an extensive work, which 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, Lord Apsley said that he and Mr. Justice Blackstone 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."[2]

But though a *bona fide* abridgment of another work is no infringement of the copyright in that work, a merely colorable abridgment may be. "Where books are colorably shortened only," said Lord Hardwicke, "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;"[3] and

[1] Curtis on Copyright, 247.
[2] Lofft's Rep. 775.
[3] Gyles v. Wilcox, 2 Atk. 142.

his lordship considered a book published by the defendant entitled "Modern Crown Law," not to be a *bona fide*, but a mere colorable abridgment of Sir Matthew Hale's "Pleas of the Crown," with the omission of some repealed statutes, and a translation of the Latin and French quotations.

A mere selection or different arrangement of parts of the original work, bringing it into a smaller compass, will not be regarded by the law as an abridgment. "There must be," said Mr. Justice Story,[1] "real, substantial condensation of the materials, and intellectual labor and judgment bestowed thereon; and not merely the facile use of the scissors; or extracts of the essential parts constituting the chief value of the original work." Many mixed ingredients enter into the discussion of such questions. In some cases, a considerable portion of the materials of the original work may be fused—if I may use such an expression—into another work, so as to be undistinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work, into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy.

In the case from which the above remarks are taken, the question was as to whether a "Life of Washington," in two volumes of 866 pages, was an invasion of the copyright in "Sparks's Life and Writings of Washington," a work in twelve volumes; 353 pages of the former work being copied from the latter, 64 pages being official letters, and 255 being

[1] Folsom v. Marsh, 2 St. Rep. 107, and see Lewis v. Fullerton, 2 Beavan, 6, 8.

private letters of Washington, first published by Sparks under a contract with the owners of the original papers of Washington. It was held by Story, J., to be such an invasion, and the injunction was granted.[1]

The question of quotation will constantly arise. In volumes of "Elegant Extracts," where the defendant published a book of specimens of modern English poetry, with criticisms and biographical notices, and inserted therein entire poems and extracts from the poems of Campbell, which were under the protection of copyright, an injunction was granted against the publication, and the *animus furandi* held to be implied by law, from the taking.[2] And said Story, J.,[3] "If a person should, under color of publishing 'Elegant Extracts' of poetry, include all the best pieces at large, of a favorite poet, whose volume was secured by copyright, it would be difficult to say why it was not an invasion of that right, since it might constitute the entire value of the volume."

The addition of words, prelude, and accompaniment to an old air was held to give the adapter a copyright in the whole composition; and where a a person adapted words to an old air and procured a friend to compose an accompaniment, his assignee was held entitled to describe himself, in an action for piracy, as proprietor of the copyright in the entire composition.[4] And it was said in Bogue v. Houls-

[1] Folsom v. Marsh, 2 Story, 100.

[2] Campbell v. Scott, 11 Simons, 31.

[3] In Folsom v. Marsh, 2 Story R. 100, 115, and see also Mawman v. Feof, 2 Russ. 383, *post* chapters on legal reports and piracy.

[4] Leader v. Purdy, 7 C. B. 4. As to how far an arrangement for the pianoforte of the score of an opera is an orginal work, see Wood v. Boosey, 7 B. & S. 869; 9 B. & S 175;

ton,[1] that where there are designs forming portion of a book in which a person has copyright under the act, such copyright extends to the illustrations and designs of the book, as well as to the letter-press. Where the plaintiff had published a book, containing letter-press illustrated by wood-engravings, the engravings being printed on the same paper as the letter-press itself, and defendants published a work with a different title and different letter-press, but containing pirated copies of the wood engravings—which are especially excluded from the English statutes[2] (the plaintiff having complied with the requisitions of 5 & 6 Vict. c. 45, but not with those of the act for the protection of engravings, by printing the date of publication and the name of the proprietor on each copy), the vice-chancellor granted an injunction, the plaintiff undertaking to bring an action to try the right at law. "It appears to me," said Sir James Parker, "that a book must include every part of the book, it must include every print, design, or engraving which forms part of the book, as well as the letter-press therein, which is another part of it. Prints published separately do not appear to have been within that act by that express definition. But the case now before the court is not the case of separately published prints, but the case of designs forming part of a book. There is no decision of any court of law, or of this court, either way upon this point."

168. If one, not claiming any originality whatever, reduces to question and answer a certain science or subject-matter, courts, as we have seen, will not

L. Rep. 2 Q. B. 340; L. Rep. 3 Q. B. 223; 18 L. T. N. S. 105.

[1] 5 DeG. & S. 275.

[2] 5 & 6 Vict. C. 45.

travel behind it to ascertain whether the questions and answers were framed from the writer's own surmises, opinions, or recollections on the particular subject, or from works consulted by him for the purpose; but will hold his work to be original, for the purposes of copyright and protection.[1]

169. We have seen that, where the sources from which the material or subject-matter are common, and of general availability and recourse—that is, *in medio*—any novel arrangement of them can be the subject of ownership.[2]

But though any person may thus acquire a copyright in his own arrangement of common materials; the materials themselves remain, as always, open to the next comer who chooses to have recourse to them, and different copyrights may be acquired in different arrangements of the same common materials. Different arrangements of common materials must, however, be independent. A later arrangement must not be a servile imitation or reproduction of an earlier one.

In Kelly v. Morris,[3] application was made for an injunction to restrain the publication of "The Imperial

[1] Jarrold v. Houlston, 3 K. & J. 108 *ante*, 40. See this principle applied in the case of a book of chronology (Trusler v. Murray; cited in note to Cary v. Longman, 1 East, 363); and to the case of an annotated catalogue of books published by a certain publishing house (Hatten v. Arthur, 11 W. R. 934); to a work on architecture (Wilkins v. Aikin, 17 Ves. 422); maps (Kelly v. Morris, 1 L. Rep. Equity, 697; *Vid.* also Carnan v. Bowles, 2 Bro. C. C. 80); and as to the protection accorded (2 Story Eq. Jur. § 941; Eden Inj. ch. 13, 286; *Vid.* also Gray v. Russel, 1 Story, 11; Emerson v. Davies, 3 Id., 768.

[2] Alexander v. Mackenzie, 9 Scotch Sess. Cass. 2nd ser 758; *Vid.* also Emerson v. Davies, 3 Story, 781; Blunt v. Patten, 2 Paine, 395.

[3] L. Rep. 1 Eq. 697; 35 L. J. 423 ch.; 14 L. T. N. S. 222.

Directory of London, 1866," on the ground that it was a mere piracy of a work belonging to the plaintiff, entitled "Post-Office London Directory." The defendant set up, as defense, that from 1862 to 1864, he had published a work called "The Business Directory," in which appeared the names of about 100,000 persons, in trade or business, which had been obtained by a large number of canvassers whom he had employed for the purpose; that, wishing to extend his operations, and bring out "The Imperial Directory," which should comprise street, conveyance, postal and other sections, he acted on a similar principle to that which had guided him in taking the names of persons in business whom his canvassers were unable to see, and procured his information from any source "where the persons had made it public at their own expense, for their own benefit"; that he considered that the name of a private resident belonged to the public when that resident had "gratuitously given it to the public through some recognized medium of publicity," and that the publisher merely "held it in trust for a purpose, receiving for his trouble any benefit he could make of the information, but that the right of using that information belonged to the public, as soon as the information was made public"; that any person might go round with a list of names already published, and ask permission to render the work of publication more complete by reproducing it, and if any error had been made in the first publication, it rested with the original owners of the names to point out the error when submitted to them for permission to reproduce which opportunity was afforded the residents by means of circulars sent round to them through the defendant's canvassers, asking the residents to fill up a form with their name and address for publication in "The

Imperial Directory." It was admitted that one of defendant's canvassers, afterwards discharged by him, had not taken the trouble to make the necessary inquiries, from house to house, so that most of the errors in the defendant's directory, identical with those in the plaintiff's, would be thus accounted for. On the other hand, several instances were adduced of corrections and large supplementary additions to the plaintiff's work contained in the defendant's, and the manuscript of the latter work was produced.

In granting an injunction the lord chancellor said: "The defendant has been most completely mistaken in what he assumes to be his right to deal with the labor and property of others. In the case of a dictionary, map, guide-book, or directory, where there are certain common objects of information, which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book he must count the milestones for himself. In the case put of a newly-discovered island, he must go through the whole process of triangulation, just as if he had never seen any former map; and generally, he is not entitled to take one word of the information previously published, without independently working out the matter for himself, so as to arrive at the same result, from the same common sources of information; and the only use that he can legitimately make of a previous publication, is to verify his own calculations and results, when obtained. So, in the present case, the defendant could not take a single line of the plaintiff's directory for the purpose of saving himself labor and trouble in getting his information. The defendant, from the description of the way in which he had in the first instance compiled his 'Business

Directory,' seems to have known exactly what he might do. . . . . The defendant goes on in his affidavit to propound a most extraordinary doctrine as to the right of publicity in the names of private residents, who had, as he expressed it, 'given their names for public use.' What he has done has been just to copy the plaintiff's book, and then to send out canvassers to see if the information so copied was correct. If the canvassers did not find the occupier of the house at home, or could get no answer from him, then the information copied from the plaintiff's book was reprinted bodily, as if it was a question for the occupier of the house merely, and not for the compiler of the previous directory. Further than this, the defendant tells us that he had a number of new agents, and that one of them had performed his part of the work carelessly, thus at once showing how easy it would be, on the system adopted by the defendant, for any negligent agent to send back his list all ticked as if correct, without having taken the trouble to make a single inquiry. . . . . The work of the defendant has clearly not been compiled by the legitimate application of independent personal labor, and there must be an injunction to restrain the publication of any copy of the defendant's work containing the portions called the 'Street' and 'Court' Directories, with liberty for the defendant to apply, when he shall have expunged from such portions all matter copied from the plaintiff's work."[1]

A compiler may not cut out slips from the former work and go and see whether they are accurate, and if accurate, copy them bodily into his own work, as

[1] *Vid.* also Matthewson v. Stockdale, 12 Ves. 275; Cornish v. Upton, 4 L. T. N. S. 862; Morris v. Ashbee, L. Rep. 7 Eq. 34; 19 L. T. N. S. 550.

was done in both the cases referred to; but he is quite justified in referring to the former book "in order to guide himself to the persons on whom it would be worth his while to call."[1] He is not entitled to take a single line of the plaintiff's directory for the purpose of saving himself trouble in getting his information.[2] Not that he may not look into the book for the purpose of ascertaining whether it was worth his while to call upon that person or not; but he may not cut out a slip or portion of the first work, and then take that particular slip, and show it to the person, and get his authority as to putting that particular slip in.[3] He must not take the passage of the directory and go and see whether it happens to be accurate, and if it is accurate, bodily copy the passage into his directory.

Nor will the fact that the publisher of the directory receives payment from some of the persons whose names are contained in it, for printing their names in large letters, or with lines of additional description, make those names, when so inserted, common property, so as to justify the compiler of a rival directory in reprinting them from slips cut from the former.[4] Nor the fact that the persons, whose names were so printed, had been applied to by the compiler of the second directory to verify the information contained in the first, and had authorized the second insertion of

[1] Morris v. Wright, L. Rep. 5 ch. app. 279; 22 L. T. N. S. 78.

[2] Kelly v. Morris, L. Rep. 1 Eq. 697; 35 L. J. 423 ch.; 14 L. T. N. S. 222.

[3] Pike v. Nicholas, 20 L. T. N. S. 909; 38 L. J. 529 ch. The decision of the vice-chancellor in this case was reversed on appeal, but only as to the question of degree in which the defendant had in fact made use of the plaintiff's work. L. Rep. 5 ch. app. 251; *vid.* also Stowe v. Thomas, 2 Amer. Law Reg. 229.

[4] Morris v. Ashbee, L. Rep. 7 Eq. 34; 19 L. T. N. S. 550.

their names in capital letters and added lines,[1] make the work an original one.

The rule, as applied to dictionaries, is illustrated in a late English case,[2] holding, that labor having been employed upon any subjects, however humble, gave a copyright which no one had a right to interfere with; and that, "as to dictionaries, while there might be a certain degree of skill exhibited as to order and arrangement, and a certain amount of ingenuity exhibited in the selection of phrases and illustrations which were the best exponents of the sense in which the word was to be used; there might also be great labor in the logical deduction and arrangement of the word in its different senses, when the sense of the word departed from its primary signification; on the other hand, there was always this to be said, that as a large mass of the words admitted of only one acceptation, and could be translated in one way only (and the large mass of dictionaries were composed of words of this description): numerous dictionaries had necessarily been published from time to time, and the new dictionary maker must, of necessity, use much of the information and of the results of his predecessors. . . . . Of course there could be no copyright in much of the information contained in the numerous dictionaries published, each necessarily having a large number of words identically similar." In the case before it the court applied the test "whether there was a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work," and the result, after an elaborate comparison of the two dictionaries, was an opinion that though the defendant had taken a good

[1] Morris v. Ashbee, L. Rep. 7 Eq. 34; 19 L. T. N. S. 550.
[2] Speers v. Brown. 6 W. R. 352.

deal from the plaintiff's work, yet a good deal of labor had been bestowed upon what had been taken, and, on the whole, it could not be said that the defendant had gone beyond what the court would allow; having produced that which, in the result, was, in fact, a different work from the plaintiff's.[1]

170. Abridgments—possibly from the fact that their spirit and tendency is by cheapening and making less laborious the perusal of learned works, to diffuse more widely education and culture—have generally been regarded with favor by the law, and liberally protected.

"An abridgment," said Lord Hardwicke,[2] "may, with great propriety, be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shown in them, and in many cases are extremely useful, though in some instances prejudicial, by mistaking and curtailing the sense of an author." The abridgment must not only contain the arrangement of the book abridged; the idea must be taken from the pages: it must be in good faith an abridgment, not a treatise interlarded with citations: to copy certain passages from a book, omitting others, is in no just sense an abridgment: the judgment is not exercised in condensing the views of the author; the language is copied, not condensed.[3]

"Between a compilation and an abridgment," said Mr. Justice Leavitt,[4] "there is a clear distinction; and yet it does not seem to have been drawn in any opinion cited. A compilation consists of selected extracts from different authors; an abridgment is a condensa-

[1] The bill praying for an injunction was dismissed; but, on account of the doubtfulness of the case, without costs.

[2] Gyles v. Wilcox, 2 Atk. 143; *vid.* also Tonson v. Walker 3 Swanat, 681; Bell v. Walker, 1 Bro. C. C. 451.

[3] Story's Executors v. Holcombe, 4 McLean, 311.

[4] Id.

tion of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the works cited; the latter must adopt the arrangement of the work abridged. The former infringes the copyright, if matter transcribed, when published, shall impair the value of the original book; a fair abridgment, though it may injure the original, is lawful."

And modern jurists have not been as unanimous as their predecessors in favorable regard for abridgments; and, perhaps, the greater cheapness and ease with which original works are now produced, render it right that it should be so. In Tinsley v. Lacy,[1] Lord Chancellor ——— said: "I do not agree in the reasons for upholding such a work, given by some learned judges, viz., that an abridger is a benefactor. I should myself regard him rather as a sort of jackall to the public, to point out the beauties of authors"; and in the case of Story's Executors v. Holcombe,[2] Mr. Justice Leavitt expressed himself to the same effect, and observing that the same rule of decision should be applied to a copyright as to a patent for a machine. "The construction," he says, "of any other machine which acts upon the same principle, however its structure may be varied, is an infringement on the patent. The second machine may be recommended by its simplicity and cheapness; still, if it act upon the same principle of the one first patented, the patent

[1] 11 W. R. 876; 1 H & M. 747; 32 L. J. ch. 535. See *post*, chapter on Piracy.

[2] 4 McLean 311. And see, to the same effect, Curtis on Copyright, pp. 272, 273.

is violated. Now an abridgment, if fairly made, contains the principle of the original work, and this constitutes its value. Why, then, in reason and justice, should not the same principle be applied in a case of copyright, as in that of a patented machine? With the assent of the patentee, a machine acting upon the same principle, but of less expensive structure than the one patented, may be built; and so a book may be abridged by the author, or with his consent, should a cheaper work be wanted by the public. This, in my judgment, is the ground on which the rights of the author should be considered. But a contrary doctrine has been long established in England, under the statute of Anne, which, in this respect, is similar to our own statute; and in this country the same doctrine has prevailed. I am, therefore, bound by precedent; and I yield to it, in this instance, more as a principle of law than a rule of reason or justice."[1]

The case of Story's Executors v. Holcombe, from which the above remarks are taken, was one in which the plaintiffs complained of an infringement of the copyright in Judge Story's "Commentaries on Equity Jurisprudence," the defense being that the work complained of (an "Introduction to Equity") was a *bona fide* abridgment of the Commentaries. It appeared that the chapters and the subjects were the same in both books; the former book contained 1856 octavo pages, including notes, the latter 348 octavo pages, including notes; a page in the latter contained a little more than one in the former: reduced to the same sized page, the ratio in the amount of matter in the latter book to that in the former, was about two to nine. In the entire work of Story there were 226 pages, constituting nearly an eighth part, on which

[1] *Vid.* also Curtis on Copyright, pp. 272, 273.

there was some matter which had been extracted in the same language, or very nearly so, into the defendant's book, this matter comprising 879 lines, or about 24 pages of his book, and 30 pages of Story, which made one-fifteenth part of the defendant's book and one-sixtieth of Story; this matter being found in scattered paragraphs in the first third of the defendant's book: all the other portions of Judge Story's book were abridged without any transcription of his common language, the part so abridged comprising two-thirds of the defendant's book. The court, in granting an injunction as to the first 100 pages of the defendant's work, said:

"What is the character of the work complained of? Upon its title-page it does not purport to be an abridgment, but 'An Introduction to Equity Jurisprudence, on the Basis of Story's Commentaries'; and in the preface the author says, 'It is not intended to supply the place of the Commentaries with any class of readers, but to serve simply as an introduction, a companion, and a supplement to their study. The text is substantially an abridgment of that work, &c.'; . . . . but he also says that 'he has felt at liberty to make very considerable alterations and additions.' Alterations of the original work, and additions to the text, are not appropriate to an abridgment. In saying, therefore, that 'the text is substantially an abridgment,' Mr. Holcombe could have meant nothing more than that, in writing his book, he followed the arrangement of the Commentaries, extracting certain parts, condensing others, with 'very considerable alterations and additions' of his own. A supplement to the Commentaries, which, Mr. Holcombe says, in some sense, is the character of his work, may supply defects in the original, but it can in no sense be considered an

abridgment. This remark seems to have been made in reference to the notes added by the author. It may not be essential to exclude extracts entirely from an abridgment, but in making extracts merely there is no condensation of the language of the author, and, consequently, there is no abridgment of it. Much looseness is found in the decisions upon this subject. Some of the judges would seem to consider that where a book is greatly reduced in the size, though made up principally of extracts, it is an abridgment. In a book of reports, such as 'Bacon's Abridgments,' the language of the court is necessarily adopted often to show the principle of the decision. But the same necessity does not exist, and the same license can not be exercised in abridging an elementary work. . . . . Nearly one-half of the text, in the first hundred pages of Mr. Holcombe's book, appears to have been extracted from Story. . . . . To class these extracts under the head of 'abridgments,' would seem to be a perversion of terms. Whatever else this part of Mr. Holcombe's book may be called, it is not an abridgment. With greater propriety it may be called a compilation, as the extracts contained in it are taken from various authors. As a compilation, this part of the book must be considered an infringement of the right of the plaintiffs, by the copious extracts made from the Commentaries, and the classification of the subjects copied from them. . . . . Looking at the smallness of Mr. Holcombe's book, in comparison of that from which it was principally taken, one might suppose that the former was a short abridgment of the latter. But this comparison of size or number of pages affords no guide to a proper decision. The character of the work must depend upon its matter; and it would seem from the

considerations stated, that the first third part of Mr. Holcombe's book, including one hundred pages, cannot be justly and legally called an abridgment, as it does not possess the essential ingredients of such a work; and that, viewing it as a compilation, it is an infringement of the plaintiff's right, on the ground that the plan of the Commentaries is copied; and also for the reason that the extracts extend beyond the proper limit of such a work. The remaining two-thirds of the book may be comprehended under a liberal construction of an abridgment. The matter is greatly condensed by Mr. Holcombe, in his own language, and in a manner highly creditable to him."

The case of Dickens v. Lee,[1] is interesting as illustrating the extent to which publishers have ventured to take advantage of the privileges of abridgers and abridgments. In that case the defendant published in a number of "Parley's Illuminated Library" (a weekly publication) a portion of a story entitled "A Christmas Ghost Story, re-originated from the original by Charles Dickens, Esq., and analytically condensed expressly for this work," which, with the exception of a few colorable alterations, was in all respects similar to the "Christmas Carol" of Charles Dickens, this was held to be a clear invasion of Mr. Dickens's copyright in that work.

It was contended that the work was neither a colorable imitation nor a piracy of the other, but a fair abridgment, the result of the defendant's mental labor, and falling within the principle of Dodsley v. Kinnersley;[2] and it was urged that—so far from any attempt being made to induce the public to believe they were buying, for one penny, what the eminent author of the

[1] 8 Jur. 183, *ante*, p. 339.
[2] 4 Esp. 169.

"Christmas Carol" had written and published for five shillings—the defendant, in his work, had a dedication of his labors to Mr. Dickens himself. "The plaintiff," said the court, "appears to be the author, and to own the copyright of a work of fiction—a novel—the copyright of which has not been contended to be not entitled to protection. The defendant has printed and published a novel, of which, fable, persons, names and characters of persons, the age, time, country, and scene, are exactly the same; the style of language in which the story is told is in many instances identical, in all similar, except when certain alterations, by way of extension or substitution have been made; as to which, whether they improve or do not improve upon the original composition, it is not necessary for me to express my opinion. Now this has been said to be an abridgment, and as an abridgment to be protected. I am not aware that one man has the right to abridge the works of another. On the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has the right to abridge and so publish in an abridged form the work of another, without more, is going much beyond my notion of what the law of this country is. The expressions of Lord Eldon, applied to a subject of copyright very different from the present, but still applied to the subject of copyright, are these: '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.'[1] And I agree that there may be such an use of another man's publication as, involving the exercise of a new mental operation, may fairly and legitimately involve it. It does not appear

[1] 17 Ves. 426.

to me that there is anything in the present case which brings that which the defendant had done within a legitimate use of the plaintiff's publication, within the terms 'fair exercise of a mental operation,' or within the expression of 'deserving the character of an original work.' I think it, therefore, entirely excluded from Lord Eldon's definition, if as a definition Lord Eldon meant it. It appears to me to be a mere borrowing, with alterations and departures merely colorable; and when it is said that the difference of price and other circumstances of difference belonging to it, are such as to render the invasion of no practicable mischief to the plaintiff, the person whose property has been taken, is entitled to judge for himself how far he will consider that abstraction of his property to be prejudicial or not prejudicial. It is a valuable property, and he is entitled to be protected from the unauthorized use of it by another. I do not, however, as at present advised, at all accede to the argument that, whatever may be the relative merit of the two publications, whatever their relative prices, the publication and circulation of the cheaper may not in a pecuniary point of view, at least, if not otherwise, materially prejudice the plaintiff. There are various points of view into which it is unnecessary for me to enter, in which such a case may be put, in which material damage may arise from the subject, considered merely and solely as a question of property, which is the only point of view in which it is my duty or business to consider it."

171. The case of Bradbury v. Hotten[1] applies the principle of unlawful abridgment to pictures and engravings. Between the years 1849 and 1867, there appeared, in the London "Punch," nine cartoons, with

[1] 8 L. R. Exch. 1; 42 L. J. Exch. 28.

descriptive writing underneath, referring to the emperor Napoleon III. In 1871, the defendant published a work called "The Man of his Time," consisting, first, of the "Story of the Life of Napoleon III., by James M. Haswell," and, secondly, of "The Same Story as Told by Popular Caricaturists of the Last Thirty Years." Among the caricatures in Part II. were copies in a reduced form, sometimes with, and sometimes without, the descriptive writings of the nine cartoons above mentioned. No consent from the proprietors of "Punch" to this reproduction had been obtained. In an action by them for infringement of their copyright in the several books or sheets of letter-press containing the cartoons, they were held entitled to recover therefor.

A collection of indices of abstracts of titles to the real estate in certain precincts, is an original work, and entitled to protection as such.[1]

172. An important aspect of this question presents itself in regard to school and college text-books,[2] which in the United States are multiplied almost by hundreds yearly, and form, perhaps, the most profitable of publishers' ventures.

The originality of these productions consists entirely and exclusively in the method of treatment or arrangement of primary, cardinal, and fundamental rules and principles, and they therefore present this branch of our inquiry in its purest phases. As was well said by Mr. Justice Story, in a leading case,[3]

[1] Banker v. Caldwell, 3 Minn. 94. See further discussion of this case in the chapter on Piracy.

[2] As to school books, see also Lennie v. Pillans, 5 Sess. Cas. 2 Ser. 416. Constable v. Brewster, B. S. 215 (N. E. 152). Greene v. Bishop, 1 Cliff R. 186.

[3] Emerson v. Davies, 3 Story, 786. *Vid.* also Gray v. Russel 1 Story, 17. As to how far a re-arrangement of scientific-

"The preparing and adjusting of such writings require much care and exertion of mind. . . . . It does not require the exercise of original or creative genius, but it requires industry and knowledge."

The case of Emerson v. Davies[1] is a leading one in the United States. In the year 1829, Frederic Emerson published a text-book entitled "The North American Arithmetic, containing Elementary Lessons, by Frederic Emerson." This book was extensively adopted; continued to be popularly used in schools; and was several times revised, re-copyrighted and re-published in various editions previous to the year 1843. In that year Professor Charles Davies published a work entitled "First Lessons in Arithmetic, Designed for Beginners, by Charles Davies."

Mr. Emerson thereupon brought his bill against Professor Davies for alleged piracy of his first-mentioned work, claiming that its distinctive features had been boldly pirated by Davies, in his work, and that the "First Lessons in Arithmetic, by Charles Davies," was really and substantially "The North American Arithmetic, by Frederic Emerson."

The complainant claimed among other, that the progressive steps by which he (Emerson) had proposed to teach children the elements of arithmetic, was his own original invention. "That, in the execution of his plan he arranged a certain set of tables in the form of lessons, with a gradation of examples to precede each table, in such manner as to form, with the table, a peculiar and symmetrical appearance of each page;" and had further illustrated his lessons by

artistic matter (as, for example, the arrangement of the score of an opera for the pianoforte), is an original work. See Wood v. Boosey, 7 B. & S. 869; 9 Id. 175; L. Rep. 22 B. 340; Id. 32 B. 223; 18 L. T. N. S. 145.

[1] 3 Story, 786.

attaching to each example unit-marks, representing the numbers embraced in the example, which features were his own original contrivance and invention. He further alleged, that these peculiar features, *i. e.*, the tables, the examples, and the unit-marks, were imitated, copied, and employed in the work by Davies. The defendant denied all the allegations, and claimed that, whatever resemblance there was between the two text-books, was owing to the identity of the subjects treated.

The ability and fullness of the arguments on both sides of this case, and the exhaustive opinion therein by Mr. Justice Story, entitle it to be considered as one leading in questions of this kind.

In his opinion in that case, Judge Story said: "It is a great mistake to suppose, because all the materials of a work, or some parts of its plan and arrangements and modes of illustration may be found separately, or in a different form, or in a different arrangement in other distinct works; that therefore, if the plan, or arrangement, or combination of these materials, in another work, is new, or for the first time made, the author, or compiler, or framer of it (call him what you please), is not entitled to a copyright. The reverse is the truth in law, and, I think, in common-sense also. It is not, for example, in the present case, of any importance that the illustrating of lessons in arithmetic, by attaching unit-marks representing the numbers embraced in the example, may be formed by dots, in 'Wallis's Opera Mathematica,' or—in 'Colburn's Arithmetic,' in the form of upright linear marks, in a pamphlet detached from the main work. That is not what the plaintiff claims to found his copyright upon. He does not claim the first use or invention of unit-marks for the purpose above mentioned. The use of

these is a part of, and included in, his plan; but it is not the whole of his plan. What he does claim, is—1. The plan of the lessons in his book. 2. The execution of that plan, in a certain arrangement of a set of tables, in the form of lessons to illustrate those lessons. 3. The graduation of examples to precede each table in such manner as to form with the table a peculiar and symmetrical appearance of each page. 4. The illustration of his lessons, by attaching, to each example, unit-marks representing the numbers embraced in the example. It is, therefore, this method of illustration in the aggregate, that he claims as his invention, each page constituting, of itself, a complete lesson; and he alleges that the defendants have adopted the same plan, arrangement, tables, gradation of examples, and illustrations, by unit-marks in the same page, in imitation of the plaintiff's book, and in infringement of his copyright; and, in confirmation of this statement, he refers to divers pages of the book of the defendants. Now, I say that it is wholly immaterial whether each of these particulars—the arrangement of the tables and forms of the lessons, the gradation of the examples to precede the tables, the illustration of the examples by unit-marks—had each existed in a separate form, in different and separate works, before the plaintiff's work; if they had never been before united in one combination, or in one work, or on one page, in the manner in which the plaintiff has united and connected them. No person has a right to borrow the same plan and arrangement and illustrations, and servilely to copy them into any other work. The same materials were certainly open to be used by any other author; and he would be at liberty to use unit-marks, and gradations of examples, and tables, and illustrations of the lessons, and to place them in the

same page. But he could not be at liberty trans-cribe the very lessons and pages, and examples and illustrations, of the plaintiff, and thus to rob him of the fruits of his industry, his skill, and his expenditures of time and money." [1]

And in the case of Gray v. Russell,[2] which was a suit brought to protect the well-known "Adam's Latin Grammar" against a so-called "improvement" thereon, the same eminent judge, with equal clearness, enunciated the principles from which our courts would very reluctantly depart. Said Story, J., in answer to the argument that there was nothing really new or novel in Mr. Gould's notes to Adam's Latin Grammar, and that all his notes were taken from works that had been subsequently printed: "That is not the true question before the court. The question is, whether these notes are to be found collected and embodied in any former single work. It is admitted, that they are not so to be found. The most that is contended for, is, that Mr. Gould has selected his notes from very various authors, who have written at different periods, and that any other person might, by a diligent examination of the same works, have made a similar selection. It is not pretended, that Mr. Cleveland undertook or accomplished such a task by such a selection from the original authors. Indeed, it is too plain for doubt, that he has borrowed the whole of his notes directly from Mr. Gould's work; and so literal has been his transcription, that he has incorporated the very errors thereof."

"Now, certainly, the preparation and collection of these notes from these various sources, must have been a work of no small labor and intellectual exertion

[1] 3 Story, R. 782.
[2] 1 Story, 11.

The plan, the arrangement, and the combination of these notes—in the form in which they are collectively exhibited in Gould's Grammar—belong exclusively to this gentleman. He is, then, justly to be deemed the author of them, in their actual form and combination, and entitled to a copyright accordingly. If no work could be considered by our law as entitled to the privilege of copyright—which is composed of materials drawn from many different sources, but for the first time brought together in the same plan and arrangement and combination—simply because those materials might be found scattered up and down in a great variety of volumes, perhaps in hundreds, or even thousands of volumes, and might, therefore, have been brought together in the same way and by the same researches of another mind, equally skillful and equally diligent, —then, indeed, it would be difficult to say, that there could be any copyright in most of the scientific and professional treatises of the present day. What would become of the elaborate commentaries of modern scholars upon the classics, which, for the most part, consist of selections from the works and criticisms of various former authors, arranged in a new form, and combined together by new illustrations, intermixed with them? What would become of the modern treatises upon astronomy, mathematics, natural philosophy, and chemistry? What would become of the treatises in our own profession, the materials of which—if the works be of any real value—must essentially depend upon faithful abstracts from the reports, and from juridical treatises, with illustrations of their bearing? Blackstone's Commentaries is but a compilation of the laws of England, drawn from authentic sources, open to the whole profession: and yet it was never dreamed that it was not a work

in the highest sense original: since never before were the same materials so admirably combined and exquisitely wrought out, with a judgment, skill, and taste absolutely unrivalled."

173. The principle already examined, which obtains in questions of this kind is, that the fact of the imitation or infringement may depend upon the value rather than the quantity of the selected and conveyed materials, as where, for example, in a review or an abridgment only the unimportant parts are omitted, and the substance of the original work retained.

It is upon this principle that the decision in Low v. Ward,[1] assigning copyright in part only, of a work which was only valuable as a whole, would seem to depend. And so the addition of words, prelude, and accompaniment to an old musical air, would give the adapter a copyright in the whole composition;[2] and the rule will be the same if the adapter procured another to compose the accompaniment instead of doing it himself.[3]

In the case of Boucicault v. Wood,[4] it was held that a person who writes a play, and borrows certain incidents from a published novel, will still be held to be its author. "The mere copyist," said the judge in that case (Shipman), "or the slavish imitator, who produces old materials substantially in their old form, without new combination, is entitled to no protection under the statute. But the law rests upon no code of comparative criticism. It protects alike the humblest efforts at instruction or amusement; the dull productions of plodding mediocrity and the most original and imposing displays of intellectual power. The

[1] L. R. 6 Eq. 418, *post*, chapter on Copyright.
[2] Lover v. Davidson, 1 C. B. N. S. 182.
[3] Leader v. Purday, 7 C. B. 4.
[4] 5 Blatchf. 87.

law should be liberally construed in favor of authors, and, leaving their comparative merits to be settled by critics, at the tribunal of public opinion, it should protect and encourage their labors. The fruits of their literary toils should be secured to them by the highest title, for they keep open the springs of thought which feed the intellectual life of the nation."

174. A question of some nicety, however, arises as to translations. While a translation of a foreign work, not under the protection of copyright in the country where the translation is made, is, of course, an infringement of no one's rights, it is a matter of some legitimate doubt whether or not, if the untranslated version is protected by copyright, the translation would violate it. Translations are, it would seem, from the considerations already submitted, original works, although not productions de génie, but rather productions de l'esprit (to use the French distinction of M. Merlin). They are laborious and diligent works, involving the individual mental labor of the translator; and as a no unimportant means of spreading and diffusing knowledge, they are regarded with favor by the law, and will be encouraged by the law as far as possible, consistently with vested rights.[1]

The law of England unquestionably treats translations as original works, and this is probably the rule in the United States. The particular question as to where a work in a language classical, or "caviar to the general," seems not to have met with any authoritative decision in either country. A case exactly in point, however, was that of Burnett v. Chetwood,[2] where a bill was brought to restrain the publication of a trans-

[1] Curtis on Copyright, p. 187.
[2] 2 Meriv. 441 (note).

lation of "Burnett's Archæologica Sacra,"—a book in which the complainant had a vested right under the statute 8 Anne, c. 19. The opportunity for an enunciation upon this mooted point was all that could be desired; but the lord chancellor (Parker) ignored the question altogether, and granted an injunction to restrain its publication, upon entirely different grounds, namely, that the work was one not innocent in its character as tending to disturb religious beliefs; grounds which, to say the least, were gratuitously suggested by his lordship, which, at the present day, appear to be sufficiently absurd.[1]

The opinion seems to be, that in cases where a copyright of the original exists within the jurisdiction when the translation is made, that the unauthorized translation would be considered as an interference with the rights of the proprietor.

Still, much is to be said in favor of an opposite view. The translation would not only have given the work a new dress, have increased its circulation and influence, but it would be a new labor expended upon old materials, which, as we have seen, cannot be forbidden. If the work was scientific in its character, however, the original writer in the foreign tongue might

[1] The lord chancellor said that, though a translation might not be the same with the reprinting of the original on account that the translator had bestowed his care and pains upon it, and so not within the prohibition of the act, yet—this being a book which, to his knowledge (having read it in his study) contained strange notions intended by the author to be concealed from the vulgar in the Latin language, in which language it could not do much hurt, the learned being better able to judge of it—he thought proper to grant an injunction to the printing and publishing it in English; that he looked upon it that this court had a superintendence over all books, and might, in a summary way, restrain the printing or publishing any that contained reflections on religion or morality.

claim protection in the peculiar system, arrangement, and design of his treatise, under the well-known rule of Judge Story,[1] who draws an analogy from the law of patents. Said he, "A man who constructs a new machine, is entitled to a patent therefor, if the combination and arrangements thereof are new and his own invention, although he uses old materials and old mechanical apparatus and powers, in constructing such machine. He may use wheels, or levers, or screws, or toggle-joints, or cranks, or any other known modes of accomplishing given mechanical ends, if he combines them in a new manner, and thus produces a beneficial result. The steam-engine, the steamboat, the cut-nail machine, the card machine, are all but new combinations of old materials, old processes, and old mechanical powers and apparatus. And so," he argues, "although the last compiler or arranger, does not, by his new arrangement, acquire the right to appropriate to himself the materials which were common to all persons before, so as to exclude those persons from a future use of such materials, still he is entitled to use such materials, with his improvements superadded, whether they consist in plan, arrangement, or illustration, or combinations; for these are strictly his own." And so, also, a patent will be granted for an improvement, just as no inconsiderable number of the more useful and laborious works in all the range of literature, are annotations of preceding texts, and, of course, copyrightable.

175. There may be cases, however, in which the ownership of literary property centers in one, not its actual author, and not its proprietor by contract of assignment or purchase, though, undoubtedly, the

[1] In Emerson v. Davies, 3 Story, R. 968; and see Gray v. Russell, 1 Id. 11.

principle upon which they depend, is one of implied contract.

Such cases are those in which the real author, at the time he produced the composition, was in the employment of another. This principle is sometimes called the law of literary accession, and is as follows: where, in the course of the production or composition of a literary scientific production, an author employs another or others to assist him, the product of their individual labor will belong to him who is the author or proprietor of the whole.[1]

The difference between the doctrine of literary accession and the preceding cases, where the labor of others was merged, consists in the fact of the employment. In the cases of the musical adaptation of an old air, and of the plot of a novel in a play, the point hinged upon, was, that ownership of the particular features of these compositions became merged in the ownership of the composition as a whole (and which was only valuable as a whole), and it made no difference that the feature happened to be the theme of the whole production, if, separated and isolated from the production, that theme was of no market value.

Still another variety of this general principle is to be found in what we have treated, further on in this chapter, under the head of proprietary copyright.

176. The doctrine of literary accession, however, will only be applied in favor of innocent parties, and those who have not willfully used or appropriated the property of others.

A wrong doer will not be permitted to derive benefit from the otherwise accessorial character of that

[1] Pothier, proprieté, 170, 175. Hatton v. Keene, 7 Com. B. N. S. 268, 29 L. J. 20 C. P.; 1 L. T. N. S. 10. 9 Am. Law Reg. 33. *Vid.* Code Nap. 566, 567.

which he converts to his own use.[1] And, as against such, the accessorial part will be held to be the principal and vital part. Accordingly, the publication of a book will be restrained or suppressed for piracy, where the matter pirated is accessorial only to former compositions in which there could be no copyright, and forms only a small portion of the whole contents.[2]

The law of literary accessions is well illustrated in the case of a calico printer,[3] who had discharged his head color-man. The color-man brought suit against him in trover for a book of entries of processes of mixing the colors used in his employ, which he had kept while in the defendant's employ. It was held that, even though many of the processes therein set forth were of the plaintiff's own invention, he could not recover, because they were the result of his employment; and that the master had a right to something beside the mere manual labor of the servant in the mixing of the colors; and though the plaintiff invented them, yet they were to be used for his master's benefit.

So where the plaintiff, an artist, accompanied an expedition to Japan, fitted out by the United States government, as a master's mate, and signed the shipping articles, and drew and received his pay as such, with the understanding that all sketches and drawings that he might make were to belong to, and become

[1] Sweet v. Bunning, 2 T. J. ch. 90; 2 S. & S. 1; 16 Com. B. 459; 3 Jur. 217; 5 Carr. & P. 58. Merlin: Questions de Droit, "Contrefacon," § II. vol. 2, p. 659; "Proprietée Litterraire," § II. vol. 6, p. 498, 4th ed.; Keene v. Wheatley, 9 Am. Law. Reg. 33; Keene v. Clarke, 5 Rob. 38.

[2] 3 Swanst, 680, 681; 5 Ves., 709; 3 Mylone & Co., 736, 737, 738; Sweet v. Benning, 16 Com. B. 459; Hatton v. Keene, 29 L. J. N. S. C. P. 20; 7 Com. B. N. S. 268; Keene v. Wheatley, 9 Am. Law. Reg. 33.

[3] Makepeace v. Jackson, 4 Taunt. 770.

the property of, the government,—and he did make certain sketches and drawings, which were afterwards incorporated in a report of the expedition to the navy department, and ordered printed by congress,—it was held, that he was not the "author or proprietor" of the prints and engravings, in such a sense as to be capable of taking out a copyright, after the publication by government.[1]

In another case, where an inventor, in the course of his experimental essays, had employed an assistant, who suggested and adapted a subordinate improvement, it was held an incident or part of the employer's main invention.[2] Where an actor in the employ of a manager of a theater, who was also the proprietor of a manuscript play, took the leading part in the representation of the play on the stage, and in so doing introduced many new and original "gags" and interpolations, consisting of words, phrases, and sentences, some of which were written in pencil on the margin of the manuscript copy of the play, and some of which were retained only in the memory of the actor,—it was held that these "gags" and interpolations were the property of the proprietor of the play, and not of the actor in her employ.[3] And, upon a like principle, in the case of a musical composition, it was held that a person who adapted words to an old air, and procured a friend to arrange an accompaniment, would acquire a copyright in the whole.[4]

This principle, however, will be exercised with great care, and should be considered in connection with

[1] Heine v. Appleton, 4 Blatchf. 125.

[2] And see Lover v. Davidson, 1 Com. B. (N. S.) 82; Maclean v. Moody, 20 Scotch Sess. Cas. 2d series, 1164.

[3] Keene v. Wheatley, 9 Am. Law. Reg. 33.

[4] Cocks v. Purday, 2 Car. & Kirw. 269.

the rules before noticed, namely, that to constitute one an author he must, by his own intellectual labor, applied to the materials of his composition, produce an arrangement, combination, or performance new in himself.[1] He cannot become entitled to its proprietorship by merely procuring another to do the work.[2]

177. A question has arisen whether a greater degree of originality is necessary to sustain a claim to a copyright than would be sufficient to support a title to a patent. In the case of patent inventions, suggestions of servants employed in perfecting a discovery, tending to facilitate its practical application, may be adopted by the employer and incorporated into his design without detracting from his claim to originality. In Barfield v. Nicholson,[3] Sir John Leach suggested the application of a similar principle to copyright. Chief Justice Jervis, however, leaned to a different opinion in the case of Shepherd v. Conquest,[4] remarking that the enactments upon which literary property and patents for inventions are respectively founded, differ widely in their origin and details; and that in order to show that the position and rights of an author within the copyright acts are not to be measured by those of an inventor within the patent laws, it is only necessary to bear in mind that, whilst on the one hand a person who imports from abroad the invention of another previously unknown here, without any further originality or merit in himself, is an inventor entitled to a patent; on the other hand, a person who merely reprints for the first time in this country a valuable foreign work, without bestowing

[1] Atwill v. Ferrett, 2 Blatchford, 46. *Ante pp.* 360, 362. Per Story, J.

[2] Id. Pierpoint v. Fowle, 2 Wood & Minn. 46.

[3] 2 Sim. & St. 1; 2 L. J. 90, 102 ch.

[4] 17 C. B. 444.

upon it any intellectual labor of his own, as by translation, which to some extent must impress a new character, cannot thereby acquire the title of an author within the statutes relating to copyright. The chief justice proceeded: "We do not think it necessary, in the present case to express any opinion whether, under any circumstances, the copyright in a literary work, or the right of representation can become vested *ab initio* in an employer, other than the person who has actually composed or adapted a literary work. It is enough to say in the present case, that no such effect can be produced where the employer merely suggests the subject, and has no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flowed from the mind of the person employed. It appears to us an abuse of terms, to say that in such a case the employer is the author of a work to which his mind has not contributed an idea; and it is upon the author in the first instance that the right is conferred by the statute which creates it."[1]

Or again: as in the case of succeeding essays or treatises upon identical subjects, or of new and improved editions of standard works, the same question, founded on a supposed analogy between patents and copyright, occurs.

It has seemed to us, however, that such an analogy, from the very nature of the things treated, cannot and does not exist.

The thing patented is actual, palpable, and material. The thing copyrighted is an invisible, impalpable idea—a thought clothed in words. The idea is the common property of him to whom it shall occur; the language is the common heritage of the race. Does

[1] Shortt, L. L. p. 85.

it not follow, therefore, that there must be a difference in their treatment, and that, because the subjects of patent and copyright will generally be found treated of together—bound together in the same treatise; or because both are alike a property created by the state; or even because authors and inventors have common and analogous rights, and seek the identical remedies or protection—there is any analogy (except, possibly, an analogy of treatment) between them?

The theory of copyright recognizes the possibility of a new work, arising from a re-arrangement or republication of old matter, without an interference with, or infringement upon, the former, which is a case unknown to the theory of patents.

For instance: the patentee of a sewing-machine, in 1874, which employs the needle of a sewing-machine patented in 1862, must pay to the owner of the patent on the needle a royalty for every one of his needles used. But the writer of a legal work in 1874, who treats a branch of the subject-matter in identically the same method; making, perhaps, identically the same remarks, in the same order and even in almost the precise words as a treatise-writer on that same subject, who published ten years before him—since, as we have seen, he could not copyright the subject-matter—so long as his work is not a mere conveyance of the preceding one, is not bound to pay a royalty for the method.

The explanation is, that a work is copyrighted simply because it cannot be patented. If the law of patents was capable of protecting every possible product of intellectual labor, there would be no necessity for a law of copyrights; and, so far from their being similar, it is only because they are dissimilar that they exist separately, or that copyright exists at all.

178. The question of proprietory copyright (which, perhaps, is only a variation of the doctrine of literary accession, and reduceable to that head), arises principally in considering as to how far the proprietor of a periodical containing translations made from foreign works, by persons employed and paid by him, or from works imported by him at considerable expense, seems to be settled in favor of the proprietor.[1] So, any assistant, employed to compile matter for catalogues or other works of reference, will be held to have no claim to authorship in the labor thus performed at their principal's instance. As, for example, persons employed by publishers of a shipping list to compile from books of a custom-house, to which the publishers had the sole right of access, for purposes of publication, will not be held to be authors.[2]

But, on the other hand, a person employed as a performer and stage manager of a theatre, who agrees to write a play to be performed in the employer's theatre, so long as it continues to draw good audiences, and who thereupon does write such play, will not be held by the agreement as to its performance to have parted with his ownership therein.[3]

One who merely procures a drawing or design to be made,[4] or who procures alterations to be made in

[1] Wyatt v. Barnard, 3 Ves. & B. 77.
[2] McLean v. Moody, 20 Scotch Sess. Cas. 2nd ser. 1164.
[3] Roberts v. Myers, 13 Month. L. Rep. 400; *post*, chapter on Dramatic Copyright.
[4] The plaintiff has not made a case for relief within the statute (8 Geo. 2 C. 13) which was made for the encouragement of genius. . . . . If he is any author, then any person who employs an engraver or printer, is an author. Lord Hardwicke in Jeffreys v. Baldwin, Amb. 164; *vid.* also Pierpont v. Fowle, 2 Wood & Min. 46, and Binns v. Woodruff, 4 Wash. 53.

a musical composition not original with himself,[1] will not be, in either case, an author. And the employment of an author to write a play, even where the employer suggests the subject, does not constitute the employer the author of the play.[2]

To constitute a joint authorship the work must have been the result of a preconcerted joint design between two co-workers, and the mere introduction of alterations, additions, or improvements by another person, whether with or without the real author's sanction, will not entitle the other person to be considered a "joint anthor" of the work in question.[3]

179. The important inquiry as to what will constitute a new edition of a work, is one of constant importance. This question was ably discussed in the late Scotch case of Black v. Murray,[4] which held that a person may, by publishing a reprint of a work of which the copyright has expired, with notes and illustrations from other works, create a new copyright, which will be protected from piracy; and that it is a piratical use of such copyright work to borrow from it any considerable number of those illustrations.

It was contended on behalf of the defenders in this case (which was an action for infringing the pursuers' copyright in the works of Sir Walter Scott, by publishing what purported to be a reprint of the original edition of the "Minstrelsy of the Scottish Border"), that the copyright claimed by the pursuers was a copyright of an edition of a work, not of the original text, the copyright in which had admittedly

[1] Lover v. Davidson, 1 C. B. N. S. 182; Leader v. Purday, 7 C. B. 4.

[2] Levi v. Rutley, L. R. 6 C. P. 523.

[3] Id.

[4] 9 Scotch Sess. Cas. 341, 3d series.

long since expired; that the pursuers' claim to copyright was chiefly based on notes contributed to their alleged copyright edition; that to make notes the subject of copyright, they must, in a reasonable sense, form a "book," and must constitute the value of the new edition; that that was not the case with the pursuers' edition, the notes added by their edition being 200 in all, many of them unimportant, and not extending to 25 small pages; that only 40 were taken by the defenders, 10 of them being found in editions not copyright; and, finally, that it was open to the defenders to quote, even from copyright books, for the purpose of illustration; but the court of session affirming the interlocutor of the lord ordinary, held the defenders liable for piracy.

"Questions of great nicety and difficulty," said the Lord President, "may arise as to how far a new edition of a work is a proper subject of copyright at all; but that must always depend upon circumstances. A new edition of a book may be a mere reprint of an old edition, and, plainly, that would not entitle the author to a new term of copyright running from the date of the new edition. On the other hand, a new edition of a book may be so enlarged and improved as to constitute in reality a new work, and that, just as clearly, will entitle the author to a copyright running from the date of the new edition. Take for example, in illustration of this, a new edition of a scientific work which is published twenty or thirty years after the date of the first edition. The progress of science in the interval necessarily leads to the new edition being a very different book from the old. That old edition will, probably, in the course of these twenty or thirty years, have become comparatively worthless, while the new edition, particularly if it is the production of the

original author himself, will be as valuable, at the later period, as the original edition of the book was at the time when it was published. But there are many cases between these two extremes; and the difficulty will be to lay down any general rule as to what amount of addition, or alteration, or new matter will entitle a second or a new edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined only to the additions or improvements themselves, as distinguished from the rest of the book. I think, in the present case, that we shall not find that we are in reality much troubled with such difficulties."

"It is not necessary," observed Lord Ardmillan, "that a work shall be entirely a new work in order to be the subject of copyright. A new edition is not necessarily a subject of copyright, but it may be so. There must be some originality in it; it may be in new thought, or in new illustration, or in new explanatory and illustrative annotation, or even, in some peculiar instances, in simply new arrangement. If, in any of these respects, there is independent mental effort, then in the result of that mental effort, there may be copyright."

Lord Kinloch said: "I think it clear that it will not create copyright in a new edition of a work, of which the copyright has expired, merely to make a few emendations of the text, or to add a few unimportant notes. To create a copyright, by alterations of the text, these must be extensive and substantial, practically making a new book. With regard to notes, in like manner, they must exhibit an addition to the work which is not superficial or colorable, but imparts to the book a true and real value, over and above that belonging to the text. This value may, perhaps, be

rightly expressed by saying that the book will procure purchasers in the market on special account of these notes. When notes to this extent and of this value are added, I can not doubt that they attach to the edition the privilege of copyright. The principle of the law of copyright directly applies. There is involved in such annotation, and often in a very eminent degree, an exercise of intellect and an application of learning, which place the annotator in the position and character of author, in the most proper sense of the word. The skill and labor of such an annotator have often been procured at a price which cries shame on the miserable dole which formed to the author of the text his only remuneration. In every view, the addition of such notes as I have figured, puts the stamp of copyright on the edition to which they are attached. It will still, of course, remain open to publish the text, which, *ex hypothesi*, is the same as in the original edition; but to take and publish the notes will be a clear infringement of copyright."

It is not necessary that the notes should be original. If skill and labor are bestowed in their selection and application, the annotator is entitled to copyright in them.

"Of the 200 notes," said the lord president, in the case just referred to, "the defendants' counsel tells us further that fifteen only consist of original matter, and are the composition of Mr. Lockhart himself, while the remaining 185 are quotations from other books and authors. Now this seems to be considered, also, to be a sort of disparagement of the value of the notes, in which I cannot at all agree. It seems to me that notes of this kind are almost chiefly valuable in bringing together, and in combination, the thoughts of the same author in different places, or the thoughts

of other authors, or of critics, bearing upon the point that is under consideration; and nothing could better illustrate it than a number of the notes which we see in these very volumes, and which are exceedingly interesting and valuable as matter of literary and critical taste and judgment. The quotations are, in many places, most apposite, and highly illustrative of the text, and exceedingly interesting to the reader; and, certainly, the selection and application of such quotations from other books may exercise as high literary faculties as the composition of original matter. They may be the result both of skill and of labor and of great literary taste; and, therefore, I think the circumstance that the notes consist, to a great extent, of quotations, is anything but a disparagement of their value." So Lord Kinloch: "It was, perhaps, thought that to repeat quotations from well-known authors was not piracy. If so, I think a great mistake was committed. In the adaptation of the quotation to the ballad which it illustrates—the literary research which discovered it—the critical skill which applied it—there was, I think, an act of authorship performed, of which no one else was entitled to take the benefit for his own publication, and thereby to save the labor, the learning, and the expenditure, necessary even for this part of the annotation."

This question would arise more properly under the consideration of the subject of piracy, to which chapter we refer the reader for a further discussion of the question of originality.

180. An examination of the subject of originality in literary matter, drawn from the decided cases on the subject, is more or less an examination of the subject of piracy; for piracy is the name which the law gives to the wrongful appropriation of intellectual

property, in which the ownership has been asserted in accordance with its own rules, just as larceny is the wrongful appropriation of personal and tangible property: the solitary difference being that, while the latter is a criminal, the former is only a civil offense.[1]

Though, indeed, why this should be, there is no logical reason. And, as the recognition by the law in any form, of this species of property is still comparatively new and recent, the day may not be far distant when even this last distinction will be rejected.

Resulting from the fact that literary and intellectual matter is property in the eyes of the law, and can, therefore, be transferred from man to man, it follows that the ownership may exist in others than its author; were it not for this, the subject of originality and of piracy might well be treated concurrently. The cases not examined, therefore, in this chapter will be found treated of further on, in the chapter on Piracy.

[1] This is, however, not the case in all countries. In France, Holland, and other kingdoms, piracy is a misdemeanor. See synopsis of copyright in different nations in chapter on Copyright, *post*.

BOOK II.

OF PROPERTY IN LITERARY COMPOSITION BEFORE PUBLICATION.

CHAPTER I.

OF MANUSCRIPTS.

181. We have stated that, as soon as the author's property in ideas is put into any tangible, visible form, and the "airy nothings" have taken to themselves a "local habitation:" the law, from that instant, asserts its recognition and protection, and will, if appealed to, take measures to enforce it.

The first form which literary composition must take outside the composer's brain, is evidently the form assumed upon its being written upon a surface, and this occupied surface is called a manuscript, which, as the name implies, means something written with the hand,[1] as contradistinguished from a printed or published "book."

Lord Ellenborough seemed to think[2] that the word "book," as used in the statute of Anne, implied a plurality of sheets, and would not cover words printed upon a single sheet. But in Beck v. Long-

[1] Latin:—*Manuscriptum* from *manus*, the hand, and *scribere*, to write.

[2] Hime v. Dale, 2 Camp. 27 (note); Clementi v. Golding, Id. 25.

man,[1] it was decided that musical compositions, printed upon a single sheet, might come under the definition of that word. If a different construction were put upon the act, many productions of the greatest genius, both in prose and verse, would be excluded from its benefits. The papers of the "Spectator," or "Gray's Elegy," might have been pirated as soon as published, because they were first given to the world on single sheets. The voluminous extent of a production cannot, in an enlightened country, be the sole title to the guardianship the author receives from the law. Everybody knows that mathematical and astronomical calculations, which will confine the student during a long life, in his cabinet, are frequently reduced to the compass of a few lines. And is all profundity of mental abstraction—on which the security and happiness of the species in every part of the globe depend—to be excluded from the protection of jurisprudence? There is nothing in the word "book" to require that it shall consist of several sheets, bound in leather or stitched in a marble cover. "Book" is evidently from the Saxon "bot;" and the latter term is from the beach-tree, the rind of which supplied the place of paper to our German ancestors. The Latin word "*liber*" is of a similar etymology, meaning originally only the bark of a tree. "Book" may, therefore, be applied to any writing, and it has often been so used in the English language. Sometimes the most humble and familiar illustration is the most fortunate. The horn-book, so formidable to infant years, consisted of one small page protected by an animal preparation; and in this state it has universally received the appellation of a "book." So in legal proceedings, the copy of the pleadings, after issue

[1] Cowp. 623.

joined, whether it be long or short, is called the paper "book," or the demurrer "book." In the court of exchequer, a roll was anciently denominated a "book," and so continues, in some instances, to this day. An oath as old as the time of Edward I. runs in this form: "And you shall deliver into the court of exchequer a book fairly written," &c. But the book delivered into court, in fullfillment of this oath, has always been a roll of manuscript.[1] The present familiar form of a book, or folio of two pages, was invented by Julius Cæsar, who adopted that form for his letters to the senate, instead of the ordinary roll in use among the Romans. But before the law the import of the term "manuscript" will doubtless be less derivatively exact, and the distinction disregarded, and by "manuscripts" the law will imply any unpublished work.

182. A literary composition may be a book entitled to copyright without being printed. Mr. Justice Yates, one of the jurists who rendered an opinion in the greatest case of literary property that English jurisprudence has ever seen,[2] in a peculiarly felicitous illustration compared the ideas of an author to birds in a cage, "which none but he can have a right to let fly. For, till he thinks proper to emancipate them, they are under his own dominion. It is certain every man has a right to keep his own sentiments as he pleases. He has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state, a manuscript is, in every sense, his own peculiar property;[3] and no man can take it from him, or make any use of it which he has not authorized, without being guilty of a violation

[1] Erskine for plaintiff in Hime v. Dale, 3 Camp. 27 (note).
[2] Millar v. Taylor, 4 Burr, 2378.
[3] Roberts v. Myers, 13 Month. Law. Rep. (N. S.) 396.

of this property."[1] The cage is the manuscript, and the slightest public use, is an invasion. Its contents are sacred from notice, in whole or in part,[2] or even from the publication of a resumé, synopsis, abridgment, description, or even a catalogue of its contents.[3] This incorporeal right to publish will be most zealously guarded, nor can it be construed as belonging even to a creditor who has seized an author's manuscripts,[4] or as passing to assignee in bankruptcy.[5] He has a right to them as chattels, but he cannot publish their contents.[6] Neither can an author be forced to publish his works for the benefit of his creditors. Even under such circumstances, the author's right of withholding the publication will continue till the very moment his book is actually given out to the public. Even the printer of the book will not be entitled to sell it for his payment, although there is not the smallest doubt that he has a complete lien over it till delivery, to prevent the author or his creditors from taking advantage of the publication till he shall be paid. When a book is published, the property of it forms a subject which creditors are entitled to attach and sell; and the price unpaid by the bookseller is as completely open to the diligence of creditors, as the price of any other commodity or piece of merchandise. And so,

[1] Per Yates, J. 4 Burr, 2378.

[2] Wheaton v. Peters, 8 Pet. 657. Hoyt v. Mackenzie, 3 Bart. ch. 323. Bartlett v. Chittenden, 4 McLean, 301. Prince Albert v. Strange, 13 Jur. 112, 1 M. & G. 42. Maughan on Literary Property, 74, 137. Webb v. Rose, 4 Burr, 2330. Pope v. Curl, 2 Atk. 342. Manly v. Owens, Burr, 2320. Southey v. Sherwood, 2 Meriv. 342. 2 Story on Eq. § 943.

[3] Prince Albert v. Strange, 13 Jur. 112, 1 Mac. & T. 42.

[4] 1 Bell's Com. 268. Curtis on Copyright, 85.

[5] 1 Bell's Com. 68. 4 Burr, 2396, 2397. Curtis on Copyright, 218. Dodson on Patents and Copyright, 2nd ed. 430.

[6] 1 Bell's Com. 68.

where one had compiled an abstract of public records of title, with great labor and care, it was held, in a very recent case, that although a sheriff might seize them upon execution, he would have no right to publish them to satisfy the judgment.[1]

And a sculptor may distribute plaster casts of his model, among his friends, without losing a right to first publish it.[2] The public exhibition of a picture, for the purpose of obtaining subscriptions to engravings of it,[3] and even the publication of a representation of a picture, accompanied by a description in a periodical, has been held to abridge no author's rights therein.[4]

The author may even limit the circulation of his manuscript to his own particular friends, guests, or pupils,[5] and such private circulation will not be construed to license the appearance of either a catalogue description or a copy of it, for the benefit of any one else.[6]

For the purposes of their regulation, the law will make no discrimination between the forms of unpublished works; so, whether in manuscript or in print (*i.e.* privately printed), both will be controlled by the law relating to manuscripts. In either case, a mere possession will not imply a right to publish.

The principles of the common law are mainly invoked in dealing with manuscripts. In this country, however, they are protected also by statute.

The act of Congress of July, 1870,[7] which was passed to revise, consolidate, and supersede all existing statutes of copyright, provides that any person who

[1] Banker v. Caldwell, 3 Min. 94. See this case discussed *post*, in chapter on Contracts, &c.
[2] Turner v. Robinson, 10 W. ch. Rep.
[3] Id. [4] Id.
[5] Bartlett v. Chittenden, 5 McLean, 32.
[6] Prince Albest v. Strange, 13 Jur. 112; 1 Mac. & T. 42.
[7] U. S. Stat. at large.

shall print or publish any manuscrips whatever, without the consent[1] of the author or proprietor first obtained (if such author or proprietor be a citizen of the United States, or resident therein), shall be liable to said author or proprietor, for all damages occasioned by such injury, to be recovered by action in any court of competent jurisdiction.—And this protection was held (in the similar enactment in the statute of 1831, to extend to any part of, as well as to the whole of a manuscript),[2] but that it did not operate to take away the right of property which the auther possesses in his unpublished works by common law.[3] This right of an author to his manuscripts is often alluded to as "copyright before publication," and is often so spoken of by writers upon literary property. This copyright before publication is the more ancient of the two. It is the exclusive privilege of first publishing any original material product of intellectual labor. Its basis is property, and it depends entirely on the common law.[4]

The first question settled in the leading case of Donaldson v. Beckett[5] was, that the author has the prior right to the publication of the contents of his own manuscript under all circumstances. Eleven judges, including Lords Mansfield and DeGray, and Messrs. Justices Blackstone and Yates, were unequivocal as to this point.

[1] The act of 1831 (now repealed) required this consent to be in writing, signed in the presence of two or more credible witnesses; but the provision is retained in section 4964 of the revision of 1873–74.

[2] Wheaton v. Peters, 8 Pet. 657; Woolsey v. Judd, 4 Duer, 385; Bartlett v. Chittenden, 5 McLean, 301; Jones v. Thorne, 1 N. Y. Leg. Obs. 409; Hoyt v. Mackenzie, 3 Barb. ch. 320.

[3] Id.

[4] Phillips on Copyright, 2.

[5] Maughan on Literary Property, p. 37.

183. The whole gist and substance of the law of literary property, as relating to unpublished works, consists solely in the right to first publish. And in this the law has a regard to the nature of the property itself. It assumes that the only value of an unpublished work is the power to publish,—either by oral delivery, exhibition, expression by gesture, pantomime, or by the multiplication of its contents by mechanical processes, such as transcribing, printing, engraving, and the like. There are exceptional cases, indeed, where the value of the unpublished work in the author's hands, seems to be insisted on, as apart from a right to publish. As, for instance, where men of culture and wealth have accumulated collections of their own sketches or descriptions, which they exhibit only to personal friends.[1] But it is submitted that the principle is not affected by these exceptions. The right claimed here is in reality the same as in all other cases, differing in degree rather than in kind. It is still the right to a first publication; that is to say, if the matter is to be published at all, the author claims the right to publish it himself; the exhibition to personal friends being nothing more or less than a publication where the public or audience is chosen by the exhibitor. Of course, a manuscript, like any other chattel, may have a historical or sentimental value. It may be an antique or a curiosity, like a palimpsest or a parchment; it may be an heirloom, a souvenir, or an ornament. In such cases it will not be considered under the head of literary property, but rather of property personal, like any other.

184. The earliest case in which a court was called upon to adjudicate concerning the common-law rights of an author to his manuscript, was prob bly

[1] As in the case of Prince Albert v. Strange, 13 Jur. 112.

the case of the famous Dr. Priestley, already examined.[1] On the trial of an action brought by him against a hundred, to recover damages sustained by him in consequence of the riotous proceedings of a mob at Birmingham, amongst other property alleged to have been destroyed, and for the loss of which he claimed compensation, were certain unpublished manuscripts. It was alleged, by way of defense, on behalf of the hundred, that the plaintiff was in the habit of publishing works injurious to the government of the state, but no evidence was produced in support of that allegation. Lord Chief Justice Eyre is stated to have observed, however, that if such evidence had been produced, he should have held it was fit to be received as against the claim made by the plaintiff.

But we have taken the liberty[2] to question if such a rule would be followed to-day. A man's manuscript is a chattel, and we doubt if a possible and prospective damage that its publication might do, would destroy its owner's property therein. If this case decided anything, it decided that there can be property in a manuscript.

Another early enunciation upon the subject was in Webb v. Rose,[3] in 1732, where equity granted an injunction to restrain the clerk of a deceased conveyancer from printing certain conveyancing drafts, which had been used by the latter. In 1741 an injunction was granted against the printing of plaintiff's notes surreptitiously abstracted from him;[4] and in 1755, certain printers who had purchased, from the lord mayor of London, the copy of the sessions paper

[1] Cited 2 Meriv. 437. *Ante*, pp. 25, 27.
[2] *Ante*, p. 25.
[3] Cited 4 Burr, 2330.
[4] Forrester & Walter, Id.

of trials, were granted an injunction restraining other parties from printing the same.[1]

In 1820, Lord Eldon enjoined the performance of a comedy called "The Young Quaker," of the manuscript of which the plaintiffs were possessed.[2] This decision is remarkable as foreshadowing the tendency of the law which resulted in the first English dramatic copyright act,[3] coming many years later, which gave to authors of plays the sole right of representing them, and therefore could only have rested on the common-law ground of proprietorship in the manuscript, including the matter written thereupon.

The common law or statute right of an author in his manuscript being conceded, the whole question, then, in treating of this branch of the subject, will be: has the author relinquished his right to say when, how, and where his compositions shall be published; or, in legal language, has he dedicated it to the public; and what damage has he suffered by the publication against his will?

185. I. Such a dedication to the public as will overcome an author's right to first publish his own manuscript, must be positive and actual. It must be the sole and voluntary act of the author himself. An act which amounts to a publication, if it be entirely or partially the act of another than the author; or, if the author begin and the other complete the act which is construably a publication, it will not be the author's own act, nor amount to a dedication.

For instance: it will not matter how the unpub-

[1] Manley v. Owen, cited 4 Burr, 2329.

[2] Morris v. Kelly, 1 Jac. & W. 481; *vid.* also Macklin v. Richardson, Amb. 694.

[3] 3 & 4 Will. 4, C. 15

lished work of any one who does not intend to publish, may have come into the hands of another person; that other person cannot publish it without the author's consent. "If any person takes it to the press without his consent, he is certainly a trespasser, though he came by it by legal means, as by a loan or by devolution; for he transgresses the bounds of his trust, and therefore is a trespasser."[1] And the law is the same whether the case be mechanical or literary; whether it be an epic poem or an orrery. The inventor of the one as well as the author of the other has a right to determine "whether the world shall see it or not."[2]

The leading case of Southey v. Sherwood[3] might at first appear to overrule this principle. In that case a motion was made on the part of the poet Southey to restrain the defendants from printing or publishing a poem called "Wat Tyler," which had been composed by the plaintiff about twenty-three years previously; and had lain unpublished during the whole of that period in the hands of the bookseller, to whom Southey had first sent it for his perusal and consideration as to the advisability of publishing it. But the decision of Lord Eldon, in refusing the injunction, was expressly on the ground that the poem in question, from its libelous tendency, was of such a nature that there could be no copyright in it. Lord Eldon, in refusing the injunction, remarked, "that, in some cases, the refusal of the court to interfere by restraining such may operate so as to multiply copies of mischievous publications; but to this my answer is, that, sitting here as a judge, upon a mere question of property, I have nothing to do with the nature of the

[1] Millar v. Taylor, 4 Burr, 2379.
[2] Id. 2386
[3] 2 Meriv. 438

property, nor with the conduct of the parties, except as relates to their civil interests; and if the publication be mischievous, either on the part of the author or of the bookseller, it is not my business to interfere with it."[1]

This decision of Lord Eldon's, however, has not commanded universal assent, and appears to have been somewhat hasty and ill-considered. A single glance at the case of Southey v. Sherwood, and its supposed precedent in Dr. Priestley's case, must be sufficient to disclose the difference.

In the latter case (the reports of which are principally traditionary, after all), we have said that the most that the court in that case actually ruled, was that, if Dr. Priestley's manuscripts were not innocent in their character, he could have had no property in their contents, had those contents been published, which the law would have recognized, and that it certainly could not be expected to award damages for presumptive profits, which, if they had accrued at all, would have accrued from a positive injury done to the morals of the community. Surely, this ruling does not justify the publication of the contents of a doubtful or non-innocent manuscript, against its author's and owner's will and protest. Mr. Curtis[2] criticises this decision or dictum of Lord Eldon's with much reason, saying:

"There is, or ought to be, some difference between the publication of an author's manuscript, against his will and protest, and the case of Dr. Priestley's MSS., which was destroyed by the act of a mob. There are two kinds or degrees of property in a literary work,

[1] 2 Meriv. 343. Lord Eldon expressly states that he followed the case of Dr. Priestley in this ruling. See Wolcot v. Walker, 7 Ves. 1.

[2] On Copyright, p. 157.

one consisting in the right to take the profits of a book when published, the other in the right to the exclusive possession and control of a manuscript, or the right to publish or withhold from publication altogether. In no case has it been considered that the author's right depends on his intention to publish and to make a profit; but the cases proceed upon the ground of a right of property, by which seems to be intended, a right to the possession and control of the manuscript, and to publish or to withhold it from publication; and this holds equally in the case of a non-innocent and an innocent work. When, therefore, an author has not published, or does not intend to publish, a work existing in manuscript, but, on the contrary, desires and intends to withhold it from publication, the question as to its innocence does not arise, because that question affects only so much of his right of property as consists in the right to take the profits of the publication."[1]

The mere parting with the possession of a manuscript, or intrusting its possession to another; or even a permission to another to take and hold a copy of the manuscript, will not amount to an authority to that other person to publish. All such acts will be construed strictly in favor of the author, and against the recipient, by the intention of the supposed licensor, and the circumstances of the act; and unless it is the express intention and effect of the gift, to pass—with itself—permission to use the contents of the manuscript for purposes of publication, profit, or gain, at the pleasure of the recipient, no such permission will be inferred by construction of law.

"To make a gift," said the court, in a leading case,[2]

[1] Curtis on Copyright, cited Shortt, 1 L. L. 7 (note).
[2] Bartlett v. Crittenden, 4 McLean, 5 McLean, 301.

"of a copy of the manuscript, is no more a transfer of the right, or abandonment of it, than it would be a transfer or an abandonment of an exclusive right to republish, to give the copy of a printed work."[1]

186. An author may loan, or even, perhaps, present his manuscript to another, or may print its contents for private circulation, without waiving his right therein, or dedicating it for the purpose of publication.[2]

Neither can the rights of an author be lost by the publication of anything else than the thing itself. And the author will not be deemed to lose his rights in the literary property itself, even if he publish an abridgment of it before the thing itself.[3]

The author of a manuscript may deliver the contents of his manuscript in the form of lectures, to his pupils, or others; or may loan it to them, to copy in portions or entirely, without being held to have published it.[4]

187. The question as to this right of an oral lecturer to restrain the publication for profit of lectures delivered by him,[5] first came before the courts in 1824, when Abernethy, the distinguished surgeon, delivered a series of lectures on the principles and practice of surgery to the medical students of St. Bartholomew's Hospital. "The Lancet" newspaper proceeded to publish these lectures; and, besides publishing some, it contained an announcement that the re-

[1] *Vid.* also Story Eq. Jur. 943.

[2] Jeffreys v. Boosey, per Erle, J. 4 H. S. 867. Bartlett v. Crittenden, 5 McLean, 37. But see Duke of Queensbury v. Shebbeare, 2 Eden, 329.

[3] Prince Albert v. Strange, 2 De G. & S. 652; 1 Mac. & C. 25; 13 Jur. 45, 109, 507.

[4] 5 McLean, 33.

[5] T. L., 19.

maining lectures would also be published as they were delivered. A bill was filed by Abernethy against the proprietor of "The Lancet," to restrain the publication.[1] It was contended, on behalf of the defendants, that no man could have any right of property in ideas and language not reduced into writing; and it was acknowledged by Mr. Abernethy, that although a good deal of the materials for his lectures had been reduced by him to writing, yet, at the time of delivering the lectures he did not read or refer to any writing before him, but that he delivered them orally. As the written notes were not produced, the lord chancellor,[2] when the case first came before him, treating the lecture as orally delivered, refused to grant an injunction, on the ground of a right of property in sentiments and language not deposited on paper, because no case had determined that there was such copyright in unpublished productions not reduced to writing; although the injunction was granted on another ground, namely, the existence of an implied contract, between the lecturer and his hearers, that the latter would make use of the lectures only for their own information; and not publish, for profit, that which they had not the right of selling.[3] The lord chancellor is reported to have stated his reasons to be, 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 com-

[1] Abernethey v. Hutchinson, 1 H. & T. 39; 3 L. J. 209 ch., and see Morrison v. Moat, 9 Hare, 257.

[2] Lord Eldon.

[3] And see Webb v. Rose, cited 4 Burr, 2330; 2 Bro. P. C., 1338; where the reports "cases temp. Talbot," were pirated.

paring 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 of opinion that, whatever else might be done with it, the lecture could not be published for profit. He had no doubt whatever that an action would lie against a pupil who published these lectures; and whether an action would or would not lie against a third person obtaining the lectures from a pupil, an injunction undoubtedly might be granted; because, if there had been a breach of contract on the part of the pupil who heard the lectures, and if the pupil could not publish for profit, to do so would be regarded by the court as a fraud in a third party.[1]

[1] But now a distinct property in lectures is given to the lecturer by Stat. 5 & 6, Will. 4, c. 65. After stating that printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects without the consent of the authors of such lectures, sect. 1 enacts, "that from and after the first day of September, one thousand eight hundred and thirty-five, the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures, and that if any person shall, by taking down the same in shorthand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts there-

Closely following this case is Bartlett v. Chittenden,[1] decided in the United States circuit court for the seventh circuit. There the complainant was a teacher of the art of book-keeping, who had reduced

of, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to His Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in Westminster, by action of debt."

Sect. 2 enacts, "that any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing."

And sect. 3 provides, "that no person allowed for certain fee and reward, or otherwise to attend and be present at any lecture delivered in any place, shall be deemed and taken to be licensed or have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures."

Sect. 4 makes an exception in the case of lectures published with leave of the authors or their assignees, and of which the statutory term of copyright had expired, and also in the case of lectures published before the passing of the Act (9th September, 1835).

Sect. 5 makes a further exception. It enacts "that nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to the justices living within five miles from the place where such lecture or lectures shall be delivered two days at least before delivering the same, or to any lecture or lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation, and that the law relating thereto shall remain the same as if this Act had not been passed."—Shortt, L. L., p. 21.

[1] 4 McLean, 300.

to writing, upon separate cards, the system of instruction he was in the habit of pursuing, for his own convenience and the convenience of his pupils. He had at various times permitted his pupils to copy these cards, with a view to their own instruction, and to enable them to instruct others. One Jones, having been qualified in the complainant's instruction, and, having copied these manuscripts or cards, engaged, in connection with him, to open a similar school in another city; and the defendant, having entered this latter school, and having been permitted to copy these manuscript cards, composed from them, with certain alterations, the first ninety-two pages of a work denominated "An Inductive and Practical System of Double Entry Book-keeping, on an Entirely new Plan," which was thereupon published. This book the complainant sought to restrain. The defendant contended that the complainant, by suffering copies of his manuscript to be taken, had abandoned them to the public. That the principle was the same in regard to copyrights as in regard to patents; and that permission or consent of the author to use the manuscript, is as fatal to his exclusive right, as the consent of an inventor to use the thing invented.[1] The court, however, said, "There was no consent of the complainant that his manuscripts should be printed. That they

[1] To sustain this view the defendants cited Rundell v. Murray, Jac. 314; Barfield v. Nicholson, 2 Sim. & S. 1; Whittmore v. Carter, 1 Gall. 478; Miller v. Sillsbee, 4 Mason, 108; Wyeth v. Stone, 1 Story R. 282; Act of March 3rd, 1839, which declares that a purchaser from the inventor of the thing invented before a patent is obtained, shall continue to enjoy the same right after the obtainment of the patent as before it; and that such sale shall not invalidate the patent, unless there has been an abandonment, or the purchase has been made more than two years before the application for the patent.

were not prepared for the press is admitted. They were without index or preface, although, as alleged, they may have contained the substantial parts of the complainant's system—which, in due time, he intended to print. Copies of the manuscripts were taken for the benefit of his pupils, and to enable them to teach others. This, from the facts and circumstances of the case, seems to have been the extent of the complainant's consent.

"It is contended that this is an abandonment to the public, and is as much a publication as printing the manuscripts; that printing is only one mode of publication, which may be done as well by multiplying manuscript copies. This is not denied; but the inquiry is: does such a publication constitute an abandonment? The complainant is, no doubt, bound by this consent; and no court can afford him any aid in modifying or withdrawing it. The students who made these copies have a right to them, and to their use as originally intended. But they have no right to a use which was not in the contemplation of the complainant and of themselves when the consent was first given. Nor can they, by suffering others to copy the manuscripts, give a greater license than was vested in themselves. Popular lectures may be taken down *verbatim*, and the person taking them down has a right to their use. He may not print them. The lecturer designed to instruct his hearers, and not the public at large. Any use, therefore, of the lectures, which should operate injuriously to the lecturer, would be a fraud upon him for which the law would give him redress. He cannot claim a vested right in the ideas he communicates, but the words and sentences, in which they are clothed, belong to him."

Analogous to this was a case where a parliamentary

agent has noted down at different times in the course of business, various observations as to the methods of passing bills through parliament, and his clerk, who had access to his papers, purloined them and published them with some trifling alterations, under the title, "Practical Instructions for Passing Private Bills Through Parliament. By a Parliamentary Agent." It was held, that, although the substance of the plaintiff's manuscripts might not have been original, he was entitled to an injunction against the publication of an edition of the above-entitled work by a third party.[1]

188. The protection afforded by the common law to unpublished compositions cannot be evaded by translation, abridgment, summary, or even review.[2]

How complete the right of the author is to prevent even the slightest infringement of the property in his unpublished production is forcibly shown by the case which may now be considered the leading one on the subject. In Prince Albert v. Strange,[3] it appeared that the queen and the prince her husband had occasionally, for their amusement, made drawings and etchings,[4] principally of subjects of private and domestic interest to themselves, and procured lithographic impressions thereof to be struck off by means of a private press kept for that purpose, for their own use,

[1] Stevens v. Sherwood, cited Maugham on Literary Property, 139.

[2] 5 & 6 Vict. c. 45, sec. 20.

[3] Per Knight Bruce, V. C., in Prince Albert v. Strange, 2 DeG. & Sm. 693.

[4] 2 DeG. & S. 652; 1 Mac. & G. 25; 13 Jur. 45, 109, 507. There was also an information filed by the Attorney-General v. Strange, for the purpose of protecting the interests of Her Majesty in those portions of the etchings which were the property of Her Majesty, and praying relief as to them similar to that prayed in the bill of Prince Albert.

and not for publication. Some few impressions had indeed been given to private friends, but no further publication was intended or desired. Some further copies being required, the plates for the purpose of printing them were sent to a printer at Windsor, and, while in his possession, one of his workmen surreptitiously took some impressions of them. These surreptitiously-procured impressions were subsequently obtained by one Judge, and from his possession they passed into that of the defendant, Strange, a London publisher. Strange printed a catalogue of the etchings, in which was expressed an intention of publicly exhibiting the impressions of them, which had come into his possession through Judge. The catalogue was entitled "A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings," and contained, after a long introduction stating the general nature of the subjects, a detailed list of sixty-three etchings, with observations upon them. The bill prayed that the defendant might be ordered to deliver up to the plaintiff all impressions and copies of the said several etchings made by the plaintiff; and that they, their servants, &c., might be restrained by injunction from exhibiting the said gallery or collection of etchings, and from selling or in any manner publishing, and from printing the said descriptive catalogue, or any work being or purporting to be a catalogue of the said etchings, and that all the copies of the said catalogue in the possession or power of the said defendants might be given up to be destroyed. An interim injunction having been granted, extending to Judge as well as Strange, the defendant Strange answered, stating, amongst other, his original belief that the impressions had come honestly into Judge's hands: that Judge wrote the descriptive cata-

logue, which he (Strange) then printed, striking off only fifty-one copies, after which the type was broken up: that the catalogue had never been published or sold, or exposed for sale, and that on receiving the first information that the contemplated exhibition was disapproved of by her majesty and the prince, he had abandoned the whole scheme; and expressly denied any intention to make such exhibition, or to make any copies or engravings of the etchings. Upon motion made to dissolve the injunction granted against Strange, so far as it sought to restrain him from selling, or in any manner publishing or printing the descriptive catalogue of the etchings—leaving unquestioned the remaining portion of the injunction against exhibiting, publishing, or parting with the etchings described in the catalogue—it was contended, that although the owner of a print might prevent another from publishing a copy of it, it was impossible to prevent the other from describing it, and printing and publishing such description; that the law of England could not prevent a party obtaining knowledge through the medium of perceiving these etchings, from using that knowledge, and from conveying that information to others; nor could a court of equity, in the absence of contract, interfere with the use of that knowledge; that no one's rights could be interfered with by the making of a catalogue describing the articles and making remarks upon them in the shape of friendly, if not flattering criticism (for such appeared to be the general character of the observations); that if a spectator had a right to contemplate any of the productions of so exalted a personage (which he might do without any invasion of domestic privacy), he had a right to communicate full information connected with those productions; and this, sub-

stantially, was all that had been done by the descriptive catalogue; that privacy was not essential to the right of property, for though the owner of anything may use every means in his power to prevent that thing been seen by another, yet, if that other person sees it, the owner can have no right of property in the notion or idea created in the mind of the person who has seen it; that there is no property in the ideas created by seeing the etchings—the property is confined to the etchings; and no regard could be paid to a mere injury to private feelings, and that in substance the complaint is of an offense not against law but against manners.

Notwithstanding, however, the distinction between the publication of copies of the (unpublished) etchings themselves and that of a mere descriptive catalogue of them sought to be established, it was held that the plaintiff was entitled to restrain the publication of the one as well as the other. Though the fraudulent manner in which the impressions of the etchings had been originally acquired formed one of the grounds on which the decision rested, the right of the plaintiff to restrain the publication of the catalogue on the sole ground of his property in the things described, was unmistakably asserted by the judges. "Property in mechanical works or works of art," said the court, "executed by a man for his own amusement, instruction, or use, is allowed to subsist certainly, and may, before publication by him, be invaded, not merely by copying, but by description or by catalogue, as it appears to me. A catalogue of such works may in itself be valuable. It may also as effectually show the bent and turn of the mind, feelings, and taste of the artist, especially if not professional, as a list of his papers. The portfolio or the

studio may declare as much as the writing-table. A man may employ himself in private, in a manner very harmless, but which, disclosed to society, may destroy the comfort of his life, or even his success in it. Every one, however, has a right, I apprehend, to say that the produce of his private hours is no more liable to publication without his consent, because the publication must be creditable or advantageous to him, than it would be in opposite circumstances. Addressing the attention specifically to the particular instance before the court, we cannot but see that the etchings executed by the plaintiff and his consort for their private use; the produce of their labor, and belonging to themselves, they were entitled to retain in a state of privacy—to withhold from publication. That right, I think it equally clear, was not lost by the limited communication which they appear to have made; nor confined to prohibiting the taking of impressions, without or beyond their consent, from the plates, their undoubted property. It extended also, I conceive, to the prevention of persons unduly obtaining a knowledge of the subjects of the plates, from publishing (at least by printing or writing, though not by copy or resemblance) a description of them, whether more or less limited or summary, whether in the form of a catalogue or otherwise." And said Lord Cottenham, upon the appeal: "It being admitted that the defendant could not publish a copy—that is, an impression—of the etchings, how in principle does a catalogue, list, or description, differ? A copy or impression of the etching would only be a means of communicating knowledge and information of the original, and does not a list and description do the same? The means are different, but the object and effect are similar; for in both, the object and effect is to make known to the

public more or less of the unpublished work and composition of the author, which he is entitled to keep wholly for his private use and pleasure, and to withhold altogether, or so far as he may please, from the knowledge of others. . . . . Upon the first question, therefore—that of property—I am clearly of opinion that—the exclusive right and interest of the plaintiff in the composition or work in question being established, and there being no right or interest whatever in the defendant—the plaintiff is entitled to the injunction of this court to protect him against the invasion of such right and interest by the defendant, which the publication of any catalogue would undoubtedly be."

"The elaborate judgments in this important case," says Shortt,[1] in his valuable work, "have established the following points:—That the right of property of the author or composer of any works of literature, art, or science, in such works, so long as they remain unpublished, is so complete and absolute that no one else, without his permission, may publish even a list or descriptive catalogue of them; that the circulation amongst a few private friends of impressions of etchings not otherwise published, is not such a publication of them as disentitles the owner to the protection of the aforesaid right, and that this right is but part of the general common-law right of property."

189. A manuscript being, as we have seen, the personal property of its author, that peculiar value, differing from the value of other personal property, which is in the future, and which it is to derive from publication of some sort, is also the property of its author. He can part with it by barter or sale; in which case the right to publish most probably would

[1] L. Lit. 54.

go with the manuscript, unless reserved by contract. The question does not appear even to-day to be fully settled. As nearly, perhaps, as the rule may be stated, it will doubtless be, that the license to publish must be express and unmistakable. The present copyright law of the United States, however, has stepped in to settle the question, enacting, "That any person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained (if such author or proprietor be a citizen of the United States, or resident therein), shall be liable to said author or proprietor for all damages occasioned by such injury, to be recovered by action on the case in any court of competent jurisdiction."[1]

Under a like provision in the English statute, Lord Macclesfield, C., is said to have held that the author might grant the right of the copy to a subsequent publisher, after it had been once published by the person to whom he had originally delivered the manuscript, the bare delivery amounting only to a license to print the first edition.[2] In a more modern case, Lord Ellenborough said, that "the statute having required that the consent of the proprietor, in order to authorize the printing or reprinting of a book by any other person, shall be in writing, the conclusion from it seemed irresistible that the assignment must also be in writing; for if the license, which is the lesser thing, must be in writing, *à fortiori* the assignment, which is the greater thing, must also be."

[1] Rev. Stat. U. S. (Rev. 1873–74) § 4967. And this consent must be in writing, signed by two witnesses. And see the English act, 8 Anne. c. 19, § 1; 54 Geo. III. c. 156, makes the consent of the proprietor first had and obtained in writing, signed in the presence of two or more credible witnesses, a requisite of the lawful publication of a manuscript.

[2] Vin. Abr. 278.

But if he part with it by gift merely, or loan it, or allow it to be copied, without express license to publish, it will not be implied to be dedicated. Even in the case of a manuscript work that is too extensive and elaborate for mere personal perusal in that form (such as a history, for example), the gift of, or license to, copy the manuscript will not imply a right to publish.

Where the son of the Earl of Clarendon gave permission to a Mr. Gwynne to take a copy of the manuscript of his deceased father's "History of the Reign of Charles II.," and Mr. Gwynne's son and administrator sold it to a Dr. Shebbeare, the court of chancery, at the suit of the Duke of Queensberry (the personal representative of the Earl of Clarendon and his son), restrained Dr. Shebbeare from printing and publishing the copy of the manuscript. Lord Keeper Henley said, "It was not to be presumed that Lord Clarendon, the younger, when he gave a copy of his work to Mr. Gwynne, intended that he should have the profit of multiplying it in print; that Mr. Gwynne might make every use of it except that."[1]

We have seen, however, that where the author of a poem had sent it to a bookseller, and had allowed it to remain in his hands unpublished for twenty-three years, Lord Eldon was of opinion that the writer had abandoned his right, as an author, and refused to grant an injunction to prevent the publication of the poem by the bookseller.[2]

190. A prior publication by the author himself, in a foreign country, or in the country itself, if without a copyright, is a dedication of the second publication to the public in the country in which it is made.

[1] Duke of Queensberry v. Shebbeare, 2 Eden, 329.

[2] Southey v. Sherwood, 2 Meriv. 434; and see Rundell v. Murray, Jacobs, R. 311.

This question will be found to mainly arise in the case of dramatic manuscripts.

In the case of manuscripts other than dramatic, a publication of their contents by their author, or any one entitled to publish them, through the press, without a formal compliance with the statutes of copyright, would be a waiver of the author's rights therein.[1] But in the case of dramatic copyright, the question as to what amounts to a waiver is more complicated.

Publication may be either a publication to the ear or to the eye. To the latter, through the medium of printing, or of some other art; or to the former, from the rostrum, the stage, or the pulpit.

The value of a literary work, such as a novel, a history, an essay, or a poem, intended for the perusal of the public, is measured by, and depends upon, the ability of the publisher to multiply and circulate copies of it over as extensive a territory as possible. The value of a dramatic work, on the contrary, consists entirely in the ability of its author to prevent the multiplication of copies thereof; to prevent its publication, through the printing-press, absolutely; and to limit its publication, by word of mouth, to one or more particular places and occasions, and to the knowledge and audience of the comparatively few who shall have obtained, for value, the license to witness it.

Hence, to prevent any other publicity to his work, it is manifestly to the interest of the dramatic author to confine literal copies of his production to a manuscript form; or if he print it, to do so privately, and for his own use alone.[2]

[1] See *post*, chapters on Copyright and Piracy.

[2] The value of dramatic productions, in these days, has largely increased, and the dramatic author is now more or less protected by statute, as well as by common law, in the enjoy-

So, although the public exhibition of a picture at a picture-gallery is, in one sense, a publication of it, yet it is a publication which may be restricted by the rules of the place of exhibition, by which the managers may preclude any use being made of their rooms for the purpose of copying; and an exhibition, under such circumstances, would not disentitle the proprietor to an injunction to restrain the piracy of the picture;[1] and musical compositions in manuscript, engravings, etchings, maps, and charts, also, while unpublished, stand on a like footing with literary matter unpublished, and so do in England, both by common law and by express statute.

A strong ruling in their favor occurs in White v. Geroch,[2] where it was held that, even though the author of a musical composition had sold several thousand copies of it in manuscript, a year before it was printed, he had not, thereby, lost the copyright. Abbot, Ch. J., in that case, was of opinion that it was not the intention of the legislature, in conferring a copyright upon authors, to impose on them, as a condition precedent, that they should not sell their compositions in manuscript before they were printed.

191. It seems to have been settled long since that the representation upon a stage of a dramatic production, will not dedicate the contents of its manuscript to

ment of his franchises. The subject of dramatic productions, both in manuscript and copyright, has been thought of sufficient importance to merit a chapter by itself, further on in this treatise. It is necessary, however, to glance, under the general subject of manuscripts, at the treatment which they will receive by common law; referring for more extended treatment of the subject to that chapter.

[1] Turner v. Robinson, 10 Tr. Ch. Rep. 121, 516.

[2] 2 B. & Ald. 298.

the public, unless that first representation takes place abroad.[1]

In Macklin v. Richardson [2] as early as 1770, it was decided that the public performance of a play, by the author's permission, is not such a publication of it by him as disentitles him to restrain the unauthorized printing or publishing of it by any other person, and is not a dedication to the public. The plaintiff in that case was the author of the farce called "Love à la Mode," which was performed, by his special permission, at the different theatres several times in 1760, and the following years, but never printed or published by him; and it appeared that, when the play was over, the plaintiff used to take the copy away from the prompter. The defendants employed a short-hand writer to go to the playhouse and take down the words of the farce from the mouths of the actors. These notes having been corrected, by one of the defendants, from his own memory, the first act of the farce was published by them in a magazine called the "Court Miscellany," of which they were the proprietors, and notice was given that the second act would be published in the next month's "Miscellany." The plaintiff filed a bill to restrain this publication; and

[1] Boucicault v. Delafield, 1 H. & M. 597; 9 L. T. N. S. 709; 39 L. J. 38 ch. This point is further enunciated in England by statute. Sect. 19 of 7 Vict. c. 12, now enacts that "neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall, after the passing of this Act, be first published out of her majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such, if any, as he may become entitled to under this act."

[2] Amb. 694.

the Lord Commissioner (Smythe) granted an injunction. He 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 from the performance, the author has another means of profit from the printing and publishing; and there is as much reason that he should be protected in that right as any other author."

And in the equally leading case of Coleman v. Wathen,[1] decided in 1793, it was ruled that the acting of a piece is in no case a publication thereof.

In the cases of Keene v. Kimball[2] and Keene v. Wheatley,[3] it was said that "The sole proprietorship of an author's manuscript and of its incorporeal contents, wherever copies exist, is, independently of legislation, in himself and his assigns, until he publish it. Where a copyright under statute exists, the publication can not affect this right, but where a copyright does not exist, an unqualified publication and one unrestricted by any condition, such as the making or sanctioning its literary or dramatic representation, is a dedication to the public, and its proprietor can not thereafter maintain an objection to such representations or representation as others are enabled, either directly or secondarily, to make from its having been retained in the memory of any of the audience. In other words, the public acquire a right to the extent of the dedication, whether complete or partial, which the proprietor has made of it to the public."

"It is to be carefully observed, however, that the distinction between a general and a limited publication, is not affected by this ruling," said Judge Hoar.[4]

[1] 5 T. R. 245.

[2] 9 Amer. Law Reg. 33; *vid.* also Keene v. Clarke, 5 Rob. 38

[3] 16 Gray (Mass.), 543.

[4] Keene v. Kimball, *ubi supra.*

"There may be a limited publication by communication of the contents of the work, by reading, representation, or restricted private circulation, which will not abridge the rights of the author to the control of his work, any further than necessarily results from the nature and extent of this limited use which he has made or allowed to be made of it.

"These principles," continued the judge, "sustain the demurrer in the plaintiff's bill. She has publicly represented the play, 'Our American Cousin,' before audiences consisting of all persons who chose to pay the price charged for admission to her theater. She has employed actors to commit the various parts to memory, and, unless they are restrained by some contract, express or implied, we can perceive no legal reason why they might not repeat what they have learned, before different audiences and in various places. If persons, by frequent attendance at her theater, have committed to memory any part or the whole of the play, they have a right to repeat what they have heard to others. We know of no right of property in gestures, tones, or scenery, which would forbid such reproduction of them, by the spectators, as their powers of imitation might enable them to accomplish."[1]

192. The publication of a work in a foreign country disentitles the author to a copyright in it in England. This, before the legislature interfered in the matter, had been judicially determined in several cases. In Clementi v. Walker,[2] it was decided that if an author first published abroad, and then, instead of

[1] We doubt the value of this ruling, however, at least under later authorities; see a fuller examination of the three cases, Keene v. Wheatley, 9 Am. Law Reg. 33; Keene v. Clarke, 5 Rob. 38; Keene v. Kimball, 6 Gray, 545; see chapter on Dramatic Composition, *post*, vol. ii. [2] 2 Barn. & C. 861.

using due diligence to publish here, forebore to publish until some other person had honestly published here, the author could not insist upon his privilege, and at a distance of time stop a publication which, in the interim, had taken place here, or treat the continuance of that publication as a piracy. "Whether the act of printing and publishing abroad," said the learned judge who delivered the judgment of the court in that case, "makes the work at once *publici juris*, it is not necessary now to decide; but we have no doubt that it becomes *publici juris*, if the author does not take prompt measures to publish it here."[1] And in Guichard v. Mori,[2] an injunction was refused on the ground that there had been a publication abroad before there was any publication in this country.

But where there was a contemporaneous publication abroad and in England, it was held that the copyright of the author here was not infringed by the foreign publication.[3] And Clementi v. Walker is in favor of the author's title to copyright, provided he print and publish here "promptly," and with due "diligence," after the publication abroad.[4]

In Keene v. Wheatley,[5] it was expressly held that the ninth section of the act of Congress (Act of 1831, c. 16) which gave redress for the unauthorized printing or publishing of manuscripts, operated in favor of a resident of the United States who had acquired the proprietorship of an unprinted literary composition

[1] *Vid.* also Page v. Townsend, 5 Sim. 395, as to publication abroad of prints and engravings.

[2] 9 L. J. (1831), 227 Ch. See also Hedderwick v. Griffin, 3 Sess. Cas. 2nd ser. 383.

[3] Erle, J., Cocks v. Purday, 2 Car. & K. 269, N. P.

[4] 2 Barn. & C. 870.

[5] 9 Am. Law Reg. 33. *Vid.* chapter on Dramatic Copyright.

from a non-resident alien author.[1] The publication in order to be such as will amount (in the absence of the copyright) to a dedication, must be a publication of the thing itself, and not the publication of something else that resembles it; so that the author of a literary work does not lose his common-law right of property in it before its publication, by previously publishing an abridgment of it.[2]

The distribution, by a sculptor amongst his friends, of copies of a plaster cast taken from the bust of a statue is not a publication of the statue itself.[3] The exhibition of the picture itself, for the purpose of obtaining subscribers to an engraving of it, is not a publication of the picture.[4] The private circulation among friends, of lithographic impressions or drawings, is not a publication of the drawings themselves.[5] Nor is the publication of an engraving of a picture in a magazine, with an article describing the picture, a publication of the picture itself.[6]

The case of Boucicault v. Delafield,[7] where the plaintiff prayed for an injunction to restrain the defendant from producing a drama ("The Colleen Bawn") written by the plaintiff, and, as it appeared on the hearing of the case, represented by the plaintiff at

[1] The property which an author has in his unpublished ideas embodied in a tangible shape being independent of statute, it should seem that an alien friend might prevent the unauthorized publication here of any of his unpublished works (Shortt, L. L. 36).

[2] Prince Albert v. Strange, 5 De G. & S. 652; 1 Mac. & G. 25; 13 Jur. 45, 109, 507.

[3] Turner v. Robinson, 10 Jr. Ch. Rep. 134.

[4] Id.

[5] Prince Albert v. Strange, *ubi supra.*

[6] Turner v. Robinson, 10 Jr. Ch. Rep. 121, 516.

[7] 1 H. & M. 597; 9 L. T. N. S. 709; 33 L. J.; 38 Ch. This was, however, under and by virtue of the statute.

New York prior to its being represented in England, where the vice-chancellor refused to grant the injunction and dismissed the bill with costs, was decided upon statutory grounds, and will be considered hereafter.[1]

The principle of literary accessions treated in the chapter on Originality[2] is also applicable to manuscripts. So, where one contracts for hire and reward to write certain portions of a book to be published by another, equity will not aid him by injunction to prevent his portion of the work being printed and published in an altered or mutilated form.[3] Wood, V. C. intimated an opinion, though the point did not arise in the case before him, that, unless there be a special contract, either express or implied, reserving to the

[1] The vice-chancellor being of opinion that the words of the 19th section of 7 & 8 Vict. c. 12, took away whatever rights the plaintiff might otherwise have had. If he had first represented his drama here, he would have been entitled to the provisions of the dramatic copyright act. Then 7 & 8 Vict. c. 12, was passed, enabling her majesty to make arrangements conferring on other nations the privileges accorded to all people who first publish their works here. If the plaintiff had this sort of double right, it was the very thing which the 7 & 8 Vict. c. 12, was intended to extinguish. The statute says in effect (sect. 19) that "if any person, British subject or not, chooses to deprive this country of the advantage of the first representation of his work, then he may get the benefit of copyright, if he can, under the arrangement which may have been come to pursuant to 7 & 8 Vict. c. 12, between this country and the country which he so favors with his representation; but if he chooses to publish his performance in a country which has not entered into any treaty or made any such arrangement with regard to copyright, then this country has nothing more to say to him; he must be taken to have elected under which of the two statutes with respect to copyright he wishes to come, by performing his work in one country instead of the other; and he is thereby excluded from all advantage of publishing in the other" (Shortt, L. L. 35).

[2] *Ante* ——.

[3] Cox v. Cox, 11 Hare, 118.

author a qualified copyright, the purchaser of a manuscript is at liberty to alter and deal with it as he thinks proper. The court is not moved in such a case by the possible effects of the alterations as affecting the writer's reputation.[1]

But it seems that if a publisher puts forth an inaccurate edition of an author's work, purporting to be executed by him, the author may maintain an action against the publisher for injury to his reputation, even where the publisher is the owner of the copyright.[2]

193. I. As to the injury sustained by the author from the trespass upon his manuscripts or unpublished works, until the case of Prince Albert v. Strange, it seemed to be settled that such injury would consist in the loss of his right or the frustration of his intention[3] to first publish himself, and of his prospective profits thereof, to arise from such publication, and that no measure of damages could be considered looking to his own personal feelings of sensitiveness, or difference, or reputation.[4] But that case appears to hold exactly the reverse, and as going further than its predecessors, may be looked upon as leading upon the subject.

A manuscript going through the press is as we shall see[5] at the owner's risk, and unless the printers

[1] Archbold v. Sweet, 1 M. & Rob. 162; S. C. & P. 219.

[2] Id.

[3] Bartlett v. Chittenden, 4 McLean, 301.

[4] In Cox v. Cox, 2 Hare. 110. "The possible effect on reputation," said Wood, V. C., "unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the court to consider, when the question of a right of property also arises." But see Archbold v. Sweet, 1 M. & Rob. 162; *post* Southey v. Sherwood, 2 Meriv. 437.

[5] Mawman v. Gillett, 2 Taunt. 325, and see *post* chapter on Contracts concerning Literary Property.

expressly insure it, they would not be liable in damages for its loss, to the author. It might be a damage to an author, also to have his art or method of trade disclosed as we have seen,[1] but the publication of his private opinions, sentiments or doings, even though by such disclosures he were rendered unpopular in certain quarters, or were defeated in an election or choice to a position of emolument or influence, would probably be no ground for an action of damages.

The question as to damage by such publication will be found to arise mainly in the case of letters of persons living, or of deceased persons, in the hands of their executors, and others.

As to the manuscripts of deceased persons in other hands than those of the executors, it has been held in England that a right on their (the executors,) part to restrain a publication of such manuscripts can only depend upon whether the estate will suffer damage by such publication.[2] The right to prevent such publication is no part of the assets in the executor's hands.[3] This question, therefore, will be treated as incidental to our examination of the general rules of law applicable to letters and correspondence.

194. The most difficult question with regard to the property and proprietorship of literary composition embodied in manuscripts, arises in the case of those manuscripts which, from their nature, pass from one ownership and possession to another, and may be said, at times, to have more than one owner: *i.e.*, letters.

[1] Bartlett v. Chittenden, 4 McLean, 300.
[2] Stevens v. Sherwood, cited Maugham L. Prop. 139.
[3] Id. 140.

Gerard Vassius,[1] remarking on the surprising discovery of the art of letter-writing,[2] a phenomenon which

[1] De Quatuor Artibus Popularibus, iii. 1.

[2] Next to the invention of printing, the invention of paper has done most toward educating and enlightening the world. The earliest races of men probably used to plant groves and set up pillars or heaps of stones, or to institute games or festivals to recall or perpetuate the memory of events. The composition and singing of historical songs was a still more popular way of accomplishing the purpose (Tac. Mor. Germ. 2). Small cords, sometimes variously colored and regularly knotted, were used by the Chinese in ancient times before the reign of Fo-hi, and by the Peruvians (Quipos) at a later period; notched or marked sticks were also employed. Probably the next step in the communication of thought, was the use of pictorial representation. When Cortez had his first interview with the Aztec chiefs he found that news of his arrival on the coast had already been conveyed to them by means of pictures of ships, strangers, horses, and artillery. Nor could they have more rapidly comprehended the power, mission, and intentions of the Spaniards, by means of language itself. The probability is that, next to pictures came hieroglyphical characters, which, without doubt, originally were abbreviations of pictures, each character meaning a word, or perhaps more than one. The Hebrew alphabet, for instance, betrays marks of this origin. The first letter, aleph, signifies an ox, and the picture of the head and horns of that animal very probably suggested its form. A zigzag line is a natural symbol for water as expressing undulation—and the Hebrew letter M, pronounced mem, is the word for water. The waving line is also the symbol of aquarius in the zodiac. So the Arabic numerals were originally the simple form of marks; a single stroke or mark meaning the digit one; two marks, forming a right angle, the digit two; a second downward stroke, attached to the right angle, the digit three, and so on And so, too, the Chinese characters disclose in their formation their natural derivation from the like simple sources. The more these symbols were employed, of course, the greater the tendency to abbreviate them; and when, from these initiative methods, the art emerged, from the historical and representative system, to the employment of mere marks and dots to express ideas or letters, a great step had been taken, and the time had come for a material to present itself. At first these materials were of so rude a description as to render the appli-

has lost its hold upon our admiration only by its frequency and familiarity, relates a pleasant story to show at what an elevation it stands above the vulgar apprehen-

cation of the character very laborious and wearisome, and while we wonder at the slow progress of improvement in an art of such urgency in the commonest affairs of life, we are forced, at the same time, to admire the refinement and perfection to which some of the languages of primitive antiquity were matured and polished in spite of all these discouragements and difficulties. The language of Homer is as graceful as it is vigorous and comprehensive, and yet, in the public and private transactions with which his poems have to do, very little occurs which indicates that the art of writing was known and practiced. The story of Prœtus, Jobates and Bellerophontes, in the sixth book of the Iliad, is the only instance in which such allusion is made; and even there the word used to denote what was carried was *σηματα*, which may mean "signs," as well as written characters. Judicial decisions, civil compacts, stipulations, pledges, obligations of kindred, rights of inheritance, conditions of combats, suspensions of hostility, treaties of peace—all appear to have been verbal. Witnesses, symbols, sacrifices, and libations were in most cases relied upon as memorials and ratifications of the most solemn and weighty transactions. When lots were cast to see who should answer the challenge of Hector, the marks and not the names of the heroes were cast into the helmet of Agamemnon (Iliad, vii. 175). It was on hard materials that the art of inscription was first practiced. According to Pliny, the Babylonians wrote their astronomical observations on bricks. Tables of stone are among the most ancient monuments of Chinese literature, though it would seem that the Chinese in very early times manufactured a sort of silk paper. There are traces of Abyssinian writings which were inscribed on clay, this clay being afterwards baked into bricks. The Decalogue, and Joshua's copy of the Law, were on stone, and metal was often substituted. In Job allusion is made to writing on lead with a style of iron; and plates of copper were also used in early days (Plin. xxxiv. § 21; Ovid, Metam. I. v. 91, 92). Themistocles writes a letter on stone, to be conveyed to the Ionians (Herod, Uram. 22), while Xerxes wrote to the Lacedemonians by means of the tablet of wood covered with wax, such as the Roman authors used to compose upon at a much later day—only for greater secrecy Xerxes wrote upon the wood itself, and covered his writing with the wax

sion of an uncultivated mind. In the country of the Brazils, he says, a slave was sent by his master to a nobleman, his friend, with a basket of figs as a present, accom-

(Herod, Polym. 239). The skins of animals, the leaves of plants, or the bark of trees came next in order. The Cumean Sybil wrote her prophesies upon leaves. Under the words *Εκφυλλοφορησαι* and *Εκφυλλοφορειν* in Suidas, we are told by him that the votes expelling a senator from his rank and office were taken on leaves. "Senatores nomina eorum in foliis oleæ scripta in echinos demittebant, argumentis et rationibus latæ sententiæ simul adscriptis." *Αντι της ψηφου φυλλοις επισημαινε την αυτου γνωμην εκαστος, και ελεγετο τυτο εκφυλλοφορησαι.* The Hindoos also used leaves for purposes of transcribing. In the time of Cyrus the interior barks or membranes of trees, especially of the linden-tree, were used; and that monarch, to prevent ennui (*ινα μη αλυν*) always carried a tablet of that material with him on his journeys (Ælian, Var. Hist. xiv. 12). It would seem, from many passages in the Greek and Latin classics, that these tablets were sometimes waxed, and sometimes polished, to enable the scratching of letters readily upon its surface; and for this purpose the box-wood seems to have been employed. *Παλαι γαρ ποτε πινακξιν, ητοι σανισι, και ταυταις εκ πυξου μαλιστα, τα γραμματα ενεκολαπτον· και το γραφειν δε παλαιας ενεργειας ονομα· ξυσμοις γαρ τισιν ετυπουντο στοιχεια, το δε ξυειν γραφειν ελεγετο.* "Tabellæ autem istæ etiam scalpendo et radendo poliebantur, quod itidem voce *ξεειν* et *ξυειν* dentabatur." These writing tablets were compactly folded, whence they were called by the Romans pugillares, since they could be carried within the grasp of the fist. The manufacture of the Egyptian papyrus was a great step forward into the world of letters, and its discovery was almost immediately followed by the beginning of the great libraries of Alexandria and Pergamus. The manufacture of papyrus is said by Varro to have been begun soon after the building of the city of Alexandria by Alexander; but others say that papyrus was manufactured at Memphis three hundred years before the reign of Alexander. The reed papyrus grew plentifully on the banks of the Nile, the Tigris, and the Euphrates, but appears only to have been manufactured in Egypt. The Egyptians themselves, however, often used linen cloth for writing; much of which is found in their mummies. As the demands of literature increased, the supply became inadequate, and we are told that, in the age of Tiberius, there was such a

panied with a letter. Tempted by the excellence of the fruit, the bearer of the present devoured it. The plunder, however, was detected, of course, by means

scarcity of paper in Rome that its use, even in contracts, was dispensed with by a decree of the senate.

Pliny the elder, who says he saw in the house of Pomponius Secundus the books of the Gracchi, written with their own hands on papyrus, and that the works of Virgil and Cicero were written in the same manner, treats expressly of the Egyptian papyrus in three chapters of his thirteenth book, upon which Guilandrinus has based his copious and curious commentary; which, however, is criticised severely by Scaliger. The Roman paper was often very finely wrought and polished, the charta dentata being paper made smooth by polishing with the tooth of a boar, or other animal. There was a famous factory for dressing Egyptian paper in Rome, conducted by one Fannius (Plin. xiii.). This paper was prepared by dividing the pellicles or fillaments of the plant, laying them in sheets transversely, and pressing them together by a machine, or with blows of mallets. Nondum flumineas Memphis contexere biblos noverat (Lucan). Besides this, papyrus had other properties, and was sometimes eaten for food. The Egyptians were often called *παπυροφαγοι*, or papyrus-eaters. It has an insipid taste, and was eaten by the Cossacks and the inhabitants of Oxai and Tscherchaskoy, according to Dr. Clark, in modern times. Vospiscus says that Firmus, who owned vast regions of papyrus-growing country, boasted that he could support an army with its revenues; but Salmasius says the emperor meant that he could feed them on the papyrus itself. (For an elaborate account of the manufacture of papyrus into paper for writing, see Roberts, 21–22, *et seq.*).

In the rolls or volumes of papyrus, the sheets or leaves were glued to each other at the edges and carried out in successive lengths, the first sheet or scheda, on which was usually nothing but the manufacturer's mark, or the title of the book, being first fastened or glued, and called on that account the *πρωτοκολλον*, whence comes the word protocol, in such frequent diplomatic use. The same term also denotes the prima scheda of the books composed of membraneous leaves, whether skin or bark. The papyrus being cut at the middle, the first pellicle or strip was the finest, and was known in Rome as Augusta (from the time of Augustus to that of Claudius); the second strip, which was the next finest, was called Livia, from Augustus' wife, and so on to the out

of the letter, and the slave found it of no avail to deny the fact, against the evidence of the letter, though utterly unable to comprehend the way in which the

side of the plant, which was so coarse as only to be used for the commonest purposes. The paper called Augusta was too fine for ordinary purposes, however, often being penetrated by the reed or Roman pen (calamus) and showing the writing on the other side; and the Emperor Claudius caused a mixed paper to be made to remedy this defect. There are accounts also of a paper made in Madagascar from the papyrus growing in that country, which is manufactured by putting the leaves into a mortar, beating them to a paste, washing this paste with clear water on a frame of bamboos, expanding them into sheets, and glazing the surface with a decoction of rice water.

Large numbers of manuscripts of papyrus were found in Herculanean, and out of 1,756 found in one room, some 210 were successfully unrolled; a process, from the fact of the vegetable juices of the material having been thoroughly baked by the heat, of no little difficulty; once opened they are quite legible and, but for the utter want of punctuation, which appears to be a mod rn invention, could be easily read. The manuscripts discovered at Pompeii crumbled upon exposure to the air, or upon being touched. The Herculanean manuscripts were unrolled by the use of goldbeater's skin being applied to the b ck.

As we have said before, the Chinese appear to have been familiar with the process of making silk paper at a very early day. In the time of Confucius they wrote on the finely-pared bark of bamboos with a style, and at about A. D. 95 appear to have invented paper. About the middle of the seventh century, they introduced it to Samarcana; when the Saracens took that city they found the art, which they transported to Mecca, where cotton was afterwards substituted for silk, and paper made therefrom in that city, early in the eighth century. From this source the manufacture found its way into Spain, and in the twelfth century a flourishing manufactory of paper was established at Valentia, where flax, which grew abundantly in that region, was substituted for cotton.

Monfancon considered that cotton paper was familiar in E ro e for six or seven hundred years before his time, and it is known to have been in common use in the tenth century. It had the name of charta bombycina. Some very ancient manuscripts in Arabic and other oriental languages are writ-

communication had been made. Some time after, he was again dispatched with some figs and a letter to the same person. Being again overcome by the ten upon a paper apparently made of silk, linen, or cotton intermixed (Prideaux, Conn. 1, B. 7). The patronage of literature by the kings of Pergamus, which began about the middle of the third century before the Christian Era, in the reign of Eumenes, excited the envy of one of the Ptolemies. who interdicted the exportation of papyrus. Invention thus being stimulated among the subjects of Eumenes, the present mode of preparing the skins of animals was discovered and pergamenum or parchment became the surface upon which books were written. Papyrus, however, continued to be the favorite, whenever procurable; but after the Saracens overran Egypt, in the eighth century, it ceased to be procurable, and it was about this time that the art of manufacturing paper from linen rags made its appearance. This great invention has been claimed by almost every civilized nation in turn, though the testimony procurable seems to assign the honor to the Chinese. Not only did the invention of paper open the way to the civilization, culture, and learning of modern times to an extent which it is perfectly impossible to calculate, but it has preserved to us a vast storehouse of the learning of the ancients; since for many centuries before its appearance, the practice of erasing from parchment books the classical remains of antiquity, in order to write upon the surface thus obtained, the legends and chronicles of monkish invention, was in general vogue, and the palimpsests of the middle ages are among the most curious of its vestiges.

The style used by the ancients was an instrument made of wood, metal, or other material, pointed at one end and blunt at the other. With the sharp end they wrote upon their tablets, covered with a sort of wax, using the obtuse end to obliterate the writing, or any part of it, when necessary. But when they wrote upon parchment or papyrus, they made use of a reed dipped in some staining or coloring liquor. Baruch is said, in the thirty-sixth chapter of Jeremiah, to have written his prophesies with ink, which is probably the earliest mention of this method of writing to which we can refer, though there is reason for supposing that the use of the reed (Du Halt. Descr. Chin. vol. I. p. 363; Phil. Trans. No. ccxxvii. p. 155) dipped in some marking liquor existed in very ancient times in China, and other parts of the East (called by the Romans stylus, or graphium). It is the instrument at this

temptation, and conscious of the tattling propensities of the letter, he was determined that it should have, this time, no knowledge of his roguery; so, putting it

day used in writing by the Turks, Persians, and Arabians. The Indian, or more properly, the Chinese ink, needs only to be slightly rubbed in water to afford a substance rather solid than fluid, well adapted to the purpose of writing. In the work on "The Empire of China and its Inhabitants, by John Francis Davis, Esq., late his Majesty's Chief Superintendent in China," 1836, will be found the following information on this subject: "The date of the invention of paper seems to prove that some of the most important arts connected with the progress of civilization are not extremely ancient in China. In the time of Confucius they wrote on finely-pared bark of the bamboo with a style. They next used silk and linen. It was not until A. D. 95 that paper was invented. The materials which they use in the manufacture are various. A coarse yellowish paper, used for wrapping parcels, is made from rice-straw. The better kinds are composed of the liber or inner bark of a species of the morus, as well as of cotton, but principally of the bamboo." And we may extract the description of the last from the Chinese Repository, vol. iii. p. 265: "The stalks are cut near the ground, and then sorted into parcels according to age, and tied up in small bundles. The younger the bamboo the better is the quality of the paper which is made from it. The bundles are thrown into a reservoir of mud and water, and buried in the ooze for about a fortnight to soften them. They are then taken out, and cut into pieces of a proper length, and put into mortars with a little water, to be pounded to a pulp with large wooden pestles. This semi-fluid mass, after being cleansed of the coarsest parts, is transferred to a great tub of water, and additions of the substance are made until the whole becomes of a sufficient consistence to form a paper. Then a workman takes up a sheet with a mold or frame of proper dimensions, which is constructed of bamboo in small strips, made smooth and round like wire. The pulp is continually agitated by other hands, while one is taking up the sheets, which are then laid upon smooth tables to dry. This paper is unfit for writing on with liquid ink, and is of a yellowish color. The Chinese size it by dipping the sheets into a solution of fish-glue and alum, either during or after the first process of making it. The sheets are usually three feet and a half in length, and two in breadth. The fine paper used for letters is polished after sizing, by rubbing it with smooth stones."

underneath a large stone, he sat upon it and regaled himself with the figs, when he proceeded on his errand and delivered the letter. He was again accused, and,

"What is commonly known in this country under the name of Indian ink, is nothing more than what the Chinese manufacture for their own writing. The writing apparatus consists of a square of their ink; a little black slab of schostus, or slate, found in the mountains called Leu-Shän, on the west side of the Poyang lake (where the last embassy saw quantities of these slabs manufactured for sale), polished smooth, with a depression at one end and hold water; a small brush or pencil of rabbit's hair, inserted into a reed handle, and a bundle of paper." The Chinese, or, as it is miscalled, Indian ink, has been erroneously supposed to consist of the secretion of a species of sepia or cuttle-fish. It is manufactured from lampblack and gluten, with the addition of a little musk to give it a more agreeable odor. A black dye is also obtained from the cup of the acorn, which abounds in gallic acid. Pere Contanein gave the following as a process for making the ink: "A number of lighted wicks are put into a vessel full of oil; over this is hung a dome or funnel-shaped cover of iron, at such a distance as to receive the smoke. Being well coated with lampblack, this is brushed off and collected upon paper. It is then well mixed in a mortar with a solution of gum or gluten, where it receives those shapes and impressions with which it comes into this country. It is occasionally manufactured into a great variety of forms and sizes, and stamped with ornamental devices, either plain or in gold and various colors. They consider that the best ink is produced from the burning of particular oils, but the commoner and cheaper kinds are obtained, it is said, from fir wood. The best ink is produced at Hoey-chow-foo, not far from Nanking; and a certain quantity annually made for the use of the emperor and the court, is called Koong-me, "tribute ink." The best ink is that which is the most intensely black, and most free from grittiness. In the Himalayan provinces there is a plant found in the greatest abundance, called Sitabhoua, from which a coarse paper is made by first detaching the bark of the stem and branches, and then submitting the same to the process of boiling, pounding it into a paste, straining it through a cloth to get rid of the coarser fibres, drying it in the sun, and finally spreading it upon a cotton cloth stretched upon a frame; and this has probably been practiced for centuries. The fabric is coarse, but

with greater confidence than before, denied the charge, "until," says the narrator, "a smart castigation con-

capable of great improvement. See the description of the plant Daphne Cannavina, by Dr. Wallich, Asiatic Researcher, vol. i. 13; and of the mode of making paper from it, in Journ. of the Asiatic Society, vol. i. 8. Paper is said to be manufactured in Kashimire, in considerable quantities, from old cloth of the Janhemp and from cotton rags. See Travels of Moorcroft and Trebeck from 1819 to 1825."—Murray.

Ink-stands, with pens (reeds) lying by them, are represented in pictures found in Herculaneum. Those reeds were dipped in some liquid substance, various in its composition and color, but for the most part black, and expressed by the word *atramentum*, in Latin. It sometimes had the name *cæpia* among the Latins, which signified the black or dark liquor emitted by the cuttle-fish. In Greek it had the general name of *γραφικον μελαν*. St. John, in his Third Epistle, says he did not intend to write with pen (reed) and ink. Allusions also to this mode of writing occur in most of the authors of the Augustan history, and their literary successors. Sometimes, in order to make the writing more visible, where the person addressed labored under an infirmity of eyesight, the letter was written with black ink (atramento) upon ivory; and these epistles were called pugillares eborei (*Armido*, fistula, and canna, split at the point). Thus the Roman epigramatist:

> Languida ne tristes obscurent lumina ceræ,
> Nigra tibi niveum littera pingat ebur.
>
> Mart. lib. XIV. Ep. 5.

The Romans found it generally convenient, in compos,ing to write their thoughts first upon waxen tables, for the facility of making alterations or corrections, and perhaps also for expedition, as they had no occasion to leave off for dipping the pen; and when the draft was thus made correct, it was transcribed upon paper or parchment. They had also a blotting-paper of a coarse contexture, which they called charta deletitia, and which had also the Greek name of *παλιμψεστος* from *παλιν*, rursus, and *ψαω*, rado, from which what was written upon it might be easily rubbed out or erased (Cic. Farrs, lib. VII. Cicero to Trebatius). The better sort usually carried about them their *pugillares*, or small writing-tables, on which they set down anything which occurred. Thus Pliny, in his agreeable letter to his friend Tacitus, tells him that he took care to have about him, even when hunting, his stylus et pugillares, "ut si manais vacuas, plenas tamen ceras reportarem"

vinced him that he had not escaped the scrutiny of the letter."

(Plin. lib. I. Ep. 6). As the Romans wore neither sword nor dagger when in the city, they sometimes had recourse to the inon style, which they carried about their persons as a weapon of defense, Accordingly, we read in Suetonius, that Julius Cæsar, when assaulted by the conspirators, upon receiving his first wound pierced the arm of the assassin with his stylus, or graphium. Quintus Antyllius, one of the lictors of the consul Opimius, who offended the followers of Caius Gracchus, in the forum of Rome, by his pushing them aside with contempt, as they were supporting their friend, was fallen upon by them, in the fury of their resentment, and slain with their styles, or writing instruments (Florus, l. iii. c. 15). We are told that the friends of Caius Gracchus and Fulvius were greatly exasperated by his rejection, on his standing for the tribuneship the third time. His disappointment was followed by the elevation of his great enemy, L. Opimius, to the consulship, who exerted the whole power of his office to procure the repeal of Caius's popular laws. Caius, it is said at the instigation of Fulvius, the triumvir, collected his friends, to defeat the consul's measures. On the day for proposing the abrogation of the laws in question, both parties repaired early in the morning to the capitol. While the consul was performing the customary sacrifices, Q. Antyllius one of the lictors, while carrying away the entrails of the victims, said to the friends of Caius and Fulvius, "Make way, ye worthless citizens, for honest men." And it is addcd, that he accompanied these words with a contemptuous motion of his hand. Whereupon, they fell upon him and killed him with their styles, or pens of their tables. Seneca, in his tract on Clemency, makes mention of a Roman knight, who, having whipped his son to death, was himself put to death by the people in the forum, who stabbed him with their styles. "Populos in foro graphiis confodit (Seneca, de Clement, lib. i. cap. 14). From which occasional use of this instrument it is probable that the word "stiletto," in the modern language of Rome, had its origin.

The case for holding the implements of writing was called by the Romans scrinium, or capsa (Horat. Sat. lib. i. 4 lin. 22), and by the Greeks *κιβωτος* or *κιβωτιον*, a very essential part of the furniture or equipment of a person or any rank or importance in the more polished nations of antiquity. The use of black lead pencils, both for writing and drawing, is

Letters are said to have been invented by Atossa, the daughter of Cyrus, wife of Cambyses and Darius Hystaspes, and mother of Xerxes.[1] Pliny considered

of old standing, though hardly, if at all, traceable to the times of Greek and Roman antiquity. There is, indeed, a hint of it in the works of Pliny, where we have the words argento, ære, plumbo, lineæ, ducuntur (Plin. lib. xxxiii. 136). But the passage seems to signify nothing more than the use of these substances in making lines by the help of the rule. This application of these materials, and especially of lead, as being soft and easily rubbed out, appears to have been in practice many centuries ago. We know that above a thousand years ago transcribers made their writings even and regular by means of parallel lines, to be erased after having answered their purpose. In very old MSS. the traces of those lines are very visible; but, according to Beckman, this practice became rare after the fifteenth century, about which period the MSS. exhibit a want of the parallelism which is characteristic of the more ancient specimens.

The use of the lead pencil in writing has an early date in modern history. Gerner, in his book on Fossils, printed at Zurich, 1565, says, that pencils for writing were used in his day, with wooden handles and pieces of lead, or, as he rather believed, an artificial composition, called by some stimmi anglia-mum (De Rerum Fossilium Figuris, 104). Towards the end of the same century, Imperati mentions the graffio plombino, and says it was more convenient for drawing than pen and ink. The mineral, he says, was smooth, greasy to the touch, had leaden color, and a sort of metallic brightness. One kind was mixed with a clay, which they called rubrica (Del. Historia Naturale di Ferrante Imperato, el Napoli, 1599, 122).

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[1] Aul. Gell. xv. 23; Strom. i. 132. *Πρωτην επιστολας συνταξαι Ατοσσαν την Περσων βασιλευσσαν φησιν Ἑλλανικος.* Tatian, in his oration against the Greeks, says that none of those institutions of which the Greeks were so boastful, were of their own invention, but came invariably from the Barbarians. *Ὁτι ουδεν των επιτηδευματων οἱς Ελληνες καλλωπιζονται Ελληνικον· αλλα εκ Βαρβαρων την ευρεσιν εσχηκος.* Quod nihil eorum quibus Græci gloriantur studiorum apud ipsos natum, sed omnia a Barbaris inventa sunt.—Bentley fixes Alossa as having lived 70 years after Phalaris, tyrant of Agrigentum, who died, according to him, Olymp. lvii. 3.

as epistles only those letters which were inscribed on paper, as distinguished from the ancient codicilli[1]—the term he gives to the writings that Bellerophontes

But the pencils principally in use in Italy, at the period of the revival of letters, were composed of lead and tin, the proportion being two parts of the former to one of the latter; which pencil was called a style. It seems that the oldest certain account of the use of the quills in writing, which has reached us, occurs in a passage in Isidorus Hispalensis, who died in 636. He mentions reeds and feathers as instruments employed in writing. There is besides, a small Latin poem on a writing pen, to be seen in the works of Anthelmus; the first Saxon, says Beckman, who wrote Latin, and who made the art of Latin poetry known to his countrymen. He is said also to have inspired them with some taste for compositions of this kind. He died in 709. The poem De Penna Scriptoria, begins thus:

"Me pridem genuit candens onocrotalus albam," which, if not descriptive of a goose-quill, at least supposes an implement furnished by a feathered animal. Writing pens are mentioned by Aleuin, who lived in the eighth century, somewhat later than Anthelmus, and composed poetical inscriptions for every part of a monastery, and, among others, for the writing study; of which, he says, that no one ought talk in it, as it was very important that the pen of the transcriber should go correctly on without mistake.

Tramite quo recto penna volantis eat.

Mabillon saw a MS. of the Gospels written in the ninth century, in which the Evangelists were represented with quills in their hands. In the curious little work of Hericus Ackerus, called "Historia Pennarum," in which he treats of the pens of the famous Academicians, published at Altenburgh, in 1726, we read of the one pen of Leo Allatins, with which he wrote his Greek for forty years, and on losing which, he is said to have with difficulty refrained from tears. "Et eo tandem amisso tantum non lacrymasse." P. Holland, the translator of Pliny, performed his work with a single pen, and he has handed down the fact in the following verse:

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[1] The epistola were always sent to the absent. Codicilli were given to those present as well, as sent to the absent, as were also the libelli, as for example Cæsar's letters to the Senate, in the form of our present book, which form was adhered to by the other emperors.

carried from Prœtus to Jobates,[1] enjoining the death of the bearer. Licinius Mucianus, a writer of the time of Vespasian, mentions having seen, when governor

> With one sole pen I wrote this book,
> Made of a gray goose-quill;
> A pen it was when I it took,
> A pen I leave it still.

Cicero, in a letter to his brother Quintus, makes some pleasant allusions to his bad pen, in which he tells him that he is apt to snatch up whatever pen (calamus) comes first to hand: "Calamo et atramento temperato, charta etiam dentata res agetur. Scribis enim te meas litteras superiores vix legere potuisse: in quo nihil eorum mi frater, fuit, quæ putas. Neque enim occupatus eram, neque perturbatus, nec iratus alicui: sed hoc facio semper, ut, quincumque calamus in manus meas venerit, eo sic utar tamquam bono" (Ad Quint. Frat. lib. ii. ep. xv.)

Haerlem, Mentz, and Strasburg seem to have the best pretensions to the original invention of the art of printing. Venice has a better claim to the improvement than to the first rudiments. For Nicolas Jenson, who is generally supposed to have first taught it to the Venetians, did not begin printing there till the year 1470; and if John de Spiras's claim should be allowed, who says "that he was the first who had ever printed in that city," yet his pretensions go only a year or two further backward. And even admitting that another book was printed at Venice before John de Spiras's "Cicero's Epistles ad Familiares," in 1469; (namely, "Fr. Maturantii de Componendis Versebus Hexametro et Pentametro," by Ranolt, Venet. 1468"), yet that would carry it back but one year more in support of the Venetian claim; whereas the first rudiments of

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[1] ———*Πορεν δ' ὁγε σηματα λυγρα,*
Γραψας εν πινακι πτυκτω θυμοφθορα πολλα.
Hom. Iliad, ζ'. 168.

Thucidides relates a similar story of Pausanias, and similarly David sent a letter by Uriah to Joab, and Hamlet wrote letters for Rosencrantz and Guildenstern. And the like is told of Giangiacomo. But Homer's *πιναξ πτυκτος* would seem rather to correspond to the Latin "tabellæ," or "pugillares," rather than litteræ or epistolæ. Pliny, while distinguishing pugillares and codicilli from epistolæ, assumed on the authority of the above passage: Pugillarium usum fuisse etiam ante Trojana tempora.

of Lycia, in a temple, an epistle from Sarpedon, written on paper. But Pliny distrusted the account; "since," says he, "even in Homer's time, and therefore long

the art, the first rough specimens, the first essay with separate wooden types, if not elsewhere, yet at least at Haerlem, was about thirty years anterior to those dates.

At Haerlem, the use of separate type blocks appears to have been first thought of, by Laurentius, about 1430, and practiced. It was afterwards practiced at Mentz with metal types, first cut and then cast, invented by one of the two brothers of the name of Geinsfleich—probably by elder John Geinsfleich, about the year 1442, when he published his first essays on wooden types, which did not answer his expectations. However, both the brothers have been called protocharagmatici. This invention of printing with metal types was called "Ars characterizandi." The cut metal types were further improved by John Faust, of Mentz, who, in 1462, completed the art by the help of his servant, Peter Shoeffer, whom he adopted for his son, and to whom he gave his daughter in marriage, pro dignâ laborum multarumque ad inventionum remuneratione. So that the original foundation of the art of printing, in general, seems to have been laid at Haerlem, and the improvements made at Mentz. As to Strasburg, it can have no pretensions nearly equal to either Haerlem or Mentz. Gutenberg endeavored to attain the art whilst he resided in that city, and his first attempts were made, in 1436, with wooden types. But he and his partners were never able to bring the art to perfection. He quitted Strasburg in 1444 or 1445, greatly involved in debt, and obliged to sell all that he had.

The true inventor of printing seems to have been Laurentius, of Haerlem, son of John, who was son of another Laurence. This Laurence, the grandson, was born at Haerlem, about 1370, and died in 1440. He was Ædituus or Custos of the cathedral of Haerlem; and was called Custer from his office, not from his family name. His descent is said to have been from an illegitimate branch of the Gens Brederodia. He was a man of large property, and his office was both respectable and lucrative. Hadrian Junius gives a full narrative of the accident which led Laurentius into the happy train of this useful invention (see his Batavia, Ed. Ludg. Bat. 1588, 253). This Laurentius being a man of ingenuity and judgment, he proceeded step by step, inventing a more glutinous ink, and then forming whole pages of wood with letters cut upon them; pasting the backsides of the pages together, thus-

after Sarpedon, the part of Egypt which produces paper was nothing but sea, being afterwards thrown up by the Nile."

making a single sheet printed on both sides. He changed his original beechen letters for leaden ones, and those again for a mixture of tin and lead, as a less flexible and more solid and durable substance. In one of his first works, the "Speculum Salutis," he introduced pictures on wooden blocks, printed on separate movable wooden types, fastened together by threads.

He did not live to see the art brought to perfection, as he died in 1440, aged 70; and was succeeded, either by his son-in-law, Thomas Peter, who married his only daughter, Lucia, or by his immediate descendants, Peter, Andrew, and Thomas, who seem to have acquired the art of printing, neatly with separate wooden types. Their last known work was printed at Haerlem, in 1472; soon after which they disposed of all their materials, and probably quitted their employment. Laurentius' types were stolen soon after his death. The thief was one of his workmen, named John, a native of Mentz; to which place he conveyed them, and settled there; it is not so certain what was his surname. John Fust or Faust has been suspected; but it seems to be an unjust charge upon him. So also, upon John Gutenberg, whose residence was at Strasburgh, from 1436 to 1444, endeavoring with fruitless labor and expense to attain the art. Neither does it seem just to suspect John Meidenbachius, an assistant to the first Mentz printers; nor John Petersheimius, some time a servant to Fust and Schoeffer, who set up a printing house at Frankfort, in 1459.

It is most probable that the culprit was John Geinsfleich, senior, elder brother of Gutenberg, who was born at Mentz, but had resided in other places. He took the shortest route, through Amsterdam and Cologne, to Mentz, where he fixed his residence, in the year 1441, and in 1442 published two small works. Ulric Zell, in his Chronicon Coloniæ, 1499, attributes the invention, or at least the completion of the art, to Gutenberg, at Mentz, though he admitted that some books had been published in Holland earlier than in that city; and from Mentz, he says, it was first communicated to Cologne; next to Strasburg; then to Venice. There is no certain proof of any book having been printed at Strasburg till after 1462, after which period printing made rapid progress in Europe. In 1490, it reached Constantinople. In the middle of the next century it advanced into Africa and America, and about 1560 was in-

The age of Homer, synchronizing with the time of Solomon, may be regarded as preceding the Christian Era by about one thousand years.[1] But the Scrip-

troduced into Russia. After this it was even carried into Iceland, the farthest north (as Mr. Bryant observes) of any place where arts and sciences have ever resided. We find mention of a book, written in Latin, by Arngrim Jonas, a native of Iceland, and printed ("Typris Hollensibus in Islandia Boreali, Anno, 1612, entitled Anatome Blefkiniana"). It was formerly the general opinion and belief, and seemed to be agreed by all our historians, that the art of printing was introduced and first practiced in England by Mr. William Caxton, a citizen of London, who had been bred a mercer, having served an apprenticeship to one Robert Large, who died in 1441, after having been sheriff and lord mayor of London, leaving a legacy to Caxton, in testimony of his good character and integrity. From the time of his master's death Mr. Caxton spent the following thirty years (from 1441 to 1471) beyond sea, in the business of merchandise. In 1464, he was employed by King Edward the Fourth in a public and honorable negotiation, to transact and conclude a treaty of commerce between that king and his brother-in-law, the Duke of Burgundy. By his long residence in Holland, Flanders, and Germany, he had opportunity of being informed of the whole method and process of this art; and returning to England, and meeting with encouragement from great persons, and particularly from the then abbot of Westminster, be first set up a press in that abbey (in the almonry or ambry), and began to print books soon after the year 1471, and is said to have pursued his business there till the year 1494, or, as some affirm, until the year 1491. He was probably upwards of four-score years of age when he died. The "Recuyel of the Historyes of Troye," is supposed to have been the first book that he had printed in England. All English writers before the Restoration, who mention the introduction of the art of printing, give Caxton the credit of it, without any contradiction or variation. For

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[1] According to Theopompus, Homer lived 500 years after the siege of Troy (684 B. C.)—Clem. Alex. Strom. 1. i. s. 21, p. 389. According to Plutarch, some affirmed that Homer lived at the time of the Trojan war, 1184 B. C. Plut. in V. Hom. 44. So that if, as Mr. Roberts suggests, we take a mean between these extremes, the age of Homer must stand at about 100 years after the age of Solomon.

tures mention a letter from David to Joab, sent by the hand of Uriah;[1] and, about forty years after, one from Jezebel, written in Ahab's name.[2] The king of Syria

example, Stowe, Trussell, Sir Richard Baker, Leland, and Howell, and the more modern authorities of Mr. Henry Wharton and M. Du Pin—are all in favor of this opinion. In opposition, however, to all these great and seemingly invincible testimonies and authorities on behalf of Caxton—a book which had been scarcely observed before the Restoration, was soon after that time taken notice of, and looked upon as a strong argument, if not a full and clear proof, "that the art of printing had been exercised "in the university of Oxford before Caxton exercised 'it at Westminster, in 1471.'" This book bears for its title, "Expositio Sancti Jeronimi in Simbolum Apostolorum ad Papam Lamentium;" and at the end, "Explicit," Expositio, &c. Impressia Oxonie, & finita Anno Domini M.CCCC.LXVIII., xvii. die Decembris."

A record which had long lain obscure and unknown at Lambeth Palace, in the register of the See of Canterbury, which record is mentioned by the reporter in a note to Miller v. Taylor, 4 Burr. 2345, as apparently drawn up at the very time, stating "that Thomas Bouchier, Archbishop of Canterbury, moved King Henry the Sixth to use all possible means for procuring a printing mold to be brought into this kingdom. The king readily hearkened to the motion, and, taking private advice how to effect his design, concluded that it could not be brought about without great secresy and a considerable sum of money given to such person or persons as would draw off some of the workmen of Haerlem, in Holland, where John Gutenberg had newly invented it, and was himself personally at work. It is resolved, that less than one thousand marks would produce the desired effect, towards which sum the said archbishop presented the king three hundred marks. The management of the design was committed to Mr. Robert Turnour, of the robes to the king, and much in favor with him. Mr. Turnour took to his assistance Mr. Caxton, a citizen of good abilities, who, trading much into Holland, might be a credible pretense, as well for his going, as staying in the low countries. Mr. Turnour was in disguise (his beard and hair shaven quite off), but Mr. Caxton appeared known and public. They went first to Amsterdam, then to Leyden, not

[1] 2 Sam. xi. 14, 15.
[2] 1 Kings, xxi. 8, 9.

wrote to the king of Israel, by Naaman, the leper,[1] nine hundred years before the Christian Era; and about twenty years later, Jehu wrote letters and sent

daring to enter Haerlem itself; for the town was very jealous, and had apprehended and imprisoned divers persons who had come from other parts for the same purpose. They stayed till they had spent the whole thousand marks in gifts and expenses; so as the king was fain to sent five hundred marks more. Mr. Turnour had written to the king, that he had almost done all his work; a bargain being struck betwixt him and two Hollanders, for bringing off one of the under workmen, whose name was Frederick Corsells (or rather Corsellis); who, late one night, stole from his fellows in disguise, in a vessel prepared for that purpose, and got safe to London. It was not thought prudent to set him on work in London, but by the archbishop's means (who had been first vice-chancellor, and afterwards chancellor of the university of Oxford), whose guard constantly watched this Corsellis, to prevent him from any possible escape till he had made good his promise in teaching them how to print."

"So at Oxford printing was first set up in England, which was before there was any printing-press or printer in France, Spain, Italy, or Germany, except the city of Mentz, which claims seniority as to printing even of Haerlem itself, calling her city Urbem Moguntinum, artis typographicæ inventricem primam, though it is known to be otherwise, that city gaining that art by the brother of one of the workmen of Haerlem, who had learned it at home, of his brother, and after set up for himself, at Mentz. The press at Oxford was afterwards found inconvenient to be the sole printing place of England, as being too far from London and the sea; wherefore, the king set up a press at St. Alban's, and another in the city of Westminster, where they printed several books of divinity and physic. For the king (for reasons best known to himself and council) permitted then no law-books to be printed; nor did any printer exercise that art, but only such as by the king's sworn servants, the king himself having the price emolument for printing books." Upon the authority of this record, all our latter writers have declared Corsellis to have been the first printer in England. This is admitted by Dr. Middleton; and he specifies Antony Wood, Mattaire, Palmer, and Bagford, by name, as persons who were clear in that opinion.

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[1] 2 Kings, v. 5–7; ch. x. 1–2, 6–7.

them to Samaria. Then there were the threatening letter from the king of Assyria to Hezekiah,[1] and the complimentary letter from Berodact-Baladan to the But he says, "it is strange that a piece so fabulous, and carrying such evident marks of forgery, could impose upon men so knowing and inquisitive." He asserts, that as it was never heard of before the "publication of Atkyns's books, so it has never since been seen or produced by any man." He cites Palmer himself as owning "that it is not to be found there now; and he thinks it clear that Archbishop Parker must have very carefully examined the registers of Canterbury, and that it was not there in his time. In fine, he declares in express terms, "that we may pronounce this record to be a forgery." But though he seems to exult in having cleared his hands of this record, yet he admits "that the book itself stands firm as a monument of the exercise of printing in Oxford six years older than any book of Caxton with date." He acknowledges the fact to be strong, and "what in ordinary cases passes for certain evidence of the age of books;" but he says, "that in this there are such contrary facts to balance it, and such circumstances to turn the scale, that he takes the date in question to have been falsified originally by the printer, either by design or mistake, and an X to have been dropped or omitted in the age of its impression;" and he argues, with sagacity and acuteness, to show not only the possibility of his conjecture, but the probability of it, and (as he says) "to make it even certain." Mr. Bowyer, whose general learning and particular knowledge in his profession seem to qualify him for being at least as good a judge of this dispute as any man that ever lived, does by no means agree with Dr. Middleton in this point of Caxton's priority to the Oxford book, or in the arguments adduced by the doctor in support of his opiuion, any more than he does in the former point, of the place where the art was first invented and practiced abroad. He is of opinion that the Oxford press was prior to Caxton's, and thinks those who have called Mr. Caxton the "first printer in England," and Leland in particular, meant that he was the first who "practiced the art with fusile types, and consequently first brought it to perfection;" which is not inconsistent with Corsellis's having printed, earlier at Oxford, with separate cut types in wood, which was the only method he had learned at Haerlem. The speaking of Mr. Caxton as the first printer in England, in this sense of the

[1] 2 Kings, xix. 14.

same king, after his sickness;[1] and Hezekiah himself wrote letters to the tribes of Ephraim and Manasseh, summoning them to Jerusalem.[2] Cyrus, after decreeing to the Jews liberty to return to their own country and rebuild the house of the Lord at Jerusalem, wrote letters recommendatory to the governors of several provinces to assist them in their undertaking, one of which Josephus[3] has recorded as being directed to the governors of Syria, and commencing with the usual epistolary salutation: "Cyrus, the king, to Sysina and Sarabasan, sendeth greeting." And during the rebuilding (about 520 B. C.), there was a frequent correspondence between the enemies of the Jews and Artaxerxes, king of Persia, on the subject.[4]

"The Greek epistles of heathen writers which have come down to us, which are entitled to be considered as genuine, are, for the most part, studied and elaborate compositions, the vehicles of argument or disquisition on matters of general interest or contemplative inquiry,[5] and as different as possible from our modern ideas of a letter. Thirteen of these letters are ascribed to Plato,[6] though two of the number are sometimes assigned to Dion. The letters which have been ascribed to Themistocles were first printed at Rome, in the year 1626, from a manuscript in the

expression, is not irreconcilable with the story of Corsellis."—Note to Millar v. Taylor, 4 Burr., p. 2418.

[1] 2 Kings, ch. xx. 12.

[2] 2 Chron. xxx. 1, 6.

[3] Jew. Antiq. lib. xi. c. 1.

[4] Ezra, iv. 8, 11, 18; Nehemiah, ii. 8, 9, vi. 17, 19; Esther, iii. 13, viii. 5, ix. 25; Isaiah, xxxvii. 14, xxxix. 1; Jeremiah, xxix. 1, 25, 29. And Mordecai wrote and sent letters to the Jews. Esther, ch. ix. 20.

[5] Roberts, p. 91.

[6] *Επιστολαι ηθικαι*, xiii., according to Fabricius, 1 Dionis, 2.

Vatican, and although doubted as spurious by most authorities,[1] are received by some as genuine. They all bear date posterior to his banishment, and from places to which the general is supposed to have retired during his exile, such as Argos, Corcyra, Epirus, Ephesus, and Magnesia. The epistles of Socrates and his scholars, Xenophon, Aristippus, and others, were collected and published in the year 1637, also from a Vatican manuscript, by the celebrated Leo Allatius. But, from internal evidence, these have been rejected as spurious.[2] Besides these, there were also

[1] Plato to Dionysis; 4 to Dion; 5 to Perdiccas; 6 to Hermias, Erastus, and Corsicus; 7 and 8 to the friends of Dion; 9 to Archytas of Tarentum; 10 to Aristodorus (or according to Laërtius, Aristodemus); 11 to Leodamus; 12 to Archytas; 13 to Dionysius. Siudas acknowledges thirteen under *Ευπραττειν*, which was the salutation used by Plato; the others using *χαιρειν*, *γαθειν*, *ευδιαγειν*, or *ευλογειν*. Laërtius mentions 10 and 12 as above. The third is said by Bentley to be genuine; but Meinursius declares that, and all the others as well, to be spurious, "in judico de quibusdam Socraticorum reliquiis."—See Comment. Socrat. regiæ Gottingensis, Ann. 1783, Classis. Histor. et Philog. But Guil. Gottlieb Tenneman contra Meinursium disputans, maintains their genuineness (p. 17, *et seq.*), except as to a part of Ep. 13, all of which Wesseling contends is genuine. Roberts, p. 84.

[2] The correspondence of Socrates with the King of Macedon has the air of puerile romance.—In one of these letters Xenophon invites some friends to come and see him at his plantation, near Olympia, informing them that Aristippus and Phædro have been visiting him there, to whom he had been reciting his memoirs of Socrates, which both had approved of: Now, this Aristippus was always on the worst terms with Xenophon, and could hardly have given his approbation to a book which, says Bentley, was a satire against himself.—The letters abound in manifest anachronisms and errors, assigning two wives to Socrates, and but one, indiscriminately.

A curious letter from Xenophon to Xantippe, after her husband Socrates' death, runs as follows:

"I have committed to the hands of Euphron, the Megarite, six small measures of wheaten cakes, and eight drachms, also a new cloak for winter wear. Accept these trifles, and be

five epistles alleged to have been written by Euripides, which, however, were said by Apollonides, who wrote a treatise on false history, to have been forged by Sabirius Pollo, "the same who counterfeited the letters of Aratus."[1] Every one of these letters, as has been

assured that Euclid and Terpsion are very good and worthy persons, full of kind-feeling toward you, and of respect to the memory of Socrates. When the children show an inclination to come to us, do not oppose their wishes, as it is but a little way for them to come to Megara. My good lady, let the abundance of the tears you have shed, suffice. To mourn longer, will do no good, but rather harm. Remember what Socrates said, and endeavor to follow his precepts and counsels. By incessant grief you will greatly injure yourself and the children. These are young Socrateses, and it not only becomes us to support them while they live, but to endeavor to continue in life for their sakes. Since, if you or I, or any other who feels a tender concern for the children of the deceased Socrates, should die, they will suffer loss by being deprived of a protector and a contributor to their support and subsistence. Therefore try to live for these children, which can only be done by attending to the means of preserving your life. But grief is among the things opposed to life, as those can testify, who experience its hurtful effects. The gentle Apolliodorus, for so he is called, and Dion, give you praise for not receiving assistance from anybody standing in no particular relation to you. You say you abound, and you are much to be commended for so speaking of yourself as far as I and your other intimate friends are able to assist you, you shall feel no want. Take courage then, Xantippe, and let none of the good instructions of Socrates be lost, for you know in what honor that great man was held by us; and consider well the example he has left us by his death. For my own part, I really think his death was a great benefit to us all, if it be regarded in the light in which it ought to be."—Now Xenophon did not return from his Asiatic expedition, until some time after Socrates' death, and so could hardly have been at Megara, as recently after the event as this letter appears to have been written. Nor does it seem probable that he was at Megara at all after his return, since he did not leave Agesilaus, until he went to settle at Scyllum (See Diog. Laërt. ii. 52).—Roberts.

[1] The Letters of Aratus are not extant.

pointed out,[1] contains unquestionable evidence of its spurious nature.[2]

"The letters attributed to Phalaris are also doubted, as are the letters attributed to Pythagoras, his wife Theano, and certain of his immediate scholars.[3]

"In the works of Herodotus, Thucydides, and other Greek historians, however, letters of statesmen, sages, princes, governors, and military commanders, are not infrequent.[4]

"Little or nothing in the shape of letters or letter-writing has survived to us, from among the Romans, until the time of Cicero. Their military ardor and warlike customs, their absorbing ambition, restless political agitations, and their addiction to brutal shows, left the Romans small leisure or taste for the refinements of epistolary intercourse. 'Those Republicans,' says Roberts, 'were characterized by a dryness

[1] Roberts, 87, citing Bentley and others.

[2] As, for instance, one of them appears to have been written from the court of Archelaus, King of Macedonia; in this, in answer to some reproaches which had been cast upon him for leaving Athens, the writer expresses himself as paying no regard to what might be said of him at Athens, by Agatho or Mesatus. Now, this Agatho, unfortunately, was all the time himself at the court of Archelaus with Euripides. Again, the injury done to Euripides by Cephisophon, seems to have been overlooked by the fabricator, since Euripides is made to address one of his letters to that personage.

[3] Roberts, 67.

[4] There are very few examples of such among the Romans. Plutarch, in his life of Pyrrhus, gives a letter from Fabricius to that monarch, communicating to him the proposal of Nicias, his physician, to poison him; also mentioned by Livy. The letter is as follows: "You seem to be unhappy in your choice both of your friends and your enemies. When you have read the letter sent us by one of your own people, you will perceive that you are making war with good and honest men, while you are trusting to the dishonest and wicked. We

of genius, and certain coarse and homespun habits of thinking, which ill-qualified them for the graceful play of thought and expression which properly belongs to good letter-writing. Nor do letters of business and grave affairs appear, but very rarely, among the transactions recorded by the historians of the Roman Republic. The mind of the nation took a sudden spring under the influence of Cicero's genius, who at once gave and completed the pattern. With the pen of Cicero, letter-writing began to take its rank in polite literature as a specific head or department of composition."[1]

make you acquainted with these things, not out of regard to you, but lest your destruction should bring a slander upon us, and we should appear to have accomplished this war by treachery, for want of ability to conclude it by valor." Upon receipt of this letter, Pyrrhus is said to have exclaimed, "This is a man whom it is harder to turn aside from the ways of justice than to divert the sun from its course." P. 114, 118.

[1] The Romans sealed their letters usually with some device or symbol, to notify the writer and identify the person written to. Plautus makes the bearer of a letter thus accost the person to whom he brings it:

Nosce imaginem; tute ejus nomen memorato mihi,
Ut sciam te Ballionem esse ipsum (Plaut. Pseud. 1).

The wax, with the impression, kept the letter closed, hence the phrase, Solvere Epistolam: and as the impression or signum was generally defaced or broken in opening the letters, the messenger or bearer usually required the person to whom it was to be delivered to acknowledge the signum, and name the writer, that it might with the more certainty appear that he was the person to whom the letter belonged. Thus Cicero, in his third oration against Catiline: "Ostendi tabellas Lentulo, et quæsivi cognosceretne signum."

Alexander Severus, according to Lampridius, after midday, always gave his attention to the reading and dispatch of letters, when he was regularly attended by the three principal officers "ab epistolis, et libellis, et a memoria," who generally continued standing in his presence, unless laboring under any indisposition, when they were permitted to be seated.

Augustus Cæsar at first adopted a sphinx for the device of

The earliest English correspondence extant, is that of the Paston family, written between 1422 and 1485. Letters of familiar correspondence are his seal, both in his public acts and in his epistles; afterwards the figure of Alexander the Great; and ultimately his own likeness, engraved by Dioscordes; which impression his successors continued to use; and we are imformed by his accurate biographer, that he was so precise in dating his letters, that he added the hour of the day or night in which they were written (Suet. Aug.).

It was not unusual with the great men among the Romans to use one of the alphabetical characters in the place of the other, where it was their design to convey certain intelligence or orders to be understood only by the person written to; the transposition having been previously concerted. Upon these occasions Julius Cæsar, instead of the proper letter, made use of the letter that came fourthly after it in the alphabetical order; as D for A, and so on. And Augustus used the letter immediately following the letter which should properly have been used (Suet. Jul. Aug. Aul. Gell. xvii. 9).

The Romans always put their own names first in the prae logium, and afterwards the person to whom the letter was to be sent, as "L. Catilini, Q. Catullo, S., Claudius Lycius, unto the most excellent governor Felix, send the greeting" (Acts, xxiii. 26). Paulino Ausonius; metrum sic suasit ut esses tu prior, et nomen progrederere meum (Aus. ep. xx). Seu leviter noto, seu caro misso sodali; omnes ista solet charta vocare suos (Mart. Epig. xiv. 11).

Sometimes, in flattery to the emperors, the writer added "*Suus*," as an expression of peculiar homage and devotion, to his name. Similar, as Casaubon observes, to the Greek *ὁ αυτου ιδιος*.—Epithets expressive of any peculiar dignity in the receiver, or of esteem, or affection, such as "optimo dulcissimo," and the like, were not unfrequently added. The Roman letter began with *Salutem*, like the Greek *χαιρειν*, following the writer's names, and ended with *Vale*, like the Greek *ἐῤῥωσο*. Often the Roman letter closed with "Cura ut valeas," take care of your health; "fac ut diligentissime te ipsum custodias;" or "Deos obsecro ut te conservarint," Heaven preserve you. In the East letters often began with "Thus says," *ὡδε λεγει*. In this manner begins the letter of Amasis, the Egyptian king, to Polycrates, and of Orœtes to the same tyrant of Samos, as given us in the Third Book of Herodotus; *Αμασις Πολυκρατει, ὡδε λεγει, Ὀροιτης Πολυκρατει, ὡδε λε-*

rarely met with in Scotch records before the sixteenth century.

γει; and to the letter in Thucydides, i. 129, *ωδε λεγει βασιλευς Ξερξης Παυσανια.* The letter of the king of Assyria to the king of Jerusalem is commenced with similar introductory words: "Thus saith the king of Assyria," 2 Kings, xviii. 31. Wesseling, in his note on the passage in Herodotus, above cited, says of this epistolary form of commencement, "Nihil simplicius et per Orientem olim probatius hac in Epistolis et Regum edictis formula."

Ælian, in his Book of Various Histories, l. xii. c. 51, has a pleasant story, of which we are here reminded. "Menecrates a physician of Syracuse, was so elated with the extraordinary cures performed by him, that he assumed the title of Jove, as being the dispenser of life to man; and accordingly, in a letter to Philip, king of Macedon, he adopted the following address: *Φιλιππω Μενεκρατης ὁ Ζευς ευ πραττειν*: 'To Philip Menecrates Jupiter sends felicity;' to which the monarch replied, heading his letter thus: '*Φιλιππος Μενεκρατει ὑγιαινειν*; 'Philip to Menecrates sends sanity.'" The anecdote which follows is amusing. Philip having ordered a sumptuous banquet, invited the celestial physician. The invitation was condescendingly accepted by Menecrates, who being introduced, was respectfully seated by himself at a separate table, with a censer placed before him; in which situation he was left to regale himself with the fumes of the incense. At first he was much pleased with the homage shown him; but after a while growing hungry, and finding nothing more substantial proposed to him, he left the place with much dissatisfaction.

The first use of the salutation *χαιρειν* is ascribed by many of the Greek grammarians to the demagogue, Cleon, who, they say, prefixed it, instead of *ευ πραττειν*, to his letter informing the Athenians of his victory at Pylum. But Xenophon, who would not have borrowed from Cleon, prefixed it to the pleasing letter which he makes Cyrus write to Cyaxares; *Κυρου Παιδ.* lib. iv. Artemidorus, who wrote about a century before Christ, says, that the words *χαιρειν* and *ἐρῤῥωσο*, were the familiar beginning and ending of every epistle, *ιδιον παση επιστολης*. And Horace alludes to the custom in lib. i. ep. 8:

> "Celso gaudere et bene rem gerere Albinovano
> Musa rogata refer."

According to Lucian, Plato censured the practice as *μοχ-*

A letter is an object of property.[1] There is nothing a man may so emphatically call his own, or more incapable of being mistaken, than his ideas thrown upon paper.[2] By the Roman law, a messenger detaining a letter was prosecuted as for forgery. *Nuntius non restituens litteras ei, cum mandatum restituere susceperit, incidit in crimen falsi.*[3]

The laws of France recognize a letter as a chattel which may be the object of larceny. An action lies; and even a criminal proceeding may be instituted against a person who, having undertaken to carry a letter, detains it. "Il y a action en justice, et même on peut prendre la voie extraordinaire contri celui qui s'etant chargé de porter une lettre, se n'est point acquitté de son message et la retient."[4]

"It is said to have been the opinion of Lord Hardwicke," says Waddeston,[5] "that the receiver of letters has no legal right[6]—I speak not of the delicacy or propriety of such a measure—to publish them; be-

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$\theta\eta\rho o\nu$ (poor and vulgar), though he himself uses it in his third epistle to Dionysius. He prefers the word $\sigma\omega\phi\rho o\nu\varepsilon\iota$, or the words $\gamma\nu\omega\theta\iota\ \sigma\varepsilon\alpha\upsilon\tau o\nu$, as a better salutation. But he did not banish the word $\chi\alpha\iota\rho\varepsilon\iota\nu$. It is prefixed to the letter sent by the apostles and elders to the brethren at Antioch, to which $\varepsilon\dot{\rho}\dot{\rho}\acute{\omega}\sigma o$ is subjoined; and so also the letter from Claudius Lysias to Felix, Acts xxiii., which letter has a claim, from the situation in which we find it, to be regarded as genuine; the words $\pi\varepsilon\rho\iota\varepsilon\chi o\upsilon\sigma\alpha\nu\ \tau o\nu\ \tau\upsilon\pi o\nu\ \tau o\upsilon\tau o\nu$, being properly translated in our Bible, "after this manner," and not "in this form," or "tenor." Diogenes Laërtius notices the different salutations prefixed to the letters of the Greek philosophers. —Diog. Laërt. lib. iii. s. 61.

[1] Denis v. Leclerc, 1 Miller (La.) 294.
[2] Millar v. Taylor, 4 Burr. 2345.
[3] Bartolus in lege Titio, 36 n. 3.
[4] 3 Collection de Jurisprudence, 312.
[5] 2 Atk. 345.
[6] Lectures, vol. 3, p. 715, § 56.

cause, at most, he has but a special property in them, jointly with the writer. The same doctrine[1] has been since confirmed and established. But the reason, attributed to Lord Hardwicke, that a special property is left in the writer, seems, at least, so equivocally expressed as to need explanation, for surely every receiver of letters may destroy them. It is, however, a different thing to publish them to the world, without the writer's consent, from which mischievous consequences might ensue."

As to the question whether the sender and receiver of a letter have each a joint property therein, and as to Lord Hardwicke's[2] opinion that such a joint property existed, a late writer[3] says: "If his lordship used this language, it serves to show that he had not considered the subject so as to have formed a definite opinion. A special property, and a joint property, are two very different things. It may not be amiss to note that the case came up on motion, and may, therefore, have had less consideration than it would have had on a regular hearing."[4]

"Again, if the receiver and the sender have a 'joint property' in the letter, they would enter joint tenants or tenancy in common."

"If such were the case, how could one burn a letter received by him. If he were only a tenant in common he would be accountable in law and in equity, from the moment he received the letter, for its cus-

[1] Amb. 737.

[2] Pope v. Curl, 2 Atk. 341.

[3] Am. Law Reg. vol. 1, p. 437.

[4] *Vid.* Gyles v. Wilcox, 2 Atk. 143, where Lord Hardwicke said, in relation to Reade v. Hodges, cited before him, "that case was upon a motion only, and at that time I gave my thoughts without much consideration, and therefore I shall not lay any great weight upon it."

tody and its use, and who would be a correspondent on those terms? There is certainly no suggestion of any such right anywhere that we know of. The Roman law asserted that the owner of the manuscript was the owner of the thing written upon it, except that it directed that the manual labor of writing should be recompensed for to the scribe,[1] but no intimation was made of any "joint property."

"Neither," says the same writer above quoted, "it seems to us, is there a general or a special property remaining in the writer of matter not literary, which he has sent to its destination. If he has a special property, who has the general, and if he has the general, who has the special? Letters in regard to matters of business or friendship—aside from the question whether they had a literary value, although they pass to the executor or administrator, are not assets in their hands, and cannot be made the subject of sale or assignment by them, but belong to the widow or next of kin. If the writer has the special property and the receiver the general, then the writer is the bailee of the receiver, which is absurd; and if the writer has the general and the receiver the special property, then the receiver of a letter is, from the moment of its reception, the bailee of its writer, and liable to respond to him in law and in equity, which, it appears to us, is equally absurd."

Clearly the only right to be enforced by the sender of a letter against the holder, is a right to prevent publication of literary matter in which he has a property. The receiver may read it aloud, recite its contents to others; he may perhaps copy it (if he do not

[1] Inst. 2, 1, 33; 3 Inst. 109; and the same law provides for the case of one man's painting on another's canvas (Inst. 2, 1, 34). See *ante*, p. 14.

print it), and distribute copies; he may sell it, if he efface the contents, but it seems he should not do so otherwise.[1]

In Eyre v. Higbee,[2] where the plaintiffs were the executors of Colonel Tobias Ford, private and military secretary to General Washington (and whose letters to Colonel Lee are the subject-matter of the controversy), it was also held that (says Story, J.) "the mere sending of letters to third persons is not to be deemed, in cases of literary composition, a total abandonment of the right of property therein by the sender; *à fortiori* the act of sending them cannot be presumed to be an abandonment thereof in cases where the very nature of the letters imports, as matter of business or friendship, or advice, or family or personal confidence, the implied or necessary intention and duty of privacy and secrecy."[3]

And the same learned jurist, sitting in the case of Folsom v. Marsh,[4] summed up on the whole law in the words following:

"The author of any letter or letters, and his representatives, whether they are literary compositions or familiar letters, or letters of business, possesses the sole and exclusive copyright[5] therein; and no

[1] Am. Law Reg. vol. 1, p. 437.

[2] 22 How. Pr. 198. *Vid.* also Gee v. Pritchard, 2 Swans. 402; 2 Story Eq. § 945; Edcn on Inj. 2 Am. ed. 324, 325; Drannard v. Dunkey, 1 Rol. & Beat. 209.

[3] 1 Eq. Jur. 947.

[4] 2 Story's Rep. 111.

[5] *I.e.*, the right to copyright. We think in this case Judge Story unquestionably uses the word in this sense, as identical with the word "copy," in the common law. "I use the word 'copy,'" said Lord Mansfield,in Millar v. Taylor, 4 Burr. 2396, "in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing and publishing of somewhat intellectual, communicated by

persons—neither those to whom they are addressed, nor other persons—have any right or authority to publish the same upon their own account, or for their own benefit. But, consistently with this right, the persons to whom they are addressed may have—nay, must, by implication possess—the right to publish any letter or letters addressed to them, upon such occasions as require or justify the publication or public use of them; but this right is strictly limited to such occasions. Thus, a person may justifiably use and publish in a suit at law or in equity such letter or letters as are necessary and proper to establish his right to maintain the suit, or defend the same. So, if he be aspersed or misrepresented by the writer, or accused of improper conduct in a public manner, he may publish such parts of such letter or letters (but no more) as may be necessary to vindicate his character and reputation, or free him from unjust obloquy and reproach. If he attempt to publish such letter or letters, on other occasions not justifiable, a court of equity will prevent the publication by an injunction, as a breach of private confidence or contract, or of the rights of the author, and *à fortiori* if he attempt to publish them for profit; for then it is not a mere breach of confidence or contract, but it is a violation of the exclusive copyright of the writer. In short, the person to whom letters are addressed has but a limited right or special property (if I may so call it) in such letters, as a trustee or bailee for particular purposes, either of information or protection, or of support of his own rights and character.

letters." "The 'copy' of a book," said Aston, J., in the same case, Id. 2346, "seems to have been not familiarly only, but legally used as a technical expression of the author's sole right of printing and publishing that work." See also per Willes, J., Id. 2311.

The general property, and the general rights incident to property, belong to the writer, whether the letters are literary compositions, or familiar letters, or details of facts, or letters of business. The general property in the manuscripts remains in the writer and his representatives, as well as the general copyright. *A fortiori*, third persons standing in no privity with either party are not entitled to publish them, to subserve their own private purposes of interest, or curiosity, or passion."[1]

195. We have seen that the mere parting with the possession of a manuscript, or intrusting its possession to another person, or a permission to that person to take and hold a copy of the manuscript, will not amount to an authorization of its publication by that other person. Such acts must be deemed strictly limited, in point of effect, to the very occasions expressed or implied, and ought not to be construed as a general gift or authority for any purposes of profit or publication to which the receiver may choose to devote them.[2]

And yet, nobody has ever called in question the right of the recipient of a letter to burn, or otherwise destroy it, to sell it for waste-paper, or to part with it to a collector of autographs or chirographical specimens; and yet, if the writer of that letter have still a property in the composition, which, if not valuable in his lifetime, might become so after his death, what is there, logically, to prevent the recipient's being called

[1] *Vid.* also Wetmore v. Scoville, 3 Edw. Ch. 543; Woolsey v. Judd, 4 Duer, 379.

[2] St. Eq. Jur. 943. See Bartlett v. Crittenden, 4 McClean, 303; 5 Id. 41, where the court says, "To make a gift of a copy of the manuscript is no more a transfer of the right or abandonment of it than it would be a transfer or an abandonment of an exclusive right to republish, to give the copy of a printed work."

upon to answer for the property which was in his possession without being his, and of which he was, if anything, only a trustee, or at least an involuntary bailee, liable only for gross negligence in the custody of property deposited with him?

Such a principle as this—the accompaniment of all other property—it is very evident cannot exist in the case of the special property of the receiver in letters sent to him in the course of correspondence. Such a rule would convert the most ordinary of all human procedure into a nice and complicated transaction, reviewable by the strict rules of equity, and render every individual, who received a letter from his friend, liable at any time to account, in a court of chancery, for the disposition made by him of an inchoate and impalpable property, undefinable and immeasurable, which existed by theory of a careful law, and with which he never sought any connection.

To escape this logical deduction and result, we must either assume that the property of the author in his sentiments and expressions, has never left his possession, or that it is a property *sui generis*, to which the ordinary rules and principles governing property will not be applied.

Both of these hypotheses are in some measure correct. In one sense, the ideas of the author never leave his possession, being still his, and capable of being used by him alone. And as we have seen in its every phase, literary property is a property unlike all other sorts and kinds, and capable of being considered by comparison with no other.

So, therefore, if the receiver of a letter destroys it, even though he may have thereby destroyed its contents as well as its material, he has done no wrong and no action can lie.

If, after its destruction, his memory still retains its contents, he cannot be summoned to repeat such contents to the writer.[1] And, if, on the other hand, the writer recollect the contents of the letter, or have retained a copy, the letter in his possession does not differ in any respect from any other manuscript, and he has the same rights that he would have in any manuscript, not in the least altered or abridged, or affected by the fact that the composition was originally written and despatched in the form of a letter.

There is nothing, in the law, to prevent one person's possessing the original, and the other a copy of a thing, and both having a property in that which they possess, the one in what his original contains, and the other, in what his copy contains. If the manuscript of a work should be retained by the author, after its contents had been published in book form, the manuscript would be none the less his own, because a thousand others possessed copies of his book. Nor does the original of a famous picture possess a lessened value, because a copy has been made and sold, nor are the visitors to the Rospigliosi Gallery and the "Aurora" of Guido any less numerous, because the author's countrymen, from his day to ours, have assiduously copied his masterpiece.

196. The rights, therefore, of the sender and receiver of letters are entirely distinct and independent, each of the others.[2] What rights the sender has, he retains,

[1] If, however, the receiver remember the contents, and publish them from memory, can equity prevent or interfere? If the ruling of Buller, J., in Coleman v. Wathen, 5 T. R. 245, that the transportation of anything in one's memory is not a piracy thereof, he evidently could, but this ruling has been doubted. See De Witt v. Palmer, 7 Amer. 480, 47 N. Y. 532, M.; *post*, vol. ii. Dramatic Copyright.

[2] But if it were even held that there could be but one prop

subject to no special right of the receiver; and what rights the receiver obtains in the reception, he enjoys and will continue to enjoy, subject to no rights of the sender.

The rights of the sender of a letter are, then, to recapitulate: First. The receiver has a title by gift to everything that passed into his possession when he received the letter. The paper, the characters, the autograph, the ink, the envelope, the superscription—the postage stamp, the postal mark. Whatever value these may have—actual, or historical, or otherwise—is his, and his only.

Second. The writer of the letter has his title by occupation (according to Blackstone) to the literary composition, the sentiment and the thought of the letter, as separated from all its above enumerated or other material adjuncts, and whatever value these may have—actual, personal, literary, or historical—is his and his only, and vests in him and his executors or assigns, until he shall have parted with that title by the various methods of abandonment (*i.e.*, by alienation, publication, or dedication) to which we have alluded.

197. While the material upon which the transmitted letter is inscribed is undoubtedly in the nature

erty in the ideas or contents, as a literary composition, and that the entire property did not pass to the receiver, then that whole property must remain in the writer as an entire thing; for it seems very clear that if in such case he has not transferred the entire property, in what is sent, to the receiver, he has not given him any special property to which his own general property is subject, making his right in the nature of a reversionary or servient interest. There may be general right of property, and there may be one or more special rights or properties in the same thing, yet all these will but constitute the whole property, and the general will be subject to the special right (1 Am. Law Reg. p. 460).

of a gift to the recipient, from the impracticability of its ownership still centering in the sender after its leaving his possession; the law, at a very early day, recognized the injustice of allowing the writer's private matters, if forming the theme of his letter, from becoming the property of another. Of the offense against common decency committed in the publishing of private letters, Cicero spoke with much earnestness in his oration against Philip: "Quis enim unquam, qui paulum modo bonorum consuetudinem nosset, literas, ad se ab amico missas, offensione aliquâ interposita, in medium protulit, palamque recitavit? Quid est aliud, tollere e vitâ vitæ societatem quam tollere amicorum colloquia absentium? Quam multa joca solent esse in epistolis, quæ prolati si sint, inepta videantur! Quam multa seria, neque tamen ullo modo divulganda!"[1]

But, unfortunately for the species, it was found that it would not answer to trust this valuable right, upon which, not private feelings alone, but the peace of families or of the state itself might depend, to any general sense of decency, or taste, or manners. It was enunciated, at a very early day, that the gift of the manuscript of a letter carried with it no license to publish. But for a long time courts based this ruling upon a right of "literary" property in the writer; and hesitated to do more than protect letters which, as they expressed it, were "literary in their character," from unlicensed publication.[2] Equity declined to interfere in the case of merely friendly or commercial letters; holding, as one judge expressed it, that "though the form of familiar letters might not pre-

[1] Cic. Orat. Philip, ii. c. 4. See Sir S. Romily; 2 Swans. 419.

[2] Percival v. Phipps, 2 V. & B. 19; and see *ante*, p. 447.

vent their approaching the character of literary works, 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," he continued, "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."

198. The old rule that letters, to be protected, must be literary in their character, was laid down by Plumer, V. C., in the year 1813, in Percival v. Phipps.[1] In that case, the defendant was proprietor of a newspaper, called "The News," in which were published, from time to time, articles and paragraphs on a subject which then engrossed the public attention—which articles and paragraphs were supplied to Phipps by a Mr. Mitford, but were written, as Mitford informed Phipps, by Lady Percival, and in her handwriting. A piece of intelligence in one of these published articles being found to be false, Phipps applied to Lady Percival on the subject, who denied that the intelligence had ever been sent, and stated that the papers containing it were forgeries. Mitford positively asserted the contrary; and to enable Phipps to justify himself to the public, delivered to him several letters written by Lady Percival to Mitford, upon similar subjects, materially tending to show that the false intelligence, published in "The News," had come from Lady Percival through Mitford. Phipps published in "The News" one of the letters given to him by Mitford, and announced an intention of publishing the others. A bill was filed, on the part of

[1] 2 V. & B. 19.

Lady Percival, to restrain the publication of those letters written by her to Mitford, as being of a private nature, and having been sent to him in confidence that he would not part with them or communicate their contents to any other person. The answer denied that the letters had been sent in any such confidence. It was urged, on behalf of Phipps, that a gross imputation had been cast upon him; and that, though he might derive a profit from publishing the letters in his own paper, his object was not profit, but the vindication of his character from the imputation thrown upon it, and to effect that object he was entitled to use the letters. The vice-chancellor held that he was entitled to make this use of the letters. "Whatever degree of confidence," he said, "or reservation of property may be implied, from the transmission of a private letter, it would be too much to hold that the individual who receives it can in no case use it for the purpose of protecting himself from an unfounded imputation—stating that to be the sole and *bona fide* object of the publication; and, upon the answer, in this case, it must be taken that the defendant has no purpose of gain, or to deprive another of the benefit derived from a literary composition; but that his only object is, by proving agency, to answer the imputation cast upon him."

"An injunction," continued the vice-chancellor, "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. . . . . We find Lord Eldon, however, five years later, criticising this case severely, when cited before him,[1] on the ground of the 'difficult and

[1] Gee v. Pritchard, 2 Swanst. 422.

endless questions of literary character which it would be forced upon courts to decide.'"

And the distinction has long since been abandoned as impracticable and absurd. The right which every man has to the control of the product of his own hands, can hardly be discriminated against on account of the character or merit of the production. "Why should a writing of inferior composition be precluded from being a subject of property. To establish a rule that the quality of a composition must be weighed previous to investing it with the title of property, would be forming a very dangerous precedent. What reason can be assigned why the illiterate and badly-spelt letters of an uneducated person, should not be as much the subject of property as the elegant and learned epistle of an author. The essence of the existence of the property is, the labor used in the concoction of the composition, and the reduction of ideas into a tangible and substantial form; and can it be contended that the labor is less in the former than in the latter case? Every letter is, in a general acceptance, a literary composition, however defective it may be in style, grammar, or orthography, or however trivial or elaborate in design or composition. The result of literary labor may differ widely in merit and value, but the basis upon which it rests in regard to the law of property, all kinds and sorts are alike.

The property of the author is the labor he has expended on his manuscript; which, in the case of the illiterate, might be even greater in amount than that expended by the fluent and facile and cultivated. No matter how labored or crude or inartificial the attempt to set down thoughts in words, the law will protect the author's right to it, however valuable or valueless. To a volume of burlesques—like the collection of

sketches, by "Artemus Ward"—nobody would deny a copyright, yet they were burlesques of the letters of an illiterate person—and why should we protect a burlesque more than the thing burlesqued?

Again, mere printing and publishing cannot make a composition literary. If it be not literary in manuscript, it will not become so between covers. If the rule as to "literary character" would apply to letters, it would apply equally to more extensive works. We have already seen that the question of the value or merit of a literary production, will not be considered in granting it the privilege of copyright."[1]

No matter how trivial or how finished, we incline to think that the writer of a letter is the owner of its substance—and so long as he continues to be—can control the multiplication of copies of the same.

Again, were a destinction between literary and non-literary property allowed to exist, what would be the test, and who would apply it? Is it a question of law or of fact? Would the court decide the question itself, or would it cite experts to appear, and leave their testimony to a jury?

Clearly it could do neither; for the decision of the judge or the testimony of the expert, could only be the assertion of his own taste or appreciation; and the one or the other would be compelled, under oath, to decide upon a question *de gustibus*, which—it is a proverb—is *non disputandum.*

Must the test be whether the letters had been, or could, or might be published, or whether any one wanted to publish them? Clearly not, since the appeal is to equity to prevent their being published at all.

If an author's title to the copyright of his own work were to rest upon its intrinsic merit, our judges

[1] *Ante*, p. 316.

must labor to prepare themselves to be critics as well; our courts must be stocked with miscellaneous as well as legal libraries, and become lyceums and debating societies, instead of the solemn tribunals of impartial justice.

The jurisdiction of a court of equity must evidently rest upon the right of the author in whatever original ideas he has written down for preservation upon his manuscript, and it is quite immaterial, even could everybody agree upon that point, whether they are worthy of such preservation or not.

199. Again, a man's reputation and honor are as much his own as his manuscripts, or anything else that is his, and that courts of equity have a right to restrain his reputation from injury and his private feelings from outrage,[1] as in the case of Cadell v. Stewart,[2] where letters written by Robert Burns, the poet, to a lady whom he designated as Clarinda, had been given by her to a bookseller, who published them, and where the poet's family were held—as interested in his literary reputation—entitled to enjoin their appearance.

Equity also might interfere to stay the publication of letters, on the ground that such publication would be a breach of contract or of confidence, and, *à fortiori*, when they are intended to be made a source of profit, in addition to all that would be a violation of the author's actual or presumptive copyright.[3]

So, upon the principle of breach of contract, an

[1] Copinger on Copyright, 30; Dodsley v. McFarquhar (Feb. 27, 1775), which was the case of Lord Chesterfield's letters (Mor. Dict. of Dec. Lit. Prop. App. 1, 5; Br. Sup. 509).

[2] June 1, 1804, Mor. Dict. of Dec. Lit. Prop. App. 4.

[3] Copinger on Copyright, 30.

injunction was granted to restra publication of letters written by an old lady to a young man to whom she had been foolishly attached, there being an agreement not to publish them, but to surrender them for a valuable consideration.[1]

"Were the court of chancery," says Copinger, "to interfere on any other principle than that already stated, individuals would be deprived of their defense in proving agency; orders for goods; the truth of an assertion, or some other fact, merely because the testimony establishing the true and genuine circumstances was contained in letters in which a pretended copyright was claimed."[2]

"Independent of property," said Vice-Chancellor McCoun,[3] "and disconnected therefrom, there is no ground or principle on which the jurisdiction to restrain the publication of private letters can properly rest. . . . . The publication of letters having relation exclusively to matters of private concern, written in the confidence of friendship, and being of a private and confidential nature, not intended for the public eye, carries with it the evidence of a wicked, depraved, and sinister purpose, and its own dishonor; for I know of no other law, than that which may be found in a just sense of propriety and honor, to forbid the publication of private letters or papers, not having the character of property about them. . . . . It is a gross breach of honor and trust. . . . . After all that can be done by the judicial tribunals of the country, much must be left to the dictates of conscience, to the usages

[1] Anon. v. Eaton, cited 2 V. & B. 247. *Vid.* also Story Eq. Jur. 2 Esp. 944, 950; Denis v. Leclerc, 1 Martin (La.), 297; Eyre v. Higbie, 35 Barb. 502.

[2] On Copyright, 30; Godson on C. 330.

[3] Wetmore v. Scoville, 3 Edw. Ch. 515.

of society, and to the corrective influence of public sentiment and opinion."[1] And Chancellor Walworth cites these words approvingly in a later case in the same state; and, while characterizing the violation of good morals and good manners,—which, however, a court of chancery cannot undertake to enforce—says further: "It is evident however, in relation to all these letters, that the complainant could never have considered them as of any value whatever as literary productions; for a letter cannot be considered as of value to the author, for the purpose of publication, which he would never have consented to have published,[2] either with or without the privilege of copyright. But we have already seen that the doctrine upon which the vice-chancellor proceeded must now be abandoned as impracticable, and that the sender's literary property in a letter cannot be restricted by the pupular meaning of the word "literary."

The case of Earl of Granard v. Dunkin,[3] seems very distinctly to sustain and to protect the doctrine of property in the receiver of a letter. In that case, it was sought to restrain the defendant from publishing letters from Lady Moira and Lady Granard to Lady Tyrawley during her lifetime. Lady Granard claimed these letters, not as their writer, but because she was the executrix of Lady Tyrawley; and it was

[1] These rights are, however, reciprocal; for if a letter contain private and confidential matter, which it would be scandalous or injurious to publish, it cannot make any difference, if it be published at all, whether it be published by writer or sender; and if the writer could enjoin the receiver from publishing such matter, the receiver could equally have his remedy to restrain its publication by the writer.

[2] This was before the doctrine laid down in Prince Albert v. Strange, however, which would seem to hold emphatically the reverse (2 De G. & Sm. 694, &c.).

[3] 1 Ball. & Beat. 207.

decreed that her own, as well as Lady Moira's letters, being Lady Tyrawley's, vested in her executrix.

200. Neither will equity leave the firm ground and province of contracts and borrow jurisdiction from its sister courts, for the purpose of punishing a crime,[1] nor can it enforce, apart from the right of property of which alone it will take cognizance, the performance of purely moral duties.[2] She will only restrain the publication of letters, written and sent in the course of epistolary correspondence, when there is a right of property in the writer, upon which its jurisdiction can rest.

So, in the case of an application[3] for an injunction to restrain publication of a pamphlet, entitled "The Life, Exploits, Comical Adventures, and Amorous Intrigues, of Benjamin Brandling, M.D., V.P.L.V.S., a distinguished pill-vendor, written by himself, &c.," the court held, that, as it did not appear to be an invasion of any right of either literary or medical property, although unquestionably a gross libel upon the complainant, equity could not interfere to grant one.

"It is very evident," said Chancellor Walworth in that case, "that this court cannot assume jurisdiction of the case presented by the complainant's bill, or of any other case of like nature, without infringing upon the liberty of the press, and attempting to exercise a power of preventive justice which, as the legislature has decided, cannot be safely intrusted to any tribunal." "The court of star chamber in England," said the chancellor, "once exercised the power of cutting off the ears, branding the foreheads, and slitting

[1] *Ante*, p. 29.
[2] Hoyt v. Mackenzie, 3 Barb. Ch. 320; 2 Story Eq. 948, a.
[3] Brandreth v. Lance, 8 Páige, 24.

the noses of the libelers of important personages. And, as an incident to such a jurisdiction, that court was undoubtedly in the habit of restraining the publication of such libels by injunction. Since that court was abolished, however, I believe there is but one case upon record in which any court either in this country or in England has attempted, by an injunction or order of the court, to prohibit or restrain the publication of a libel, as such, in anticipation. In the case to which I allude, the notorious Scroggs, chief justice of the court of king's bench, and his associates, decided that they might safely be intrusted with the power of prohibiting and suppressing such publications as they might deem to be libelous. They accordingly made an order of the court prohibiting any person from printing or publishing a periodical entitled 'The Weekly Packet of Advice from Rome, or a History of Popery.' The house of commons, however, considered this extraordinary exercise of power on the part of Scroggs, as a proper subject of impeachment, and I believe no judge or chancellor, from that time to the present, has attempted to follow that precedent."[1]

In case, however, of an explicit agreement by its receiver to refrain from publishing a letter, courts might interfere to prevent its publication upon other grounds, namely, to enforce and uphold a trust, or to decree a specific performance of the agreement.[2] That is, where the agreement was made before the receipt of the letter.[3]

201. The leading case upon the subject of letters

[1] Hudson's Star Chamber, 2 Collect. Jurid. 224; 8 Howell's State Trials, 198.

[2] Gee v. Pritchard, 2 Swans. 402.

[3] 1 Am. Law Reg. 456.

still continues to be Pope v. Curl,[1] decided in 1741, in which Lord Hardwicke continued an injunction, obtained by the poet Pope, to restrain the defendant from publishing a collection of his letters.

"The first question," said Lord Hardwicke, "is whether letters are within the grounds and intention of the statute.[2] I think it would be extremely mischievous to make a distinction between a book of letters, which comes out into the world either by permission of the writer or the receiver of them, and any other learned work. . . . Another objection has been made by the defendant's counsel, that, where a man writes a letter, it is in the nature of a gift to the receiver. But I am of opinion that it is only a special property in the receiver. Possibly the property of the paper may belong to him, but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer." And to the objection insisted on by the defendant's counsel, that this was a sort of work which did not come within the meaning of the act of parliament, because it contained only letters on familiar subjects, and inquiries after the health of friends, and therefore could not properly be called a learned work, his lordship replied: "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 read-

[1] 2 Atk. 342. See remarks of Lord Mansfield in Millar v. Taylor, 14 Burr, p. 2397.

[2] 8 Anne, c. 19.

ing." The injunction was continued, by the lord chancellor, only as to those letters in the book which were written by Pope, and not as to those which were written to him.

This ruling, however, militates against Lord Ellenborough's declaration in Du Bost v. Beresford,[1] that, upon an application, he would have granted an injunction to restrain the exhibition of a libelous painting. A note to Horne's Case,[2] says that this declaration "excited great astonishment in the minds of all the practitioners in the courts of equity."

Subsequent to Pope v. Curl, the next leading case in this branch of the law is that of Thompson v. Stanhope,[3] wherein the executors of Lord Chesterfield, in 1774, brought suit against Stanhope,—his natural son,—to restrain the publication, by him, of his lordship's famous "letters."

These letters were written, as is well known, to Lord Chesterfield's natural son, Philip Stanhope, who lived abroad, and was "a public character." On the latter's death, his widow came to England, where she was affectionately received by Lord Chesterfield, to whom she delivered certain of the letters in which his lordship had drawn the characters of different living persons (first keeping copies of the same), but retaining the others which treated of politics, education, and manners. After his lordship's death, the widow agreed with one Dodsley, a publisher, to deliver to him the letters treating of education, manners, &c., for publication; and accordingly these were, from time to time announced. Lord Chesterfield's executors, upon seeing the announcements, brought suit to restrain the publi-

[1] 2 Camp. R. 511.
[2] 20 Howell's State Trials, 779.
[3] Amb. 737.

cation of the letters. The widow Stanhope, in her answer, stated that, being frequently in conversation with his lordship, she had one day mentioned to him that she thought the letters he had written her late husband would form a fine system of education if published, to which he had answered: "Why, that is true, but there is too much Latin in them;" but did not express any disapprobation of the plan, only stating that he wished to destroy the letters in which he had sketched the characters of persons then living; that these letters had thereupon been restored to him, but that he had given her permission to keep the others. But the court seemed to hold that permission to keep the letters did not imply permission to publish them—and granted the injunction sought.

202. There are, however, it is to be noticed, circumstances under which the law will not allow a writer of private letters to insist on his special property in them, and to hinder their publication by others. He may, by his own acts, disentitle himself to prevent the publication of his letters to another person, and justify that other person in giving them to the world. A false accusation, brought by the writer against the recipient of the letters, which may be disproved by their publication, for example, will justify such publication; and courts of equity have refused to aid, by injunction, the writer of the letters in such a case. Sir Thomas Plumer, V. C.,[1] refused an injunction to prevent the publication of the letters, under such circumstances, where the receiver was forced to the publication, in his own justification, against charges of dishonesty and a circulation of false news.

[1] Lord & Lady Perceval v. Phipps, 2 V. & B. 19. *Vid.* also Gee v. Pritchard, 3 Swanst. 416, 419, and Folsom v. Marsh, 2 Story, 100–111.

"The distinction in that case," says Shortt,[1] "between the publication of private letters without the writer's consent, for the purpose of profit or gain, and publication for a different purpose, is treated by Lord Eldon, in Gee v. Pritchard,[2] as of no moment. His lordship considered the previous cases to have decided that, *ultra* the purposes for which the letter was sent, the property was in the sender. 'If that is the principle,' he observes, 'it is immaterial whether the publication is for the purpose of profit or not. If for profit, the party is then selling; if not for profit, he is giving that, a portion of which belongs to the writer.' The defendant in this case was the illegitimate son of the plaintiff's deceased husband, and had received many letters from the plaintiff during her husband's lifetime. After her husband's death, the plaintiff ceased to be on terms of friendship with the defendant, and denied the truth of statements made by him as to the expectations which he had been led to entertain from the plaintiff and her husband. The defendant returned to the plaintiff the original letters which she had written to him, but took copies of the letters before returning them, without the plaintiff's knowledge, and advertised his intention to publish the letters, but, as he stated in his answer, for private circulation only. This he did, as he alleged, in order to clear his character from the charge of want of veracity which the plaintiff had brought against it. In this case the defendant, by returning the originals, had abandoned whatever property he had—for if he had any right of property it was in the originals—and Lord Eldon restrained the threatened publication. In giving judgment he observed, 'I do not say there may not be a

[1] L. Lit. 16.
[2] 2 Swanst. 415.

case, such as the vice-chancellor (Sir T. Plumer) thought the case before him, where the acts of the parties supply reasons for not interfering; but that differs most materially from this case. In April last, the defendant having so much of property in these letters as belongs to the receiver, and of interest in them as possessor, thinks proper to return them to the person who has in them, as Lord Hardwicke says, a joint property, keeping copies of them without apprising her, and assigning such a reason as he assigns for the return [his "being unworthy of the sentiments and expressions of kindness contained in them"]. Now I say, that if, in the case before the vice-chancellor, Lady Percival had given to Phipps a right to publish her letters, this case is the converse of that; and that the defendant, if he previously had it, has renounced the right of publication.'

"Lord Eldon was careful to rest his decision in this case on the ground of the plaintiff's property in the letters (as determined by previous cases), and not on any considerations as to wounded feelings. When reference was made to such considerations by the defendant's counsel, his lordship interposed: 'I will relieve you from that argument. The question will be, whether the bill has stated facts of which the court can take notice, as a case of civil property, which it is bound to protect. The injunction cannot be maintained on any principle of this sort, that if a letter has been written in the way of friendship, either the continuance or the discontinuance of that friendship affords a reason for the interference of the court.'"[1]

203. We have seen that—by what has been

[1] 5 T. R. 245. *Vid.* also Wetmore v. Scoville, 3 Ed. Ch. 527; Woolsey v Judd, 4 Duer, 382.

called the law of literary accession—if the literary composition is the result of labor performed by one in the employ of another, the literary property therein belongs to the employer.

So, if the writer of a letter be employed by a principal, and write a letter in the course of the employment, and concerning its subject-matter: that peculiar property in letters which we have ascertained to remain in the writer, would, by the same rule, inhere in the principal. And if the principal be also the recipient of the letter, the principal would own not only the paper and material part of the letter, but also the property of the writer thereof. So, if the agent or servant of a company write a letter, apparently on behalf of the company, to a shareholder, it is the property of the company, and the agent or servant cannot prevent the company from publishing the letter.[1] Where the solicitor of an insurance company established in London, wrote a letter not marked "private" or "confidential," to one of the shareholders in the country, in reference to certain shares allotted to the country shareholder, he was held not entitled to restrain the publication of this letter in a pamphlet, published after the winding up of the company by its late manager, to whom a copy of it had been sent by the shareholder. "If the solicitor of an insurance company established in London," said the master of the rolls, in this case, "by the direction of the directors, wrote a letter to one of the shareholders in the country, it is clear that such letter is not the property of the solicitor, and that he cannot say that the company have not a right to publish it. Take it a step further, and assume that the solicitor wrote a letter, but not by the direction or on behalf of the directors, though

[1] Howard v. Gunn, 32 Beav. 465.

it had all the appearance of being written on their behalf, and by their direction. Thus, if it were written to a person who proposed to take shares in the company, and it related to the affairs of the company, and contained authoritative information on behalf of the company, in answer to an application for shares, and the person who receives it treats it as such, and sends back to the company, objecting to its contents, shall the solicitor be allowed to complain of its publication, and to insist that it is a private letter, though it appears to be written on behalf of the directors? The answer is, if that be so, it ought not to have been written. It has all the appearance of having been written by the plaintiff, on their behalf, and the shareholder to whom it is addressed so treats it, for he writes to the manager in answer to it. Can the plaintiff be allowed to say that the company have no right to publish it? and if they have, is not the defendant entitled, as regards the plaintiff, to bring it forward? It is obvious that this was not a private letter, and was not intended to be a private letter."

But all manuscript letters and communications sent expressly or impliedly for publication to any periodical,—such as a newspaper, review, or magazine,—and received by its editors or proprietors, become the property of the person or periodical to whom they are addressed or directed, and cannot be published by any other person obtaining possession of them.[1] Book manuscripts are ranked as third-class matter by the United States post-office department; can be sent by mail, to the publisher, at the same rates as transient printed matter, proof-sheets, and corrected proof-sheets, &c., at the prepaid rate of one cent for each ounce or fraction of an ounce. All matter of this description

[1] Copinger on Copyright, 32; Hogg v. Kirby, 8 Ves. 215.

which is inclosed in an envelope, which conceals it so as to prevent the post-office authorities examining it, without breaking the envelope, will be charged letter postage.[1] It has been held that publishers are liable for the loss of manuscripts sent them—even when they have not requested them from their authors, or are not in the habit of paying for those accepted—where the author's address accompanied the manuscript, and no notification was sent him that it would be returned to him on receipt of the postage which it was necessary to prepay.

A dramatic manuscript can be copyrighted at any time, even though its contents have been previously represented on the stage; and such representation will in no case be a dedication of its contents to the public.[2]

204. A manuscript written in another country, if brought to this, will not lose its character of personal property which it possessed in that.[3] But if such manuscript, or a copy thereof, be brought against the will of its proprietor, the literary property in its contents will not vest in the possessor of the manuscript.

And the manuscript may be a personal chattel on this side of the water, although its contents have been copyrighted on the other.[4]

205. If an author sell and dispose of his manuscript, in specie, to a publisher, with the express agreement and understanding that he parts with its possession, he

[1] U. S. Official Postal Guide.

[2] Roberts v. Myers, 13 Month. Law Rep. N. S. 396.

[3] Story Conf. L. § 376, *et seq.*; Keene v. Wheatley, 9 Am. Law Reg. 33; Keene v. Clarke, 5 Rob. 38; Keene v. Kimball, 6 Gray (Mass.) 542; Palmer v. De Witt, 47 N. Y. 532; Crowe v. Aiken, 2 Biss. 208.

[4] Id.

cannot afterwards copyright the work in his own name, but the copyright belongs to the publisher.[1]

206. The right to take out copyright of a work, as a rule, belongs to the owner of the manuscript.[2] Copyrights of manuscripts may be entered, at any time, by depositing a printed title thereof; and the time of completion of the manuscript work does not affect the title. In the case of unprinted dramatic compositions, the notice of copyright, required by the act, does not apply; neither does the requirement of two copies of the publication. But if the title, once deposited, is changed, or in any way altered, a distinct entry must be made; and there must continue to be a distinct entry for every such change in the title. This rule also applies to photographs, prints, and engravings, of every description. The librarian of congress is not at liberty to record or issue certificates of copyright upon written titles. The law explicitly requires a printed copy of the title of the article, for which the copyright is desired, to be sent to the office of the librarian, before the author or proprietor can be entitled to receive his copyright. The particular form or style of type is immaterial; and only the precise words of the title need be printed. It does not appear to be necessary that the whole title-page shall be filed.[3]

207. It may not be out of place, in connection with the subject of property in letters, to allude to postal facilities, regulations, and laws. The conveyance of dispatches, and royal letters and messages, by regular couriers, was a feature that appears, at a very early date, to have entered into the policy of every ancient state. In the book of Job, which is conceived, by some, to be a fragment of the earliest literature, the

[1] Paige v. Banks, 7 Blatchf. 152.
[2] *Post*, chapter on Copyright, Vol. II.
[3] Id.

transitoriness of life is compared to the fleetness of a post[1]—the Hebrew word there employed signifying a runner or courier. And again, in Jeremiah,[2] we read: "One post shall run to meet another, and one messenger to meet another, to show the king of Babylon that his city is taken." So, in the third chapter of the book of Esther,[3] we read that "letters were sent by the posts into all the king's provinces." In Persia, more especially, the institution of regular posts appears to have been an object of attention, as early, at least, as the reign of Cyrus. A passage in the Cyropædia of Xenophon is very clear and particular on this head: "We have been informed, also, of another invention of Cyrus for promoting the prosperity of his empire, by providing a method of communication whereby intelligence might be brought of what happened in places the most remote. Having considered what journey a horse was capable of performing, in the course of a day, he ordered stables, accordingly, to be prepared at the proper distances from each other, and stationed horses in each of them, with persons to take care of them, and have them in readiness. He placed also a person at each of these stations, who might receive the letters brought to them and hand them over to the others, taking due care of the tired men and horses, and providing others fresh and prepared for going forward. In this manner the conveyance was to be carried on successfully by night as well as by day,—an arrangement so complete, that Xenophon continued: "Some say the progress was more rapid than the flight of cranes. If this be an over-statement, it is, however

[1] Job, ix. 25.
[2] Jeremiah, li. 31.
[3] Verse 13.

certain, that no journey by a human being, made on land, was ever so expeditious."[1] The same institution of posts in the Persian empire, as it existed in the time of Xerxes, is thus noticed in Herodotus. A man and horse were posted at the regular intervals of a day's journey, to deliver the letters to each of the succession, till they reached the place of their destination. From one relay to the other, the journey was to be performed in the time prescribed, whatever might be the state of the weather or the obstacles of the way; and the historian remarks, "that nothing mortal was ever known to proceed with greater celerity."[2] This institution is expressed by the word *αγγαρειον*; in the Ionic idiom of Herodotus *αγγαρηϊον*, a term borrowed from the language of Persia, where it appears, if not to have had its origin, at least to have attained to great perfection. The messengers employed had the name of *αγγελοι*, angari; and the noun, from its primary use in designating the institution and conduct of the posts, came at length to indicate any compulsory service, but especially a journey by constraint. The verb *αγγαρευειν*, has also its derivative sense, and is used by St. Matthew:[3] "Whosoever shall compel thee to go (*αγγαρευσει*) a mile, go with him twain." The force of which word in the original is not properly understood but by adverting to the authority of the *αγγαροι*, to press others into their service by way of expediting the post.[4] The principal couriers, or postmasters of Persia, appear to have been persons of some importance in the dominions of the Persian monarchs, and, if we may credit Plutarch,

[1] Xenoph. *Κυρου Παιδειας, βιβλ. Η.* 642; Ed. Hutch. 1727.
[2] Herod. Uran. 98.
[3] Matt. v. 41.
[4] Roberts, p. 40.

Darius Codomannus, was originally one of that order; a circumstance, among many others, affording some confirmation to the testimony which history bears to the pains bestowed in this quarter of the globe, at an early period, on the means of conveying intelligence and instruction between places at great distances from each other. Throughout the eastern states a similar attention to the establishment of posts, or the provisions for the rapid conveyance of important despatches, appears to have been paid, and continued to modern times. In the dominion of the Mogul emperors, as well as in provinces subjugated by the Turks and Tartars, the speed of couriers on foot, or on the backs of horses or dromedaries, has been always an object of great importance. A modern traveler, who in 1840 published accounts of travels in British India and Bochara, alludes to the post as follows: "We continued our march to Tugduluk, and passed the Soorkh road, or Red river, by a bridge, with a variety of other small streams, which pour the melted snow of the Sufued Kob into that rivulet. On our way we could distinguish that a road had once been made, and also the remains of the post-houses which had been constructed every five or six miles by the Mogul emperors to keep up a communication between Delhi and Cabool. They may even be traced across the mountains of Balkh; for both Humaioon and Aurungzebe, in their youth, were governors of that country. "What an opinion," adds the traveler, "does this inspire of the grandeur of the Mogul empire; it had a system of communcation between the most distant provinces as perfect as the posts of the Cæsars."

Up to this time, however, and, indeed, for a long period thereafter, we find no traces of any provision

for the employment of the post by private parties or by the public, even had there been (as there probably was not) a disposition on their part to take advantage of it. These conveyances were contrived only for the service of the state, or rather of the court, and for the transmission of instruction and dispatches; and if they were occasionally made use of by private persons, or for personal communication, the risk of disclosure must have made it an unfit and unsafe vehicle. Servants, hired messengers, or traveling friends, furnished the only means of carrying on a free correspondence; and it is easy to imagine how greatly the uncivilized, unsettled, and tumultuous state of those ancient communities multiplied the chances of miscarriage, not to mention the negligence or treachery of the private, irresponsible hands to which the charge was necessarily committed. The old historians record numerous instances of súbtle expedients and contrivances to transmit intelligence so as to avoid the danger of treachery or discovery. Mention of a table, covered with wax after the letters had been engraved on the wood, and sent by Demaratus to the Lacedemonians, is made by Herodotus,[1] who abounds in similar anecdotes.

The transmission of information by letters was always attended with risk or uncertainty in the disorderly state of ancient manners—the establishment of posts remaining for a long period the organ of courts and governments rather than a medium of general communication.

Private hands and special messengers were perpetually betraying their employers, as we may learn from the history, as well as the drama, of the ancients. Herodotus records a striking instance of treachery in

[1] Herod. Polym. 239.

the conduct of the internuncius of Histiæus, who, instead of carrying the epistles of that general to his friends, in Ionia, who were plotting with him against the Persian government, delivered them to Artaphernes, the great Persian satrap and commander in that province.[1] The stratagem of Harpagus, who dispatched a letter in the body of a hare to the young Cyrus, to persuade him to take up arms against his grandfather, Astyages, is one among several curious methods of eluding discovery, in the conveyance of secret intelligence, which we meet with in the same historian.[2] The story of Artabazus is as follows: That general having laid siege to Potidæa, was informed that Timoxenus was disposed to deliver up the city by treachery; and it being a matter of the greatest difficulty and danger to interchange intelligence with him, the following expedient was adopted: A letter was written on a scroll, and wound round an arrow, which was shot from a bow so as to reach a certain place agreed upon, and an answer was sent back by the same method. On one occasion, however, Artabazus missed the mark; and the arrow, instead of falling where it was intended, struck the shoulder of one of the citizens. The people, gathering round him and taking up the arrow, on which they found the letter, carried it to the proper authorities, and thus the plot was discovered.[3]

Another more subtle method[4] is related of Histiæus. Being detained at Susa, by the Persian king, and wishing to convey to Aristagoras, at Miletus, in Ionia, information of his intended defection, he shaved the head of one of his servants on whose fidelity he

[1] Herod. Lib. vi. s. 4.
[2] Id. Lib. viii. s. 128
[3] Id. Lib. i. s. 123-4.
[4] Id. Lib. v. s. 95.

could rely, and wrote, or rather engraved, upon his skull, a letter containing the secret. After this was done, the hair was suffered to grow again; and as soon as the head was covered, the man was sent to Miletus, where he safely arrived, and delivered his message to Aristagoras, who was to cause his head to

[1] Humboldt, in his "Vues Pittoresques des Cordillères," relates, that in order to maintain postal communication between the shores of the South Pacific and the province of Jaen de Brancamoros, Indians are employed, who, during two days, descend the river Guancabamba, or Chamaya, and afterwards the Amazon river, as far as Tomependa. The courier, before he commits himself to the water, wraps the few letters, with which he is charged monthly, sometimes in a handkerchief, and at other times in a species of drawers called guayuco, and this he disposes in the form of a turban round his head. In this turban he also places the large knife or cutlass with which he is always provided, less as means of defense than to assist him in making his way though the underwood, for the Guancabamba is not navigable throughout, by reason of the great number of falls and rapids; these the postman passes by land, taking again to the water as soon as all danger from them is over. To assist him in swimming, the Indian provides himself with a log of very light wood, generally the trunk of the bombax. These men, who are known in the country as the swimming couriers—el coreo que nada—have no occasion to encumber themselves with provisions, their wants being abundantly supplied by the hospitable inhabitants of the cottages which they pass on the banks of the rivers. A similar mode of securing the letters entrusted to their care, is adopted by the couriers of Hindostan. When compelled, as they frequently are, to cross a river by swimming, they deposit their letters in the turban, and thus convey them safely to the opposite shore. One of these men having failed to make his appearance at the appointed time, messengers were dispatched to search for him. On the banks of a river which flowed across the route lay the dead body of an alligator, with its jaws distended as if it had suffered a violent death. They proceeded to examine it more closely, and discovered the head of the unfortunate courier completely choking up the passage of the throat, so that the animal had died from strangulation; the letter was found uninjured in the turban.

be again shorn, and to read what was inscribed upon it.[1]

The scytale of the Spartans was a contrivance made of two small cylinders of wood, smoothed and polished, and of the same length and size. One of these was taken by a general on his departure for service, and its fellow retained by the magistrates at home. Round one of these pieces of wood a leather strap was wound, the edges touching each other in every part with a perfect adjustment, and ending exactly with the wood at each extremity. When a secret despatch was to be sent, it was written along the cylinder and over the places where the edges of the strap were in contact. When the strap was removed, the letters and words were detached so as to fall into illegible disorder and confusion; and in this state it was sent to the general, who alone could make out the sense, by winding the strap round his own cylinder, which brought again all the letters into their proper places, making them coincide as they had done when they were written upon the cylinder in the hands of the council at Sparta; and thus secrecy was maintained between the parties.[1]

It was customary with the Roman generals, when writing to the senate the news of a victory gained by their valor and conduct, to fold their letters in laurel leaves. A report had reached Rome of a defeat supposed to have been sustained by Posthumius, in a battle with the Æqui, which spread great consternation through the city. But the tide of success was turned; and the Romans achieved so complete a victory as nearly to annihilate the army of the Æqui.

[1] Aul. Gell. Noct. Att. lib. xvii. c. 9.

Litteræ laureatæ announced the event, and proclaimed that the enemy's army was routed.[1]

The Romans were far behind the eastern nations in adopting the convenience of the post. It does not appear, even in the time of Cicero, that any public provision had been made for the conveyance of letters of any description. The carriage was committed to some private hand, or special messenger, usually a slave, who was called tabellarius. Men of high condition often employed slaves, for freedmen, to write their letters, called amanuenses; which domestics were held in great consideration, as persons of a very confidential character. Sometimes, indeed, the proper and expedient time for the delivery of the letter was left to the discretion of the tabellarius.[2]

It appears, from Suetonius, that Augustus Cæsar felt the inconvenience arising from the want of a public provision for the transmission of important despatches; and that, in order to establish a speedy intercourse with the provinces of the empire, he first stationed young men at moderate intervals along the high roads, and afterwards chariots, to facilitate the transport of letters, and oral intelligence.[3] And this

[1] "Æquorum exercitum deletum" (Tit. Lib. I. v. c. 28).—Roberts.

[2] Cicero writes to Brutus (Cic. ad Fam. lib. xi. ep. xvi.; and see Harat. lib. i. ep. xiii.): "Permagni interest, quo tibi hæc tempore epistola reddita sit: utrum cum sollicitudinis aliquid haberes, ad cum ab omni molestia vacuus esses. Itaque ei præcepi, quem ad te misi, ut tempus observaret epistolæ tibi reddendæ. Nam quemadmodum coram qui ad nos intempestive adeunt, molesti sæpe sunt; sic epistolæ offendunt non loco redditæ. Si autem ut spero, nihil te perturbat, nihil impedit: et ille, cui mandavi, satis scite, et commode tempus ad te cepit adeundi: confido me, quod velim, facile a te impetraturum."

[3] Sueton, August.

continued to be the practice of his successors. The word post is Roman, if we suppose it, as is probable, to be derived from positus, the carriers being placed, or posted, at certain settled distances from each other. It does not seem, however, that regular relays of horses were part of the institution. The messengers seized any horses they could find, till Trajan appointed regular horse-stations for the conveyance of despatches and intelligence, of which a particular mention is made in the Theodosian Code, "de Cursu Publico." It was not, however, till in quite modern times, that this most useful provision came under a regular and general management, so as to be a system of popular economy and common convenience. Lewis Hornigk, who has furnished, in the German language, a full and accurate treatise on posts, tells us that they were first settled on this large scale, by the Count de Taxis, at his own expense; in acknowledgment of which the Emperor Matthias, in 1616, gave him in fief the charge of postmaster under him and his successors.

It is said that Charlemagne established stations for couriers, who rode upon horseback, delivering messages and parcels; but that the custom lapsed at his death, and was revived in France by Louis XI., who made his stations four French miles apart. But Rollin relates that France was indebted, for the great conveniency of the post, to the university of Paris. That university being at the time of its institution the only one in the kingdom, and having great numbers of scholars resorting to it from all parts of the country, took into its employment messengers, whose business it was, not only to bring clothes, silver, and gold for the students, but also to carry bags of law proceedings, informations, and inquests; and, in

process of time, to conduct all sorts of persons, indifferently, to and from Paris, finding horses and diet; as also to convey letters, parcels, and packets for the public, as well as the university. In the university registers of the faculty of arts these messengers are often styled *nuncii volantes.* Until, in 1576, by a royal edict, Henry III. granted certain privileges to royal messengers, similar to those which his predecessors had granted to the messengers maintained at the charge of the university, the students were the only post-riders, and the university the only postal department of France. It was in recognition of its services that Louis XV., by his decree of the council of state, of the 14th of April, 1719, and by his letters patent, registered in parliament, and in the chamber of accounts, ordered that, in all the colleges of the university, the students should be taught gratis; and to that end, for the time to come, appropriated to the university one-twenty-eighth part of the revenue arising from the general lease or farm of the posts and messengers of France, which twenty-eighth amounted in that year to 184,000 livres, or about $37,000. In England we find but little trace of anything like a post establishment till about the twenty-third year of Elizabeth. In the early stages of society, private persons departed but seldom from their homes or families, and the business of commerce was transacted with very little complication. The king's letters and writs to summon his barons, command his sheriffs, and collect his revenues, were carried, by special messenger, through the medium of a general establishment, charges for the conduct and expenses of which, make frequent items in the records of the royal household; and this practice was imitated by the more powerful nobles, who had their *nuncii* among their retainers.

For these *nuncii*, by degrees, fixed posts and stations were established, for the maintenance of regular relays; and in the time of Edward IV., during the war with Scotland, certain posts, twenty miles apart, are said to have been fixed for a succession of carriers, who were so well equipped and furnished with means, as to expedite the conveyance at the rate of one hundred miles per diem. By statute 2 and 3 Edw. VI., ch. 3, "the rate for the hire of post-horses, for the conveyance of letters, was fixed at one penny per mile."

In 1581, Thomas Randolph was appointed chief postmaster-general of England, and seems to have occupied himself more with the establishment and supervision of post-houses, than with the introduction of any great improvements in the transmission of the mails.[1] There was no complete organization of mail service, in England, until during the reign of James I., who constituted the office of postmaster of England for foreign parts, and appointed Matthew Le Quester the first postmaster, with reversion to his son. Le Quester appointed William Frizell and Thomas Witherings his deputies. The latter became postmaster-general in 1635, and was directed to establish running-posts between London and Edinburgh, to go night and day, and come back in six days. In 1644, Edmund Prideaux, a member of the house of commons, was appointed master of the posts, and first established a weekly conveyance of letters into all parts of the nation. In 1656 an act was passed to

[1] When the Spaniards invaded Peru, fifty-four years before Randolph's appointment, they had found an admirable system of postal communication in operation from Quito to Cuzco, the couriers winding around their waists the quipu, a species of sign-writing by means of knotted cords. News of the invaders was thus transported to the capital, as it had been by pictures, when the Spaniards landed in Mexico.

settle the postage of England, Scotland, and Ireland, fixing the rates of letter postage and the prices for post-horses.[1] Rowland Hill proposed, in a pamphlet, the sweeping changes which have connected his name illustriously with the postal service in 1837.

Parliament adopted the changes in 1839, and they went into operation in 1840, under Hill's supervision. Inland postage was reduced to the uniform rate of one penny for a single half ounce; the franking privilege was abolished, and to the dispatch of the mails at more frequent periods, and increased speed in the delivery of letters, was added prepayment, by stamps. In 1848 the transmission of books by post was granted, at first, at 6*d.* per lb. This was subsequently modified so as to give increased facilities for forwarding proofs, pictures, &c., at low prices.[2] The money-order system

[1] "The rates of postage, previous to the act of 1645, were, for a single piece of paper: Under 80 miles, 2*d.*; between 80 and 140 miles, 4*d.*; above 140, 6*d.*; and on the borders and in Scotland, 8*d.* That act raised the rates to 14*d.* for a distance of more than 300 miles, from which sum they were diminished according to the distance, down to 2*d.* for 7 miles and under. Between this period and 1838, although a multitude of acts relative to postal affairs were passed, the rates were not materially changed. All manner of devices for avoiding the payment of postage were adopted. The franking privilege was at an early period granted to members of parliament and officers of the government, and was much abused; and franks were sold openly."—American Encyclopædia.

[2] In 1849, the French mail tariff was fixed as follows: For letters within Paris, 2 sous (2 cents nearly) when the weight is under 13 grammes (not quite half an ounce), 4 sous if over 15 and under 30 grammes, &c.; for letters to or from other parts of France, Algeria, and Corsica, 4 sous if under 15 grammes, &c. If not prepaid, one-half is added to these rates. Newspapers must always be prepaid, but throughout France the postage is only 1 sou, and if treating on questions of political or social economy, only half that price. For foreign countries, the weight prescribed for single postage is $7\frac{1}{2}$ grammes, or about $\frac{1}{4}$ oz. In 1859, the total number of French

was copied from the Germans. In the colonies a postal system was projected as early as 1692, and introduced into Virginia under Sir Edmond Andros. An act, passed shortly after his arrival, in 1693 sets forth a royal patent to Thomas Neale to establish a post in the American colonies for the transportation of letters and packets, "at such rates as the planters should agree to give," or proportionable to the rates of the English post-office. Rates of a postage were accordingly authorized, and the establishment of a post-office in each county. Similar laws being passed in Massachusetts and other colonies,—not, however, without the exhibition of some doubts and jealousy,—a colonial post-office system, though of a very limited and imperfect character, was presently established under this patent.[1] Neale's patent for colonial posts having expired, an act of parliament extended the British post-office system to America. A chief office was established at New York, to which letters were to be conveyed by regular packets across the Atlantic. The same act regulated the rates of postage to be paid in the plantations, exempted the posts from ferriage, and enabled postmasters to recover their dues by summary process. A line of posts was presently established on Neale's old routes, north to the Piscataqua, and south to Philadelphia, irregularly extended, a few years after, to Williamsburg, in Virginia, the post leaving Philadelphia for the south as often as letters enough were lodged to pay the expense. The

post-offices was 3,703; the total number of persons employed in the postal service was about 28,000. In 1821, the receipts were 24,000,000 francs ($4,732,000); in 1859, 58,308,000 francs ($11,256,444). The number of letters conveyed by post in France in 1859 was 259,450,000; 90 per cent. of the whole number being prepaid.—American Encyclopœdia.

[1] Hildreth's History of the United States, ii. 181.

postal communication subsequently established with the Carolinas was still more irregular,[1] but was not organized till 1710. By act of parliament of that year, the postmaster-general of the colonies was "to keep his chief letter office in New York, and other chief offices, at some convenient place or places, in other of her majesty's provinces or colonies in America." The revenue was of course very small. In 1753 Benjamin Franklin was appointed postmaster-general for the colonies, and was guaranteed the sum of £600 per annum for the salary of himself and his assistant.[2]

After Franklin was dismissed from his office of postmaster, by the royal government, one William Goddard seems to have traveled from colony to colony, exerting himself to get up a "constitutional post-office" in opposition to the royal mail, which, by this time was nearly broken down from failure of postages. Finally the Congress of the Confederation established a post-office system of its own, and appointed Franklin postmaster-general.[3]

In 1789, the reorganization of the general post-office was delayed till more complete information could be obtained, the establishment being, meanwhile, continued as it then stood. Franklin, the first continental postmaster-general, had been succeeded in that office by his son-in-law, Richard Bache, and he by Ebenezer Hazard, who still held it.[4] President Wash-

[1] Hildreth's Hist. of the United States, 262.

[2] Franklin's first astounding innovation was in 1760, when he startled the colonies by proposing to run a stage-wagon, to carry the mail from Philadelphia to Boston, once a week, starting from each city on Monday morning, and reaching its destination by Saturday night!

[3] Hildreth's History of the United States, iii. 89.

[4] Id. 2 ser. i. 105.

ington appointed Samuel Osgood postmaster-general upon his inauguration in 1789.

"Upon a bill," says Hildreth,[1] "for the organization of the post-office system, the same difference of opinion arose which had defeated any organization of that department by the preceding congress. The propriety of vesting in the president, or the postmaster-general, authority to designate and establish post-roads was urged, on the ground of the better knowledge of the subject likely to be possessed by an officer whose whole attention was devoted to it, and free from those local influences to which members of congress might be subjected. But in the act as passed, this authority was reserved to congress. A power, however, by way of compromise, was vested in the postmaster-general, to establish cross post-routes—the contractors undertaking to carry the mail for the postage. The postmaster-general was also authorized to appoint his assistants, and all deputy postmasters; and, after advertising for proposals, to make contracts for carrying the mail by stage-coaches or on horse-back, as he might judge convenient; but the whole expenses of the department were to be paid out of the income. The postmaster-general was to settle quarterly with his deputies, and himself as often with the secretary of the treasury. The postage was fixed at rates varying from six cents, for distances of thirty miles or less, to twenty-five cents, for distances of four hundred and fifty miles or over, with like amounts for each inclosure—rates persevered in for more than fifty years, till the danger of private competition led to more moderate charges."

"Newspapers were to pay one cent each, for every hundred miles or less, and a cent and a half for greater

[1] History of the United States, 2 ser. , 485.

distances. The franking privilege was given to members of congress, during the session and twenty days afterward; also to the principal executive officers. An attempt was made to strike out this provision, but without success. Robbery of the mail, or embezzlement, by any officer of the post, of letters containing money or valuable papers, was made a capital offense; the opening, obtaining, or destroying other letters was made punishable by a fine of three thousand dollars, and six months' imprisonment. The salary of the postmaster-general was fixed at two thousand dollars, and that office, upon the resignation of Osgood, was conferred on Timothy Pickering. The deputy postmasters were to be paid, as theretofore, by a commission on their receipts; but none were to receive more than eighteen hundred dollars. Though considered, at first, as an inferior office, not entitling the holder to a seat in the cabinet, the extent to which its patronage has reached has since made the station of postmaster-general, in the eyes of politicians at least, one of the most important posts in the government. Perhaps it was a perception of the influence thus to be exerted, that made Jefferson so urgent, with the president, that the general superintendent of the post-office should be annexed to his department, rather than to Hamilton's—a request which he backed with the suggestion that the treasury department possessed already such an influence as to swallow up the whole executive powers, and to threaten to overshadow even the office of president.[1] Return J. Meigs, the governor of Ohio, was appointed postmaster-general, in the place of Granger, long distrusted as of the discontented faction, and who now provoked his dismission by giving to Leib, a conspicuous leader of the same

[1] Hildreth's History of the United States, 2 ser.

clique, the lucrative office of postmaster of Philadelphia."[1]

The postmaster-general was first made a cabinet officer, under President Jackson.

The present postal regulations of the United States provide as follows:

[1] Hildreth's History of the United States, 2 ser.

[2] Following is the act of congress approved June 23d, 1874, and sections explanatory thereof:

Sec. 5. That on and after the 1st day of January, 1875, on all newspapers and periodical publications mailed from a known office of publication or news-agency, and addressed to regular subscribers or news-agents, postage shall be charged at the following rates: On newspapers and periodical publications, issued weekly and oftener, two cents a pound or fraction thereof; less frequently three cents a pound or fraction thereof: Provided, That nothing in this act shall be held to change or amend section 99 of the act entitled, "An act to revise, consolidate, and amend the statutes relating to the post-office department," approved June 8th, 1872.

Sec. 6. That on and after the 1st day of January, 1875, upon the receipt of such newspapers and periodical publications at the office of mailing, they shall be weighed in bulk, and postage paid thereon by a special adhesive stamp, to be devised and furnished by the postmaster-general, which shall be affixed to such matter, or to the sack containing the same, or upon a memorandum of such mailing, or otherwise, as the postmaster-general may, from time to time, provide by regulation.

Sec. 7. That newspapers, one copy to each actual subscriber residing within the county where the same are printed, in whole or in part, and published, shall go free through the mails; but the same shall not be delivered at letter-carrier offices or distributed by carriers, unless postage is paid thereon as by law provided.

Sec. 8. That all mailable matter of the third class, referred to in section 133 of the act entitled "An act to revise, consolidate, and amend the statutes relating to the post-office department," approved June 8th, 1872, may weigh not exceeding four pounds for each package thereof, and postage shall be charged thereon at the rate of one cent for each ounce or fraction thereof; but nothing herein contained shall be held to

Letters in the United States cannot be carried out of the mail except in postage-stamped envelopes. One not acting as a common carrier, may carry a

change or amend section 134 of said act. (Amended by act of March 3d, 1875, making it read one cent for each ounce.)

Sec. 9. That the postmaster-general, when in his judgment it shall be necessary, may prescribe, by regulation, an affidavit in form, to be taken by each publisher of any newspaper or periodical publication sent through the mails under the provisions of this act, or news-agent who distributes any of such newspapers or periodical publications under the provisions of this act, or employee of such publisher or news-agent, stating that he will not send, or knowingly permit to be sent, through the mails, any copy or copies of such newspapers or periodical publications, except to regular subscribers thereto, or news-agents, without prepayment of the postage thereon at the rate of one cent for each two ounces or fractional part thereof; and if such publisher or news-agent, or employee of such publisher or news-agent, when required by the postmaster-general or any special agent of the post-office department to make such affidavit, shall refuse so to do, and shall thereafter, without having taken such affidavit, deposit any newspapers in the mail for transmission, he shall be deemed guilty of a misdemeanor; and, on conviction, shall be fined not exceeding one thousand dollars for each refusal; and if any such person shall knowingly and willfully mail any matter without the payment of postage as provided by this act, or procure the same to be done with the intent to avoid the prepayment of postage due thereon; or if any postmaster or post-office official shall knowingly permit any such matter to be mailed without the prepayment of postage as provided in this act, and in violation of the provisions of the same, he or they shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or imprisoned not exceeding one year, or both, in the discretion of the court.

Sec. 11. That the sixty-third, eightieth, eighty-first, eighty-second, eighty-third, eighty-fourth, and eighty-sixth sections of the said "act to revise, consolidate, and amend the statutes relating to the post-office department," approved June 8th, 1872, be amended to read as follows:

"Sec. 63. That the postmasters, except the postmaster at New York city, whose annual salary is hereby fixed at six thousand dollars, shall be divided into four classes, as follows: The first class shall embrace all those whose annual salaries

sealed letter, whether in a stamped envelope or not; but to continue so to do, for hire or profit, will subject to a penalty of one hundred and fifty dollars. News-

are not more than four thousand dollars nor less than three thousand dollars; the second class shall embrace all those whose annual salaries are less than three thousand dollars but not less than two thousand dollars; the third class shall embrace all those whose annual salaries are less than two thousand dollars but not less than one thousand dollars; the fourth class shall embrace all postmasters whose annual compensation, exclusive of their commissions on the money-order business of their offices, amounts to less than one thousand dollars.

"Sec. 80. That the postmaster at New York City and postmasters of the first, second, and third classes, shall be appointed and may be removed by the president, by and with the advice and consent of the senate, and shall hold their offices for four years, unless sooner removed or suspended according to law; and postmasters of the fourth class shall be appointed and may be removed by the postmaster-general, by whom all appointments and removals shall be notified to the auditor for the post-office department.

"Sec. 81. That the compensation of the postmaster at New York city shall be six thousand dollars per annum, and the respective compensations of postmasters of the first, second, and third classes shall be annual salaries, assigned in even hundreds of dollars, and payable in quarterly payments, to be ascertained and fixed, by the postmaster-general, from their respective quarterly returns to the auditor for the post-office department, or copies or duplicates thereof, for four quarters immediately preceding the adjustment or readjustment, by adding to the whole amount of box-rents, not exceeding two thousand dollars per annum, commissions also not to exceed two thousand dollars per annum on the other postal revenues of the office, at the following rates, namely: On the first one hundred dollars per quarter, fifty per centum; on all over one hundred dollars and not over four hundred dollars per quarter, forty per centum; on all over four hundred and not over two thousand four hundred dollars per quarter, thirty per centum; and on all over two thousand four hundred dollars per quarter, ten per centum. And in order to ascertain the amount of the postal receipts of each office, the postmaster-general may require postmasters to furnish duplicates of their quarterly returns to the auditor, at such times and for such periods as he

papers, magazines, and periodicals, may be carried out of the mail for sale or distribution to subscribers, but

may deem necessary in each case: provided, that whenever, by reason of the extension of free delivery of letters, the box-rents of any post-office are decreased, the postmaster-general may allow, out of the receipts of such office, a sum sufficient to maintain the salary thereof at the amount at which it had been fixed before the decrease in box-rents.

"Sec. 82. That the compensation of postmasters of the fourth class shall be the box-rents collected at their offices, and commissions on other postal revenues of their offices at the rate of sixty per centum on the first one hundred dollars or less per quarter; fifty per centum on the next three hundred dollars or less per quarter; forty per centum on the excess above four hundred dollars per quarter; the same to be ascertained and allowed by the auditor, in the settlement of the quarterly accounts of such postmasters: provided, that when the aggregate annual compensation, exclusive of commissions on money-order business of any postmaster of this class, shall amount to one thousand dollars, the auditor shall report such fact to the postmaster-general, in order that such postmaster may be assigned to his proper class, and his salary fixed as heretofore provided.

"Sec. 83. That the salaries of postmasters of the first, second, and third classes, except that of the postmaster at New York city, shall be readjusted by the postmaster-general once in two years, and in special cases as much oftener as he may deem expedient.

"Sec. 84. That the postmaster-general shall make all orders assigning or changing the salaries of postmasters in writing, and record them in his journal, and notify the change to the auditor; and any change made in such salaries shall not take effect until the first day of the quarter next following such order: provided, that in cases of not less than fifty per centum increase or decrease in the business of any post-office, the postmaster-general may adjust the salary of the postmaster at such office, to take effect from the first day of the quarter or period the returns for which form the basis of readjustment.

"Sec. 86. That the postmaster-general may designate offices at the intersection of mail routes as distributing or separating offices; and where any such office is of the third or fourth class he may make a reasonable allowance to the postmaster for the necessary cost of clerical services arising from such duties." . . . .

if put into a post-office for delivery, postage must be paid thereon.

Sec. 12. That section 245, section 246, section 247, section 251, and section 253 of the act entitled "an act to revise, consolidate, and amend the statutes relating to the post-office department," approved June 8th, 1872, be amended to read as follows:

Sec. 245. That every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster, and in cases where the amount of the bond exceeds five thousand dollars, by a postmaster of the first, second, or third class, in a sum to be designated by the postmaster-general in the advertisement of each route; to which bond a condition shall be annexed, that if the said bidder shall, within such time after his bid is accepted as the postmaster-general shall prescribe, enter into a contract with the United States of America, with good and sufficient sureties, to be approved by the postmaster-general, to perform the service proposed in his said bid, and, further, that he shall perform the said service according to his contract, then the said obligation to be void, otherwise to be in full force and obligation in law; and in case of failure of any bidder to enter into such contract to perform the service, or, having executed a contract, in case of failure to perform the service, according to his contract, he and his sureties shall be liable for the amount of said bond as liquidated damages, to be recovered in an action of debt on the said bond. No proposal shall be considered unless it shall be accompanied by such bond, and there shall have been affixed to said proposal the oath of the bidder, taken before an officer qualified to administer oaths, that he has the ability, pecuniarily, to fulfill his obligations, and that the bid is made in good faith, and with the intention to enter into contract, and perform the service, in case his bid is accepted.

Sec. 246. That before the bond of a bidder provided for in the aforesaid section is approved, there shall be indorsed thereon the oaths of the sureties therein, taken before an officer qualified to administer oaths, that they are owners of real-estate, worth, in the aggregate, a sum double the amount of the said bond, over and above all debts due and owing by them, and all judgments, mortgages, and executions against them, after allowing all exemptions of every character whatever.

Sec. 247. That any postmaster who shall affix his signature to the approval of any bond of a bidder, or to the certificate

To insure the forwarding of a letter through the post-office, it must have not less than three cents in postage-stamps affixed. The word "paid" endorsed

of sufficiency of sureties in any contract before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office, and be thereafter disqualified from holding the office of postmaster, and shall also be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both.

Sec. 251. That after any regular bidder whose bid has been accepted, shall fail to enter into contract for the transportation of the mails according to his proposal; or, having entered into contract, shall fail to commence the performance of the service stipulated in his or their contract as therein provided, the postmaster-general shall proceed to contract with the next lowest bidder for the same service, who will enter into a contract for the performance thereof, unless the postmaster-general shall consider such bid too high, in which case he shall re-advertise such service. And if any bidder whose bid has been accepted, and who has entered into a contract to perform the service according to his proposal; and, in pursuance of his contract has entered upon the performance of the service, to the satisfaction of the postmaster-general, shall subsequently fail or refuse to perform the service according to his contract, the postmaster-general shall proceed to contract with the next lowest bidder for such service, under the advertisement thereof (unless the postmaster-general shall consider such bids too high), who will enter into contract and give bond, with sureties, to be approved by the postmaster-general, for the faithful performance thereof, in the same penalty and with the same terms and conditions thereto annexed as were stated and contained in the bond which accompanied his bid; but in case each and every of the next lowest bidders for such service whose respective bids are not considered too high by the postmaster-general shall refuse to enter into contract and give bond as herein required for the faithful performance of his contract, the postmaster-general shall immediately advertise proposals to perform the service on said route. Whenever an accepted bidder shall fail to enter into contract, or a contractor on any mail route shall fail or refuse to

on a letter is not regarded at the office of delivery; letters so marked, and not having any stamp affixed, are treated as unpaid.

perform the service on said route according to his contract, or when a new route shall be established, or new service required; or when, from any other cause, there shall not be a contractor legally bound or required to perform such service, the postmaster-general may make a temporary contract for carrying the mail on such route, without advertisement, for such period as may be necessary, not in any case exceeding six months, until the service shall have commenced under a contract made according to law: Provided, however, That the postmaster-general shall not employ temporary service on any route at a higher price than that paid to the contractor who shall have performed the service during the last preceding regular contract term. And in all cases of regular contracts hereafter made, the contract may, in the discretion of the postmaster-general, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same, or other contractors, shall be made by the postmaster-general.

Sec. 253. That hereafter all bidders upon every mail route for the transportation of the mails upon the same, where the annual compensation for the service on such route at the time exceeds the sum of five thousand dollars, shall accompany their bids with a certified check or draft, payable to the order of the postmaster-general, upon some solvent national bank, which check or draft shall not be less than five per centum on the amount of the annual pay on said route at the time such bid is made, and, in case of new or modified service, not less than five per centum of the amount of the bond of the bidder required to accompany his bid, if the amount of the said bond exceeds five thousand dollars. In case any bidder, on being awarded any such contract, shall fail to execute the same with good and sufficient sureties, according to the terms on which such bid was made and accepted, and enter upon the performance of the service to the satisfaction of the postmaster-general, such bidder shall, in addition to his liability on his bond accompanying his bid, forfeit the amount so deposited to the United States, and the same shall forthwith be paid into the treasury for the use of the post-office department; but if such contract shall be duly executed and the service entered upon as aforesaid, such draft or check so deposited, and the checks or drafts deposited by all other

A double rate of six cents for each half ounce or fraction thereof, is chargeable on letters reaching their destination which have not had one full rate

bidders, on the same route, shall be returned to the respective bidders making such deposits. No proposals for the transportation of the mails where the amount of the bond required to accompany the same shall exceed five thousand dollars shall be considered, unless accompanied with the check or draft herein required, together with the bond required by a preceding section: Provided, That nothing in this act shall be construed or intended to affect any penalties or forfeitures which may have heretofore accrued under the provisions of the sections hereby amended.

Sec. 14. That hereafter the postage on public documents mailed by any member of congress, the president, or head of any executive department, shall be ten cents for each bound volume, and on unbound documents the same rate as that on newspapers mailed from a known office of publication to regular subscribers, and the words "public document," written or printed thereon, or on the wrapper thereof, and certified by the signature of any member of congress, or by that of the president, or head of any executive department shall be deemed a sufficient certificate that the same is a public document; and the term "public document" is hereby defined to be all publications printed by order of congress, or either house thereof: Provided, That the postage on each copy of the "Daily Congressional Record" mailed from the city of Washington as transient matter shall be one cent.

The following additional sections and parts of sections of an act approved March 3rd, 1875, making appropriations for the service of the post-office department, &c., relate to the franking privilege, and other matters necessary to be noticed:

Sec. 3. . . . . That the provisions of section thirteen of the act of June 23rd, 1874, entitled "an act making appropriations for the service of the post-office department for the fiscal year ending June 30th, 1875, and for other purposes," shall apply to ex-members of congress and ex-delegates for the period of nine months after the expiration of their terms as members and delegates, and postage on public documents mailed by such persons shall be as provided in said section.

Sec. 5. That from and after the passage of this act, the "Congressional Record," or any part thereof, or speeches or reports therein contained, shall, under the frank of a member of congress or delegate, to be written by himself

prepaid at the mailing office. If a one or two cent stamp has been affixed at the mailing office the amount will be deducted, and the rest charged.

After a letter has passed from the mailing office the delivering of it cannot be delayed or prevented by an alleged writer; but if the writer thereof request the return of a letter placed in a post-office which has not left in the mail, the postmaster must deliver it, provided he is furnished with proper evidence that the party applying is the writer; and, if the application be made before the stamp is canceled it may be returned without canceling the stamp. But a request to return, on a drop-letter, will only be regarded, however, when the address, to which it is to be returned, is within the delivery of the office into which such letter has been dropped. For instance, if a letter prepaid at the drop rate is deposited in the New York post-office, having indorsed thereon a request if not delivered in ten days to be returned to some address in Boston, such request cannot be regarded.

When a letter-carrier delivers a letter at a designated address, in the absence of instructions to be carried in the mail free of postage, under such regulations as the postmaster-general may prescribe; and that public documents already printed, or ordered to be printed, for the use of either house of congress may pass free through the mails upon the frank of any member or delegate of the present congress, written by himself, until the 1st day of December, A. D. 1875.

Sec. 7. That seeds transmitted by the commissioner of agriculture, or by any member of congress or delegate receiving seeds for distribution from said department, together with agricultural reports emanating from that department, and so transmitted, shall, under such regulations as the postmaster-general shall prescribe, pass through the mails free of charge, and the provisions of this section shall apply to ex-members of congress and ex-delegates, for the period of nine months after the expiration of the terms of members and delegates.

the postmaster to the contrary, it is a legal delivery, and such letter cannot be remailed unless prepaid anew; but parties may insure their letters being forwarded without additional charge, by advising the postmaster in writing. To leave word with a janitor, landlord, or clerk, or any person upon the premises except the postmaster, will not be considered a notice to him.

A letter received by mail, may, in the absence of the principal person named in the address, be delivered to any person to whose care it is directed, who in that case becomes in the nature of an agent of the writer in its delivery. All connection with and responsibility for such letter, on the part of the post-office department, cease and determine upon its passage into the possession of either of the persons named in the address; and the department has no jurisdiction in any questions arising, between the parties, as to the opening or other use of such letter, or of its contents. Delivery of a letter at a designated address, in the absence of any instructions to the postmaster to the contrary, is a legal delivery, and such letter cannot be remailed unless prepaid anew.

Postmasters are not obliged to accept in payment for postage stamps or stamped envelopes, wrappers, &c., any currency so mutilated as to be uncurrent, or the genuineness of which is at all questionable, nor to receive more than twenty-five cents in copper or nickel coins, nor to affix stamps to letters, nor to make change, except as a matter of courtesy, or to give credit for postage.

Cut postage stamps, stamps cut from stamped envelopes, mutilated postage stamps, and internal revenue stamps cannot be accepted in payment of postage. Letters deposited in a post-office having such matter affixed

will be held for postage; and the use or attempted use, in payment of postage, of a postage stamp or stamped envelope, or any stamp cut from such stamped envelope, which has been before used in payment of postage, is punishable with a fine of fifty dollars.

Postal cards are cards issued by the post-office department,[1] having one blank side upon which messages may be written, for transportation any distance through the mails. These cards are to be treated by the mail service as sealed letters; with the exception only that, if remaining uncalled for by the person to whom they are directed for sixty days, they will not be sent to the dead letter office, or returned upon request, but will be burned by postmasters. In using postal cards care should be taken to write or print nothing upon the side reserved for the address; as, if anything but the address be inscribed upon that side, they are unmailable. They are unmailable likewise if anything be pinned, pasted, gummed, or otherwise attached to them, or if two postal cards be pinned or pasted together. No card is a postal card except such as are issued by the post-office department. Cards issued by private parties, containing anything written besides the address, are ratable as letters, and will be sent subject to letter postage.

The postal regulations prohibit the mailing of postal cards containing writing of an indecent character, or scurrilous epithets, but there is nothing to prohibit the mailing of a postal card containing a bill or notice of indebtedness; and such communications on postal cards may be written or printed, or both.[2]

Postmasters have the right to read communications on postal cards, and to exclude them from the

[1] U. S. Postal Laws, § 170, p. 77. [2] *Post*, page 510.

mail when they contain obscene, scurrilous, or abusive epithets, but they should not disclose information obtained by reason of such perusal.

A postal card reaching its destination, and having been delivered to the person named in the address, has performed its functions as a postal card. In order to again pass in the mails it must be prepaid at letter rates of postage.

A postal card with one address erased and another substituted, is mailable at letter rates only; and a postal card on which anything is written, printed, or attached for the purpose of concealing the message, or any part thereof, is mailable only at letter rates.

The post-office department has no authority to issue postal cards of any other denomination than one cent. For all other purposes of correspondence postage stamps are issued.

All postage stamps of the department issues of 1861, and subsequent dates, are still available for the payment of postage. Stamps issued prior to 1861 have been declared obsolete, and will not be received in payment of postage.

Postmasters are not allowed to exchange postage stamps for goods, or to traffic in them in any manner whatever; nor has the post-office department facilities for the redemption or exchange of postage stamps in the hands of private parties.

Under the present regulations nothing is allowed to pass through the mail without stamps; and the post-office officials themselves, writing upon public business, are required to employ the stamps now issued for the particular department to which they are attached.

In printed matter sent through the mails no written matter is permitted to be inclosed, with the exception

that bills or receipts for subscription to regular subscribers to a newspaper, may be covered within them. A regular subscriber to a periodical has been pronounced to be one who regularly receives—through a designated and certain post-office, mailed from a known publication office or news agency, and at the post-office for the district in which such office is situated, or the nearest thereto, and at stated intervals—a newspaper, magazine, or other periodical, for which he has paid or undertaken to pay a subscription price, or for whom some other person has paid or undertaken so to pay. But, in the latter case, such payment must have been made or undertaken to be made, with the previous consent or request of the receiver. One to whom a publication is sent without his request or consent is not understood to be a "regular subscriber" within the meaning of the regulation. Matter printed for gratuitous circulation, or specimen copies of newspapers, will not be received at regular subscription rates.

"Should a postmaster suspect that a publisher is in the habit of mailing his periodicals to persons who are not regular subscribers thereto, without prepayment of postage as for transient printed matter, he should require such publisher to take and subscribe the oath in the form set forth in the 9th section, act of June 23, 1874.[1] If the publisher, after having been requested to take the oath, shall, either by himself or any of his agents, repeat the offense, the postmaster should present a written statement of all the facts of the case to the United States attorney for the judicial district in which his office is situated, in order that the offender may be prosecuted for the penalty named in the law—$1,000. Upon receipt of newspapers or other periodicals at a post-office, addressed

[1] *Ante*, p. 488.

to persons who disclaim being subscribers thereto, and upon which postage has not been paid by stamps, as required for transient printed matter, the fact should be promptly reported to the postmaster at the mailing office, giving the name and date of the periodical, the place of its publication, name of the publisher and of the person who denied being a subscriber thereto, with a request that such publisher be required to take the oath referred to in section 9, act of June 23, 1874. Should the offense be repeated by the same publisher, after notice given to the mailing office, the case should be fully reported to the post-office department."[1]

Any concealment or inclosure of written within printed matter, will subject the sender to a fine of five dollars; unless the party to whom it is addressed consent to pay letter postage thereon. If he decline so to do, the matter must be returned to the sending office in order that the sending postmaster may cause the offender to be prosecuted for the penalty.

Anything written upon the envelope or wrapper which covers the printed matter, more than is absolutely necessary to insure its accurate delivery—even such a request to return as is allowable in the case of letters—subjects the printed matter to letter postage. But a professional card imprinted upon the wrapper, or pen marks upon the inclosed printed matter;—designed to call attention to a portion thereof or to correct a typographical error—is permissible. The rule seems to be that no information, additional to that printed in the printed matter, shall be conveyed with a pen. A mark calling attention to a portion of the print or correcting a typographical error therein, it appears, is not considered additional matter—though

[1] United States Official Postal Guide, p. 23.

if the price of an article mentioned in the print, or if signs which conveyed any meaning to the writer or receiver, were added with a pen, such pen marks would be. The wrapper of this printed matter may be transparent and sealed; or open at the ends; or secured by a rubber band, or twine, or it may be of any such other character, form or condition, as to permit the examination of its contents by the post-office officials; the regulation being that the wrapper must be such an one as to allow of the examination without being destroyed. Postmasters are not at liberty to destroy a wrapper; therefore, if the scrutiny is not facilitated without, the matter must pay letter postage.

Publishers of newspapers are allowed to fold within their newspapers any printed supplement thereto—that is to say, any matter crowded out of the paper itself, or that, from want of time, or for greater convenience, is separately printed. Such a supplement is considered and required to be a genuine accompaniment of the paper; printed with the intent and purpose of supplying an omission in the particular issue of the paper which it accompanies, and not for any distinct purpose, without which the newspaper itself would be complete (such as a tradesman's advertisement, a postal card, or the like). A package of papers from a publishing-office sent to any one address, cannot be considered as being sent in the course of regular subscription. Newspaper-dealers, however, may return surplus papers to the publication-office at pound rates. When a subscriber to a newspaper or periodical changes his post-office, he cannot have his publications forwarded from the old office to the new, free of postage. A request to forward printed matter should be accompanied with an amount sufficient to prepay

the postage at third-class rates. Publications borrowing the name, and having some of the characteristics of a newspaper, printed for gratuitous circulation, and depending on their advertisements for support, cannot be sent by mail, gratuitously,—to persons not actual and *bona fide* subscribers,—upon the footing of newspapers sent from a known office of publication and to regular subscribers.

Publications printed in weekly parts, but not offered for mailing until bound in monthly parts, must be prepaid at the rate of three cents per pound, or fraction thereof, and will be classed with publications issued less frequently than once a week. There is no law authorizing the free exchange of publications between publishers. Such exchanges may, however, be included with the bulk mail, and be prepaid at the pound rates of two or three cents, according to frequency of issue.

Ready printed outsides ("patent outsides") can only be sent in the mails at the rate of postage, and under the rules, governing third-class matter, and will not be considered as newspapers.

The delivery, in the United States, of postal matter, is not controlled by acts of congress, or by statutes, but by the rules and regulations of the post-office department. The object of the department being to facilitate, by every means in its power, the delivery of mailed matter to the persons for whom it is intended. Where a mail arrives at a post-office after closing, on Saturday night, a postmaster is not obliged to keep the office open on Sunday, except for an hour or more, if public convenience seem to require it. In the case of registered letters and money-orders, postmasters are expected to exercise a sound discretion, and require such proofs of identity of persons unknown to them,

who claim the money, as are ordinarily required in banking institutions, from persons presenting checks or drafts. And in the case of advertised letters, parties should be interrogated as to from whence they are expecting correspondence, &c., &c.

Each post-office box or drawer, in all post-offices, is restricted to the use of one family, firm, or company, and the rent therefor must be paid at least one quarter in advance. A person hiring a post-office box may have the letters of his family, firm, or company, or letters addressed to his friends stopping temporarily with him—if directed to his care or to the number of the box—put into it. But letters addressed to other persons residing in the same place, and living and doing business separate and apart from a box-holder, will not be placed therein.

In every case of loss by mail, the department should be notified of the particulars, as the name of the office in which the letter was posted, and the date of mailing, and by whom; the names of the writer and the person addressed; the amount and a description of the inclosure; the office to which addressed; whether mailed direct or for distribution—if the latter, to what distributing office it was mailed, and whether registered or unregistered, with any other particulars that may aid in making a thorough investigation. Communications on this subject are to be addressed: "Second Assistant Postmaster-General, Division of Mail Depredations."

Printed matter, merchandise, and other third-class[1] matter cannot be forwarded from the office

[1] Mailable matter in the United States is divided into three classes, for convenience of regulation. The first class consists of letters: *i.e.*, all correspondence wholly or partly in writing, excepting book-manuscript, and corrected proof-sheets sent between publishers and authors; all local or "drop" letters,

to which it is addressed, unless the postmaster is furnished with postage at the rate of one cent for each ounce, or fraction thereof, for such purpose. Neither can a postmaster regard a request to return indorsed on such matter, except he is furnished with postage as above.

Only matter subject to letter postage will be registered by the department. Packages of mutilated currency sent for redemption to the treasurer of the United States may be registered free of charge, but postage must be paid at letter rates, and so copyright matter for the librarian of congress must be now prepaid at regular post-office rates.

Letters addressed to initials or fictitious names are not deliverable, unless the address contains a desig-

and postal-cards issued by the department, written visiting-cards, music-manuscript, and architects' drawings; though it has been held that photographs of such drawings are third-class matter. The second class consists of matter exclusively in print, regularly issued, at known intervals, from a fixed office of publication, bearing no written addition of writing, sign, or mark. The third class includes all pamphlets, occasional publications, magazines, transient newspapers, handbills, posters, prospectuses, books, book-manuscript (By U. S. O. P. G. No. 1, manuscript for publication in newspapers, magazines, or periodicals are subject to letter-postage; and any notation made on corrected proof of book-matter, asking for, conveying, or giving information will be subject to letter-postage), proof-sheets, corrected proof-sheets, unsealed circulars, maps, engravings, prints, blanks, flexible patterns, articles of merchandise, phonographic paper, sample-cards, letter-envelopes, postal envelopes, and wrappers, cards, plain and ornamental paper, photographic representations of different types, seeds, cuttings, bulbs, roots, scions, merchandise, almanacs, and all other matter which may be declared mailable by law, and all other articles not above the weight prescribed by law, which are not, from their form or nature, liable to destroy, deface, or otherwise injure the contents of the mail-bag, or the person of any one engaged in the postal-service; but no written matter, or request to return must be written upon matter of this class.

nated place of delivery, for example: Letters addressed A B, station G, New York, are not deliverable; but a letter addressed A B, stating street and number, or a box number, is deliverable.

Packages containing liquids, poisons, glass, live animals, sharp-pointed instruments, sugar, explosive chemicals, or any other matter liable to deface or destroy the contents of the mail, or injure the person of any one connected with the service, must be rigidly excluded from the mails. If such matter be found in any post-office, or in any mail pouch or sack, it must be retained by the postmaster, and the department (third assistant postmaster-general) notified of the fact, when instructions will be given as to its disposition. If found by a postal clerk or route agent, it must be delivered to the post-office at the end of the route, where it will be treated as above directed,

All books, pamphlets, circulars, prints, &c., of an obscene, lewd, lascivious, vulgar, or indecent character; all letters, or circulars concerning illegal lotteries (though lottery schemes, sanctioned by enactments of state legislatures, are held to be legal, and letters and circulars concerning such will be transported through the mails); so-called gift concerts, or other similar enterprise offering prizes, or concerning schemes devised and intended to deceive and defraud the public, for the purpose of obtaining money under false pretenses; letters upon the envelope of which, or postal card upon which, scurrilous epithets have been written or printed, or disloyal devices printed or engraved, must be withdrawn from the mails by postmasters at either the mailing or the delivery office, marked unmailable, and sent to the dead-letter office. Postmasters will promptly notice violations of this section, and where the party by whom such matter is

mailed is known, the attention of the United States attorney for the district must be called to the case, and the evidence necessary for conviction, including the matter in question, placed in his hands.[1] The case must also be reported to the special agent of the department for the district, and all the facts at once communicated to the department (second assistant postmaster-general, division of mail depredations and special agents). If the party sending be unknown, the matter must be sent to the third assistant postmaster-general, in a securely-sealed package, with a letter advising him of the transmission of the package, sent by the same mail, but in a separate envelope. The weight of any package to be sent in the mail must not exceed four pounds, except second-class matter, documents printed by order of congress, or emanating from any of the executive departments.[2]

[1] Sections 148, 149. See United States Official Postal Guide: New York, Hurd & Houghton.

[2] The present postage rates of the United States are as follows:

A single rate of three cents is uniformly established on domestic letters: *i.e.*, letters within the various states and territories of the United States, not exceeding half an ounce; double rate if exceeding half an ounce, but not exceeding an ounce; treble rate if exceeding an ounce, but not exceeding an ounce and a half; and so on, charging an additional rate for every additional half ounce, or fraction of half an ounce.

At the post-office where letters brought by vessels or steamboats not employed in carrying the mail from any domestic or foreign port are deposited, they will be charged with double rates of postage, to be collected at the office of delivery—that is to say, six cents for the single weight if mailed, and four cents the single weight if delivered at the office; but if such letter has been prepaid by United States stamps at such double rate of postage, no additional charge will be made. If only partly prepaid by stamps, the unpaid balance will be charged and collected on delivery.

On first-class matter (letters, sealed packages, mail-matter

The post-office is a department of the general government, created by statute, and its officers are paid by the government, and cannot be understood

wholly or partly in writing, except book-manuscript and corrected proofs passing between authors and publishers, and except local or drop-letters, or United States postal-cards; all printed matter so marked as to convey any other or further information than is conveyed by the original print, except the correction of mere typographical errors; all matter otherwise chargeable with letter-postage, but which is so wrapped or secured that it cannot be conveniently examined by postmasters without destroying the wrapper or envelope; all packages containing matter not in itself chargeable with letter-postage, but in which is inclosed or concealed any letter, memorandum, or other thing chargeable with letter-postage, or upon which is any writing or memorandum; all matter to which no specific rate of postage is assigned; and manuscript for publication in newspapers, magazines, or periodicals), three cents for each half ounce, or fraction thereof.

On local or drop-letters, at offices where free delivery by carriers is established, two cents for each half ounce, or fraction thereof.

On local or drop letters at all offices where there is no free delivery by carriers, one cent for each half ounce or fraction thereof.

On all second-class matter the postage is as follows: On all newspapers and periodicals, mailed under the definition above given, to regular subscribers or news agents, which are issued weekly or oftener, two cents for each pound or fraction of a pound; and on all such issued less frequently than once a week, five cents for each pound or fraction of a pound. The 6th section of the act of June 23d, 1874, which provided that the above regulations should take effect on and after the first day of January, 1875, also provided "that on and after the said first day of January, upon the receipt of such newspapers and periodical publications at the office of mailing, they shall be weighed in bulk, and postage paid thereon by a special adhesive stamp, to be devised and furnished by the postmaster-general, which shall be affixed to such matter, or the sack containing the same, or upon a memorandum of such mailing, or otherwise, as the postmaster-general may, from time to time, provide by regulation. Under this regulation, publishers and news dealers must present their newspapers and periodicals at the post-office, sorted into the

as entering into any contract with the community or with individuals. The postmaster-general is therefore responsible only to the government of which he is an agent, and all contracts made by him are made by and binding upon the government, and not by or upon himself personally.[1] But—while the postmaster-general is not responsible either for his own default or for the default of his deputies[2]—yet his deputies themselves have been held liable, for want of diligence, or for fraud of their subordinates, when they themselves have not exercised a reasonable caution and discretion in their selection of agents.[3] Generally mail contractors will be held to make no personal contracts with the senders of letters, and to be responsible only to the government from which they receive their remuneration;[4] but it has been held otherwise.[5] No law of the United States, in reference to the postal service, makes it a legal channel of

above indicated classes, that they may be separately weighed, and the adhesive stamps above indicated must be affixed either by the department or by the proprietors. Ordinary postage stamps cannot be used for the purpose, nor can these special newspaper stamps be used for any other purpose.—U. S. Official Postal Guide.

[1] Rowning v. Goodchild, 3 Wills. 443; Whitfield v. Le Despencer, Cowp. 754; Story on Cont. § 979; on Agency, §§ 302–307; on Bailments, §§ 462, 463, 464; 1 Bell Comm. § 468; Dunlop v. Munroe, 7 Cranch, 242; Bolan v. Williamson, 2 Bay, 551; Schroyer v. Linch, 8 Watts, 632.

[2] Story on Cont. § 970; Wiggins v. Hathaway, 6 Barb. (N. Y.) 632.

[3] Maxwell v. McIlroy, 2 Bibb. 211; Bishop v. Williamson, 2 Fairf. 495; Dunlop v. Munroe, 7 Cranch, 242; Bolan v. Williamson, 2 Bay, 551; Dox v. Postmaster, 1 Pet. 318; Christy v. Smith, 23 Vt. (8 Wast.) 663; Teall v. Felton, 3 Barb. (N. Y.) 512; 1 Comst. (N. Y.) 537; Coleman v. Frazier, 4 Rich. 146; Fitzgerald v. Burrill, 106 Mass. 446.

[4] Conwell v. Voorhies, 13 Ohio, 523; Hutchins v. Brackett 2 Fost. (11) 252.

[5] Sawyer v. Coral, 17 Gratt. 230.

communication, which a party may adopt as compulsory upon his correspondent.[1] When a letter is placed in a post-office, it is within the legal custody of the officers of the government, and no one has the authority to open it, even though it comes from a criminal and is suspected of containing improper information,[2] but it is the duty of the postmaster, if the person to whom it is directed live in the same place where his office is situated (or if his office be the nearest post-office) to deliver it to that person.[3]

The postmaster is the only judge of the fact as to which paper has the largest circulation; under the act of congress of March 3, 1845, obliging him to advertise a list of letters non-called for in such a paper, and he is not responsible in a state court for the results of his judgment.[4] Nor will an action lie against a postmaster by publishers for refusing their proofs as to the circulation of their newspaper.[5]

[1] Tanner v. Hughes, 53 Pa. St. 289.

[2] United States v. Eddy, 1 Bess. 527; Id. v. Pond, 2 Curris C. C. 265.

[3] Nevins v. Bank, 10 Mich. 547.

[4] Foster v. McKibben, 4 Pa. L. J. Rep. 303: 14 Pa. St. (2 Harris) 168.

[5] Strong v. Campbell, 11 Barb. (N. Y.) 135. And see besides generally as to post-office and postmasters, U. S. v. Bank of Necropolis, 15 Pet. 378; Postmaster-General v. Rice, Gilpin, 544; U. S. v. Hart, Pet. C. C. 390; Trafton v. U. S., 3 Story, 646; Boody v. U. S., 1 W. & M. 150; U. S. v. Davis, Deady, 294; Foster v. McKibben, 4 Pa. L. J. Rep. 303; Fitzgerald v. Burrill, 106 Mass. 46; U. S. v. Driscoll, 1 Low. 303; U. S. v. Crow, 1 Bond. 51; Farnam v. U. S., 1 Col. T. 309; Chouteau v. Steamboat St. Anthony, 1 Miss. 226; U. S. v. Hedges, 13 How. (U. S.) 478; Ware v. U. S., 4 Wal. (Id.) 617; Trafton v. U. S. 3 Story, 646; U. S. v. Brown, 9 How. (U. S.) 487; Id. v. Roberts, Id. 501; Id. v. Rice, 9 Gilpin, 554; Id. v. Foye, 1 Curtis C. C. 364; Id. v. Fisher, 5 McLean, 23; Id. v. Kean, 5 Id. 509; Id. v. Tanner, 6 Id. 128; Id. v. Whitaker, Id. 343; Id. v. Emerson, Id. 406: Id. v. Sander, Id.

We have already seen that the doctrine of innocence will be insisted upon by the United States postal department, and that no scurrilous, obscene, or libelous matter will be allowed in the mails. The offense of sending scurrilous postal cards through the mails will be prosecuted by government, and heavy penalties visited upon offenders. One Chamberlin, who was indicted in the United States circuit court for the southern district of New York, for sending such postal cards, was found guilty and sentenced by the court to pay a fine of five thousand dollars.[1]

598; Id. v. Beatty, 1 Hemp. (U. S.) 487; Id. v. Parsons, 2 Blatchf. 104; Id. v. Marselis, Id. 108; Id. v. Collingham, Id. 470; Id. 4. Mulvaney, 4 Parker (N. Y.) 164; Id. v. Collins, 4 Blatchf. 142; Id. v. Kirby, 7 Wall. (U. S.) 482; Tanner v. Hughes, 53 Pa. St. 289; Sawyer v. Corse, 17 Gratt. (Va.) 230; Wingate v. McNamar, 28 Ind. 481. As to what is mailable matter, see U. S. v. Bromley, 12 How. (U. S.) 88; Teal v. Felton, Id. 284.

A common carrier cannot on the ground of its employment by government set up that it is an agent of the government, so as to escape liabilities for the negligence of its own servants. Truex v. Erie Ry. Co., 4 Lans. (N. Y.) 198.

[1] This case is as yet unreported. The indictment was filed June 30th, 1875. The trial began December 15th, 1874, and lasted nine days. The indictment contained fourteen different counts (four of which were afterwards consolidated); upon one of which counts, the jury finding the defendant guilty, he was sentenced to pay the above fine. See New York Times, December 15–24, 1874. And the offense of writing defamatory matter on a postal-card is also one civilly cognizable, and sounding in damages. In Crane v. Walker, in the Marine Court of the city of New York, the plaintiff, a collector of past-due claims, applied to the defendant, a tailor, on Fifth-avenue, in 1871, with a letter of introduction, for employment. A number of bills were given him, upon which a percentage was to be paid in case of collection, rising to thirty per cent. if suit had to be brought, the plaintiff, however, to pay all expenses. Two or three bills were collected and returned, the plaintiff in the meantime ordering and receiving a pair of pants, which remain unpaid for, although defendant claimed that pay-

The same rule will be applied to the sending of messages by private telegraph companies. A telegraph company would have the right to decline the transmission of all messages of an illegal or immoral character, or such as were in furtherance of fraud or against public policy; or where the message was for the purpose of aiding or concealing crime, or would in any other way tend to thwart the course of public justice. If this were not so, the agents of the company would, in some cases, become *particeps criminis*; and would, in all such cases, be lending their aid, for a reward, to purposes not sanctioned by the law. The same moral and legal obligation rests upon the company as upon individuals, in reference to their contracts and dealings with each other; and whatever the law would not compel it to perform, it has the

ment was promised within a month. Among the claims was one against a person named Salmonson, against whom suit was brought, judgment obtained, and examination on supplementary proceedings had, the plaintiff in the end getting forty dollars from Salmonson, not in reduction of the judgment, but in payment of referee's fees, costs, &c. This collection coming to Mr. Walker's ears, and supposing it to have been a payment on account of the bill, of which no return was made to him, and, as he says, being unable to get an explanation, he wrote the following words on a postal-card, and sent it to the plaintiff through the mail:—"It seems to me you are acting like a regular fraud in your treatment of me. You admit of having collected forty dollars from Salmonson, and yet you have made no return to me, and not on your own account which you got on false pretenses. It is more than thieving to do as you have done, and if it is possible I'll have you put in jail for collecting my money without making any return." It was shown that this was read by several parties while lying on the plaintiff's desk before his arrival at his office. The court charged the jury that a publication was established, and that the amount of their verdict would be governed by the injury done and the intent of the defendant in writing it.

A verdict was rendered for the plaintiff for three hundred dollars.—N. Y. Herald, May 19th, 1875.

right to refuse. In some of the American states the transmission of such messages is expressly prohibited by statute, and in some of them it is made a criminal offense so to do.[1] By the California statute[2] it is provided: "If any agent or operator in any telegraph office shall knowingly send by telegraph any false or forged message, purporting to be from such officer (or telegraph company), or any other person, or if any other person or persons shall furnish, or conspire to furnish, to such operator, to be so sent any such message knowing the same to be false or forged, with the intent to deceive and injure, or defraud any individual or corporation, or the public, such agent, operator, or persons, shall be deemed guilty of a misdemeanor and shall be punished by fine not exceeding five hundred dollars, or imprisonment, not to exceed six months, or both, such fine and imprisonment, in the discretion of the court."

There is a similar provision in Pennsylvania[3] and in Oregon.[4] In Ohio,[5] it is provided that if any agent officer, or manager of any telegraph line, operating in this state, or any other person, shall knowingly transmit, by such telegraph line, any false communication or intelligence, with intent to injure any one, or to speculate in any article of merchandise, commerce, or trade, or with intent that another may do so, or shall knowingly send or deliver any dispatch that is thereto, he shall, on conviction, pay a fine not exceeding five hundred dollars. By the California act of April 18, 1862, sec. 4, it is provided that nothing in the act

[1] Scott & Jarnagin on the Law of Telegraphs, § 119.
[2] Act of April 22, 1850.
[3] Purdons's Digest, 1861, Crimes, 185.
[4] Compilation of 1866, ch. 54, § 19.
[5] Act of March 31, 1865.

contained shall require the sending, receiving, or delivering of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, o to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime. By the Revised Statutes of Kentucky,[1] "If an agent, officer, or manager of a telegraph line, constructed in this state, or other person, shall knowingly transmit, on or through the same, any false communication or intelligence, with intention to injure any one, or to speculate on any article of merchandise, commerce, or to trade, or with intent that another may do so; or if any agent, officer, manager of a telegraph line, from corrupt or improper motives, or willful negligence, shall withhold the transmission of messages or intelligence, for which the customary charges have been paid or tendered, he shall be fined not less than ten, nor more than five hundred dollars."

[1] 1860, vol. 1, pp. 394, 395; and other states have enacted to the same effect.

END OF VOL. I.