THE

LAW OF COPYRIGHT.

THE

LAW OF COPYRIGHT,

IN WORKS OF LITERATURE AND ART:

INCLUDING THAT OF THE

DRAMA, MUSIC, ENGRAVING, SCULPTURE, PAINTING, PHOTOGRAPHY,
AND ORNAMENTAL AND USEFUL DESIGNS;

TOGETHER WITH

INTERNATIONAL AND FOREIGN COPYRIGHT,

WITH THE STATUTES RELATING THERETO,

AND

REFERENCES TO THE ENGLISH AND AMERICAN DECISIONS.

BY

WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW.

AUTHOR OF 'INDEX TO PRECEDENTS IN CONVEYANCING;' 'A TREATISE ON THE CUSTODY AND PRODUCTION OF TITLE DEEDS;' 'TABLES OF STAMP DUTIES,' ETC.

"Non equidem hoc studeo, bullatis ut mihi nugis
Pagina turgescat, dare pondus idonea fumo."—*Pers.*

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TO

THE RIGHT HONOURABLE

HUGH McCALMONT EARL CAIRNS,

K.B., D.C.L., LL.D., &c.,

FORMERLY LORD HIGH CHANCELLOR OF GREAT BRITAIN,

This Work

IS

BY HIS LORDSHIP'S KIND PERMISSION

RESPECTFULLY DEDICATED

BY

THE AUTHOR.

PREFACE TO THE SECOND EDITION.

TEN years have elapsed since this, the first of the Author's literary adventures, was placed before the public. The favourable manner in which it was then received, and the undeserved terms in which it has been so frequently referred to by his professional brethren, has induced the Author to revise the whole work and make the volume as complete a treatise on the subject of copyright as was in his power, and any failure in this respect must be attributed rather to his want of skill than to lack of labour.

Though the legislative changes during the last ten years have been few, yet many cases have been decided involving principles of great magnitude.

Matters, too, of great value were evolved in the evidence given before the Royal Commissioners on Copyright, and where in their valuable report they have suggested alterations and amendments in the existing law, these have invariably been referred to throughout the present work.

The Author's best thanks are due to his friend S. Moore, Esq., of Lincoln's Inn, for his kind assistance in the chapter on Foreign Copyright, the greater part of the additions to which have been compiled by him.

It is hoped that the forms in the Appendix, especially those under the Fine Arts Copyright Act, 1862, may prove of use to authors, artists, and others.

The Index has been compiled by the Author with great care, and has been made as comprehensive as the case seemed to require; for the Author is one of those who consider that

many of our best law books are rendered far less valuable than they otherwise would prove to the professional man, by reason of their meagre index, while on the other hand many an indifferent treatise is rendered comparatively valuable by reason of the exhaustive character of its index, whereby reference is easily found to general principles and particular cases on the point in question.

W. A. COPINGER.

LINCOLN CHAMBERS,
18 *South King Street, Manchester.*
December 1880.

PREFACE TO THE FIRST EDITION.

THE decisions of our Courts of Law and Equity on the subject of Copyright during the last few years have been numerous; and so severely has been experienced the want of a work embodying these decisions, and presenting an exposition of the principles on which they have been determined, that little apology will be deemed necessary for introducing to the profession a digest of the Copyright Laws.

If I have, by the classification adopted, in any way facilitated the lawyer in his search for the principles of law as applicable to particular circumstances, and have proved of assistance to the literary man or the artist in the acquirement of that peculiar knowledge of the law which, for the due protection of his production is so requisite, I shall have attained an object at once gratifying to myself, and sufficiently compensative for my labour.

W. A COPINGER.

MIDDLE TEMPLE LANE, TEMPLE.
September 1870.

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THE LAW OF COPYRIGHT.

CHAPTER I.

HISTORICAL VIEW OF THE COPYRIGHT LAWS.

COPYRIGHT may be defined as the sole and exclusive liberty of multiplying copies of an original work or composition (*a*). Definition and nature of copyright.

The right of an author to the productions of his mental exertions may be classed among the species of property acquired by occupancy; being founded on labour and invention (*b*).

A literary composition, so long as it lies dormant in the author's mind, is absolutely in his own possession. Ideas drawn from external objects may be communicated by external signs, but words demonstrate the genuine operations of the intellect. The former are so identical with himself, that when by the author resolved into the latter, they lose not their original characteristic; and whether

(*a*) 14 M. & W. 316. The term "copyright" may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of that word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word. (*Per* Baron Parke, in *Jefferys* v. *Boosey*, 4 H. L. C. 920.)

(*b*) Hoffman's 'Legal Outlines,' sect. iii.; Locke on Gov. pt. 2, c. 5.

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or not they be regarded as of pecuniary value in the way of recital or sale, he ought to be the sole arbiter to authorize or to prohibit their publication, and have full control over them, before they are actually submitted to public inspection. In ancient times orations, plays, poems, and even philosophical discourses, were usually orally communicated, and all ages have allotted to the composers the profits which arose from this mode of publication. They were rewarded by the contributions of the audience or by the patronage of those illustrious persons in whose houses they recited their works. A recompense of some sort was regarded as a natural right, and any one contravening it, was esteemed little better than a robber. Terence sold his 'Eunuchus' to the ædiles, and was afterwards charged with stealing his fable from Nævius and Plautus. "*Exclamat furem, non poetam, fabulam dedisse*" (*a*). He sold his 'Hecyra' to Roscius, the player. Statius would have starved had he not sold his tragedy of 'Agave' to Paris, another player:

"*Esurit, intactam Paridi nisi vendat Agaven*" (*b*).

These sales were founded upon natural justice. No man could possibly have a right to make a profit by the publication of the works of another, without the author's consent. It would be converting to one's own emolument the fruits of another's labour.

In later times the method of publication was usually by writing, or describing in characters those words in which an author had clothed his ideas. Characters are but the signs of words, and words the vehicle of sentiments. Here the value which distinguishes the writing arises merely from the matter it conveys. The sentiment is, therefore,

(*a*) *Prologus ad 'Eunuchum'*:

"Exclamat, furem, non poetam, fabulam
Dedisse, et nihil dedisse verborum tamen;
Colacem esse Nævi, et Plauti veterem fabulam,
Parasiti personam inde ablatam et militis."

(*b*) Juvenal, *Sat.* vii. 87.

the thing of value from which the profit must arise. No man has a right to give another's thoughts to the world, or to propagate their publication beyond the point to which the author has given consent. His reputation is concerned and he has a right to defend it. This is natural justice, and dictated by reason; consequently, as *Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria et contraria prohibet* (*a*), we may obviously assume that though copyright, as *a species of property*, was in a strictly accurate sense unknown to, or at least was not by precedent established at common law, yet, "the novelty of the question did not bar it of the common law remedy and protection" (*b*).

Distinct properties were not adjusted at the same time and by one single act, but by successive degrees, according as either the condition of things or the number and genius of men seemed to require. When once established, the same law which pointed out and settled the line of demarcation commands the observance of everything that may be conducive to the end for which these various boundaries were erected. "*Nequaquam autem omnes res*," says Puffendorf (*c*), "*statim ab initio humani generis, aut ubique locorum ex definito aliquo præcepto juris naturalis debuerunt proprietatem subire; sed hæc est introducta, prout pax mortalium id requirere visa fuit.*"

Property in literary compositions.

The necessary consequence of being a distinguishable property was its having a determinate owner. As property must precede the violation of property, so the rights must be instituted before the remedies for their violation; and the seeking for the law of the right of property in the law of procedure relating to the remedies is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein.

(*a*) Co. Lit. 319 b. Jenk. Cent. 117.

(*b*) 4 Burr. 2345. *Nihil quod est contra rationem est licitum*: Co. Lit. 97 b. *Sou le ley done chose, la ceo done remedie a vener a ceo*: 2 Roll. R, 17. *In novo casu, novum remedium apponendum est*: 2 Inst. 3.

(*c*) *De Jure Nat. et Gen.* lib. iv. c. iv. s. 14. *Vide ibid.* s. 6.

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If the essential principle for one source of property be production, the mode of production is unimportant; the essential principle is applicable alike to the steam and gas appropriated in the nineteenth century, and the printing introduced in the fifteenth, and the farmers' produce of the earlier ages. The importance of the interest dependent on words advances with the advance of civilization. If the growth of the law be traced with respect to the words that make and unmake a simple contract, and with respect to the words that are actionable or justifiable as defamation, and with respect to the words that are indictable as seditious or blasphemous, it will be thought reasonable that there should be the same growth of the law in respect of the interest connected with the investment of capital in words. In the other matters the law has been adapted to the progress of society according to justice and convenience, and by analogy it should be the same for literary works, and they would become property with all its incidents, on the most elementary principles of securing to industry its fruits and to capital its profits (*a*).

In the vast complications of human affairs, requiring new applications of old principles continually to be made; in the measureless range of human thought, bringing new doctrines out of the mass of new and old events; in the immense fields of human exploration, luminous with the light of every species of science, over which the race of man is always travelling; in the unlimited expansibility of human society, developing new aspects, new relations, new wants; in the fact that, although the reported decisions of the courts are numerically great, they embrace but comparatively few even of the questions which have arisen heretofore; in the known fact, also, that evermore the surges of time are driving the shores of human capability farther towards the infinite,—we read the truth, pervading every system of jurisprudence, that whenever a matter comes before the courts, it is really a call for a new enunciation of legal doctrines, and that from the past we

(*a*) *Per* Mr. Justice Erle in *Jefferys* v. *Boosey*, 4 H. L. C. 870.

only gather a few rules to guide us in the future. We learn that both the olden and the new light point to the way of principle for the settlement of all new cases, when particular precedents fail (*a*).

What property could be more emphatically a man's own than his literary works? Is the property in any article or substance accruing to him by reason of his own mechanical labour denied him? Is the labour of his mind less arduous, less worthy of the protection of the law? When the right could not be combated on the ground of common sense or simple reason, the lawyers were forced to fly to what Lord Coke styles "*summa ratio*," or the *legal* reason, and they contended that from the very nature of literary productions no property in them could exist. For, said they, to claim a property in anything it is necessary that it should have certain qualities; it should be of a *corporeal substance*, be capable of occupancy or possession, it should have distinguishable proprietary marks, and be a subject of sole and exclusive enjoyment. Now, none of these indispensable characteristics were possessed by a literary production.

To this it was replied, that such definition of property was too narrow and confined; (for the rules attending property must ever keep pace with its increase and expansibility, and must be adapted to every particular condition;) that a distinguishable existence in the thing claimed as property, and an actual value in such thing to the true owner, are its essentials; and that the best rule of reason and justice seemed to be, to assign to everything capable of possession a legal and determinate owner.

No copyright in mere ideas.

Ideas, being neither capable of a visible possession nor of sustaining any one of the qualities or incidents of property, inasmuch as they have no bounds whatever, cannot be the subject of property. Their whole existence is in the mind alone; incapable of any other mode of acquisition or enjoyment than by mental possession or

(*a*) Bishop's 'Criminal Law.'

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apprehension, safe and invulnerable from their own immateriality, no trespass can reach, no tort affect, no fraud or violence diminish or damage them (*a*). They are of a nature too unsubstantial, too evanescent, to be the subject of proprietary rights.

Copyright however in the material that has embodied the ideas.

When, however, any material has embodied those ideas, then the ideas, through that corporiety, can be recognised as a species of property by the common law. The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance. The order of each man's words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious by comparing the words of ancient authors with other works of their day; the vigour of the words is unabated, though other works have mostly perished (*b*). It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by action on the case, instead of detinue or trover (*c*).

Author's right to the first publication of his own manuscript.

"Ideas," says Mr. Justice Yates, "are free. But while the author confines them to his study, they are like birds in a cage, which none but he can have a right to let fly;

(*a*) Yates, J., in *Millar* v. *Taylor*, 4 Burr. 2362; *Abernethy* v. *Hutchinson*, 1 Hall & Tw. 28; S. C. in 3 L. J. (Ch.) 209, 213, 219: and see Sir G. Turner, V.C., in *Morison* v. *Moat*, 9 Hare, 257.

(*b*) The intellectual creations of the ancient Greeks and Romans have come to us through many centuries in better preservation than their great works of art; and while many of their stupendous monuments of stone and brass can no longer be distinguished, the identity of their intellectual labours remain unaffected by time.

(*c*) Mr. Justice Erle, in *Jefferys* v. *Boosey*, 4 H. L. C. 869.

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, if 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, the manuscript is, in every sense, his peculiar property; 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 of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication; and whoever deprives him of that priority is guilty of a manifest wrong, and the court have a right to stop it" (*a*).

Thus we see that every man has the right at common law to the first publication of his own manuscript, it cannot without his consent be even seized by his creditors as property (*b*). He has in fact, supreme control over his own productions, and may either exclude others from their enjoyment, or may dispose of them as he pleases. He may limit the number of persons to whom they shall be imparted, and impose such restrictions as he pleases upon their use. He may annex conditions, and proceed to enforce them, and for their breach he may claim compensation (*c*).

(*a*) Yates, J., in *Millar* v. *Taylor*, 4 Burr. 2378; 1 Mac. & Gor. 36; *Forrester* v. *Walker*, cited 2 Bro. P. C. 138; *Manley* v. *Owen*, 4 Burr. 2329; *Webb* v. *Rose*, 4 Burr. 2330; *Southey* v. *Sherwood*, 2 Mer. 435; *Wheaton* v. *Peters*, 8 Peters, S. C. R. (Amer.) 591; Eden on Injunc. 285; 2 Story, Eq. Jur. s. 943; Curtis on Copy, 84, 150, 159; *Woolsey* v. *Judd*, 4 Duer (Amer.) 385.

(*b*) See *Little* v. *Hall*, 18 How. (Amer.) 170; *Bartlette* v. *Crittenden*, 4 McLean (Amer.) 300; S. C. 5 *ibid.* 32; *Webb* v. *Rose*, *supra*; *Pope* v. *Curl*, 2 Atk. 342; *Manley* v. *Owen*, *supra*; *Macklin* v. *Richardson*, Amb. 694; *Donaldson* v. *Becket*, 4 Burr. 2408; *Abernethy* v. *Hutchinson*, 1 Hall & Tw. 28; *Prince Albert* v. *Strange*, 2 De G. & Sm. 652: 1 Mac. & G. 25; *Turner* v. *Robinson*, 10 Ir. Ch. 121, 510; *Wheaton* v. *Peters*, *supra*. See *Dudley* v. *Mayhew*, 3 Coms. (Amer.) 12; *Clayton* v. *Stone*, 2 Paine (Amer.) 383; *Jones* v. *Thorne*, 1 N. Y. Leg. Obs. 409; *Parton* v. *Prang*, 3 Cliff. (Amer.) 537; *Carter* v. *Bailey*, 64 Me. (Amer.) 458; *Boucicault* v. *Wood*, 16 Amer. Law Reg. 529; *Keene* v. *Wheatley*, 23 Law Rep. 440; *Roberts* v. *Dyer*, *ibid.* 396; *Stone* v. *Thomas*, 2 Amer. Law Reg. 228; *Woolsey* v. *Judd*, *supra*; *Beckford* v. *Hood*, 7 T. R. 616; *Palmer* v. *Dewitt*, 23 L. T. N. S. 823.

(*c*) Lord Mansfield described his right as "an incorporeal right to print a set of intellectual ideas, or modes of thinking, communicated in a set of words, or sentences, and modes of expression. It is equally detached from the manuscript, or any other physical existence whatsoever," 4 Burr. 2396.

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Suppose therefore, that a man, with or without leave to peruse a manuscript work, transcribes and publishes it, the offence would not be within the Copyright Acts; it would not be larceny, nor trespass, nor a crime indictable (the physical property of the author, the original manuscript, remains), but it would be a gross violation of a valuable right. Again, suppose the original or a transcript be given or lent for a man to read, and he were to publish it, such publication would be a violation of the author's common law right to the copy (*a*).

Lord Clarendon's 'History.'

In the case of the *Duke of Queensbury* v. *Shebbeare*, before Lord Henley, an injunction was granted against printing the second part of Lord Clarendon's 'History,' Lord Clarendon lent to a person of the name of Gwynne a copy of his 'History;' his son and representatives insisted that he had a right to print and publish this 'History,' but the court were of opinion that Gwynne might make every use of it except the profit of multiplying in print. The presumption was that Lord Clarendon never intended that when he gave him the copy. The injunction was acquiesced under (*b*); and Dr. Shebbeare recovered, before Lord Mansfield, a large sum against Gwynne for repre-

(*a*) "The nature of a right of an author in his works is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copying after publication in print, which is the limited meaning of copyright in its common acceptation, and which is the right of an author, to which the statute of Anne relates. Thus, if after composition the author chooses to keep his writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages if any are sustained; also if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong, still the author's right to his composition would be recognised against the importer, and such sale would be stopped. . . . . Again, if an author choses to impart his manuscript to others without general publication, he has all the right for disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give, or sell any copy of his composition, with or without liberty to transcribe, and if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee. About the rights of the author before publication at common law, all are agreed." Erle J., *Jeffreys* v. *Boosey*, 4 H. L. C. 867; see *Parton* v. *Prang*, 3 Cliff. (Amer.) 548.

(*b*) 2 Eden, 329; *Knaplock* v. *Curle*, 4 Viu. Abr. 278.

senting "that he had a right to print." But where the plaintiff, as residuary legatee under the will of Miss Mitford, claimed to be entitled to an account against the defendant Bentley for the profits of the publication of the letters and papers of the testatrix, without the plaintiff's authority; and it appeared that after the date of her will, Miss Mitford had addressed an unattested letter to her executor, W. Harness, saying, that in case anybody should print her letters or life, she wished that a part at least of the produce should go to the plaintiff; and some years afterwards Harness arranged with one of the defendants to edit the said letters and papers, and requested him to pay £20 to the plaintiff, in compliance with Miss Mitford's wish, and the editor entered into an agreement with Bentley for the publication of a work containing the letters and papers which he had edited, and offered the plaintiff the sum of £20, which was not accepted, the Master of the Rolls held that the letter of Miss Mitford to Harness was tantamount to a gift to him of her letters and papers, and that on Bentley offering and undertaking to pay to the plaintiff the sum of £20, before offered by the editor, the bill must be dismissed, but without costs (*a*).

'Precedents of Conveyancing.'

In the cases of Webb and Forrester (*b*), the Court of Chancery again interposed by injunction. It appears that the plaintiff in the former case had his 'Precedents of Conveyancing' stolen out of his chambers and printed; and in the latter he had his notes copied by a clerk of a gentleman to whom he had lent them, and printed. In *Macklin* v. *Richardson* (*c*) the defendant had employed a short-hand writer to take down the farce of 'Love à la mode,' upon its performance at the theatre, and inserted one act in a magazine, giving notice that the second act would be published in the magazine of the following month. Upon an application to Lord Camden for an

'Love à la mode.'

(*a*) *Sweetman* v. *Bentley*, W. N. (1871) 162.
(*b*) Cited Ambl. 695
(*c*) *Ibid.*

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injunction, he directed the case to stand over until that of *Millar* v. *Taylor*, which was then pending, should be determined; and after the decision had been given in that case the injunction was granted by the Lords Commissioners Smythe and Bathurst. The former, referring to the play, saying, "it has been argued to be a publication by being acted, and therefore the printing is no injury to the plaintiff; but that is a mistake; for, besides the advantage of the performance, the author has another source of profit from the printing and publishing, and there is as much reason that he should be protected in that right as any other." Bathurst adding, "The printing it before the author is doing him a great injury."

This was the opinion also of Lord Cottenham in a case subsequently referred to (*a*). "The property," said he, "of an author or composer of any work, whether of literature, art, or science, in such work unpublished, and kept for his private use or pleasure, cannot be disputed after the many decisions upon which that proposition has been affirmed or assumed. I say 'assumed,' because in most cases which have been decided, the question was not as to the original right of the author, but whether what had taken place did not amount to a waiver of such right; as, in the case of letters how far the sending of the letter, in the case of dramatic composition how far the permitting performance, and in the case of Mr. Abernethy's lectures how far the oral delivery of the lecture, had deprived the author of any part of his original right and property;—a question which could not have arisen if there had not been such original right or property."

The statutes do not affect right before publication.

The statutes with reference to copyright do not in any manner affect the common law ownership of literary compositions before publication, and therefore until publication

(*a*) *Prince Albert* v. *Strange*. 18 L. J. (N. S.) Ch. 120; 1 Hall & Tw. 1; 1 Mac. & Gor. 25; *Turner* v. *Robinson*, 10 Ir. Ch. Rep. 121, 510; *Southey* v. *Sherwood*, 2 Mer. 435; *Gee* v. *Pritchard*, 2 Swans. 402.

an author and his assignees have a proprietary right in his production, of which he is not deprived by the statute, and which the court will protect against invasion (*a*). The copyright laws are merely ancillary to the common law rights of authors (*b*). They continue them after publication in print, but in no way impair such rights, so long as the literary composition remains in manuscript, or is not printed.

Prince Albert's case.

These principles were clearly developed in Prince Albert's case (*c*), a case possessed of peculiar interest from the high position of the parties. It appeared that the Queen and the plaintiff had occasionally, for their amusement, made drawings and etchings, being principally of subjects of private and domestic interest to themselves, and that they had made impressions of those etchings for their own use, and not for publication; that, for greater privacy, such impressions had been, for the most part, made by means of a private press kept for that purpose, and the plates themselves had been ordinarily kept by her Majesty under lock, and the impressions had been placed in some of the private apartments of her Majesty at Windsor, and in such apartments only; that the defendants Strange and Judge had in some manner obtained some of such impressions, which had been surreptitiously taken from some of such plates, and had thereby been enabled to form, and had formed, a gallery or collection of such etchings, of which they intended to make a public exhibition without the permission of her Majesty and the plaintiff, or either of them, and against their will; that the defendants had compiled and prepared a work, which had been printed and published by the defendant Strange, of which the title page or cover was as follows:—"A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings."

(*a*) *Palmer* v. *Dewitt* (American case), 23 L. T. (N. S.) 823.

(*b*) Mr. Edward Jenkins, M.P., in his separate report as a member of the copyright commission says, "The statute law *creates*, it does not *recognise* copyright," but it is conceived that this is a position which could not be supported.

(*c*) *Prince Albert* v. *Strange*; 1 Hall & Tw. 1; 1 Mac. & Gor. 25, 18 L. J (N. S.) Ch. 120; 13 Jur. 45, 109, 507.

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"Every purchaser of this catalogue will be presented (by permission) with a facsimile of the autograph of either her Majesty or of the Prince Consort engraved from the original, the selection being left to the purchaser, price sixpence;" that this work had been compiled, printed, and published without the consent of her Majesty and the plaintiff, or either of them, and against their will; that, in fact, among the etchings were portraits of the plaintiff, the Prince of Wales, the Princess Royal, and other members of the Royal Family, and personal friends of her Majesty, from life, and afterwards transferred to copper and etched by her Majesty and the plaintiff, and among such etchings were portraits of their favourite dogs, taken by them from life, and etchings from old and rare engravings in the possession of her Majesty, and several from such original designs as in the catalogue mentioned; and among such etchings there were several portraits of the Princess Royal, and such scenes in the Royal nursery as in the said catalogue mentioned; and that the said descriptive catalogue comprised sixty-three several etchings; that the catalogue could not have been made except from impressions surreptitiously obtained; that the impressions were intended for private use, and not for publication, and very few had been given away, and those only to private friends. The bill then, as amended, charged that certain of the plates were given to Brown, a printer, at Windsor, for the purpose of printing off certain impressions thereof for her Majesty and the plaintiff, and that Brown employed therein a person of the name of Middleton, who, without Brown's consent or knowledge, and in violation of the confidence reposed in him, took impressions thereof for himself; and that Judge had bought or in some manner obtained the same from Middleton. It was then prayed that the defendants might be ordered to deliver up to the plaintiff all impressions and copies of the several etchings respectively made by the plaintiff; and that they, their servants, &c., might be restrained by injunction from exhibiting the said gallery or collection of etchings, or from

making engravings or copies of them, or in any manner publishing them, or from parting with or disposing of them, and also from selling, publishing, or printing, the descriptive catalogue in the bill mentioned or any work being or purporting to be a catalogue of the said etchings, and that the copies of the catalogue in the possession of the defendants might be given up to the plaintiff. An injunction was immediately granted against Strange until he had answered the bill, or the court should make order to the contrary, which injunction was afterwards extended to the other defendants. Strange subsequently put in an answer denying that he had in any manner, either surreptitiously or otherwise, obtained any impressions of the etchings or copies of them. He stated that he believed that Judge purchased certain impressions of the etchings from Middleton; that Judge had proposed to him to exhibit them if her Majesty and the Prince did not object; and that he then believed that the impressions had not been improperly obtained; that Judge afterwards wrote the catalogue, which Strange printed, but struck off fifty-one copies only, and then broke up the type; that this catalogue had never been exposed for sale, and that as soon as he learnt that the exhibition was disapproved of by the Queen and the Prince, he determined to abandon the scheme, and had offered to give up all copies of the catalogue in his possession if the bill were dismissed against him and his costs paid, but that the solicitor for the plaintiff refused to pay the defendant's costs. He insisted by his answer that, as a matter of strict right, he was entitled to publish the catalogue; and so far as the injunction related to the publication of the catalogue he moved to dissolve it before Vice-Chancellor Knight Bruce. It was contended by the defendants that a man acquiring knowledge of another man's property without his consent, is not by any rule or principle which a Court of Justice can apply—however secretly that other man may have kept or endeavoured to keep his property—forbidden,

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without consent, to communicate or publish that knowledge to the world, to inform the world what the property is, or to describe it publicly, whether orally or in print or writing. That there were distinct properties, independent of each other, in the owner of portraits; first, there was the right of property in the canvas; secondly, in the face that adorned the canvas; thirdly, the knowledge of the existence of what he possessed. That supposing that the owner of a collection of pictures allowed the public on certain days to view his collection, and by this means one of the visitors acquired a knowledge of the paintings, the same as the owner, that such person had in the absence of contract to the contrary a right to make use of that knowledge. It was admitted that he might be restrained from using the form, but contended that he could not be restrained from describing the attributes created by the form. That there was no greater right of property in the knowledge, in the owner of the collection, than in any stranger who might have had access to them. But both the Vice-Chancellor Knight Bruce in the first instance, and Lord Cottenham on appeal, refused to give effect to this argument. The former saying (*a*), "The author of the manuscripts, whether he is famous or obscure, high or low, has a right to say of them, whether light or heavy, saleable or unsaleable, that they shall not, without his consent, be published; and I think to use a dishonest knowledge of them, for the purpose of composing and publishing, and so to compose and publish a catalogue of them, amounts to a publication of them within the principle and the rule. Assuming the law to be so, what is its foundation in this respect? It has not reference to any considerations peculiarly literary. Those with whom our common law originated, had not, probably, among their many merits, that of being patrons of letters, but they knew the duty and necessity of protecting property, and, with that general object, laid down rules providently expansive—rules capable of adapting themselves to the various forms and modes of property that

(*a*) 13 Jur. 57.

peace or cultivation might discover or introduce. The produce of mental labour, thoughts, and sentiments recorded and preserved by writing, became, as knowledge went onwards and the culture of man's understanding advanced, a kind of property which it was impossible to disregard. . . . Upon the principle, therefore, of protecting property, it is that the common law, in cases not aided nor prejudiced by the statute, shelters the privacy of thoughts and sentiments committed to writing, designed by the author to remain not generally known. This has been, in effect, judicially declared, not by any judge more distinctly than by Lord Eldon, on several occasions, particularly in Mr. Southey's case. He says, 'It is to protect the exclusive property of the writer that injunctions are granted.' And again: 'I have examined the cases I have been able to meet with containing precedents for injunctions, and I find that they all proceed upon the ground of title to property in the plaintiff.' Such being, as I believe, the nature and foundation of the common law as to manuscripts, independently of Parliamentary additions and subtractions, its operation cannot, of necessity, be confined to literary subjects; that would be to limit the rule by the example. Wherever the produce of labour is liable to invasion in an analogous manner, there must be, I suppose, a title to analogous protection or redress. Such I consider the case of mechanical works or works of art executed by a man for his private use. Whatever protection those, or some of those, may have by the Act of Parliament, they are not, I apprehend, deserted by the common law. The principles and rules which it applies to literary compositions and manuscripts must, to a considerable extent, be applicable to these also." And the latter, assuming the right of property, says (*a*): 'If, then, such right and property exist in the author of such works, it must so exist exclusively of all other persons. Can any stranger have any right or title to, or interest in, that which belongs exclusively to another?—and yet

(*a*) 13 Jur. 112.

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this is precisely what the defendant claims, although, by a strange inconsistency, he does not dispute the general proposition as to the plaintiff's right and property; for he contends that, admitting the plaintiff's right and property in the etchings in question, and, as incident to it, the right to prevent publication or exhibition of copies of them, yet he insists that some persons having had access to certain copies, and having, from such copies, composed a description and list of the originals, he, the defendant, is entitled to publish such list and description —that is, that he is entitled, against the will of the owner, to make such use of his exclusive property. It being admitted that the defendant could not publish a copy—that is, an impression—of the etchings, how, in principle, does the case of a catalogue, list, or description differ? A copy or impression of the etchings could 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: it is to make known to the public, more or less, the unpublished works and compositions 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. Cases of abridgments, translations, extracts, and criticisms of published works, have no reference whatever to the present question. They all depend on the extent and right under the Acts with respect to copyright, and have no analogy to the exclusive right of the author in unpublished compositions, which depend entirely on the common law right of property . . . . Upon the first question, therefore—that of property—I am clearly of opinion that the exclusive right and interest of the plaintiff in the compositions and works 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."

What amounts to publication sufficient to defeat the common law right is a question of some nicety. The property which a composer of a piece of music ordinarily has in his composition is the pecuniary value which it has to him, and not merely the amount of fame he may acquire; and such pecuniary value is necessarily and wholly dependent upon the means which he may lawfully employ to bring his production before the public, and the approval of the public of his work; and there is no other property in that description of literary composition.

What amounts to publication at common law.

"When a right of property in the invention or creation of an author is recognised as an inherent right by the common law," says Mr. Judge Monell in a late American case (*a*), "it assumes that the thing to be secured and protected is of value to the owner. The law does not regard as property a thing entirely worthless. If a literary composition, therefore, derives its value from, and becomes property because of, the use which can be made of it before the public, and such value is increased or diminished in proportion to the extent of its use, then it becomes very important to know where and when the author's literary property in it terminates. To give it value, or to make it property, recognised by the common law, the author must be allowed to use it before the public; and if, having submitted it once to a public hearing, it is to be deemed a publication, so as to take away the proprietary right, and to deprive the author of the benefit of copyright laws, then, obviously, the common law means nothing, and there is no such thing as property in literary work. Can it be said that once delivering a lecture upon a scientific or literary subject, before a public audience, will for ever thereafter deprive the author of his property in the ideas invented or created, and which represent, by a combination of words his meaning? If so, then any one who can obtain the

(*a*) *Palmer* v. *Dewitt* 23 L. T. (N.S.), 823, 825.

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manuscript, or access to it, or who, by employing the art of stenography, or by the exercise of memory, can carry it out of a public lecture-room, may, without the consent or knowledge of the author, appropriate and use, for his own emolument, the literary production of another person. I cannot believe there is so little foundation for, or so narrow a limit to, the proprietary rights of an author in his literary labours. I believe the law intended to secure to him the *beneficial* results of his labours, and to protect him from any piratical invasion of his rights, until he has done some act inconsistent with an exclusive ownership, and which shall amount, in judgment of law, to a publication. There can be no fixed rule determining when an author has surrendered his literary property."

What does not amount to publication.

The publication of a work for private purposes and private circulation is not a publication sufficient to defeat the common law right of an author (*a*). Accordingly, it has been determined that a copyright in a piece of music is not lost, although it had been published in manuscript a year before being printed. The words "printed and published," used in the statutes, have reference only to the time at which the author's exercise of the right is to be dated; and therefore, the circumstance of an author having previously published in manuscript any composition which is afterwards printed, only varies the period of time from which the term of protection is to be calculated. The delivery of a lecture to an audience of persons admitted on payment of a fee, is not deemed a publication (*b*); neither is the exhibition of a picture at a public exhibition or gallery, where copying is expressly or impliedly forbidden, nor the exhibition of a picture for the purpose of obtaining subscribers to an engraving (*c*).

(*a*) *White* v. *Geroch*, 1 Chitt. 26, 2 B. & Ald. 298; *Prince Albert* v. *Strange*, 2 De G. & Sm. 686; 1 Mac & Gor. 42; 1 Hall & Tw. 1; *Jefferys* v. *Boosey*, 4 H. L. C. 816.

(*b*) *Abernethy* v. *Hutchinson*, 3 L. J. (Ch.) 209.

(*c*) *Turner* v. *Robinson*, 10 Ir. Ch. 510. But see *Dalglish* v. *Jarvie*, 2 Mac. & Gor. 231, 2 H. & T. 437, cited Kerr on Injunc. 184, and 25 & 26 Vict. c. 68.

The effect of publication.

On publication, no more passes to the public than an unlimited use of every advantage that the purchaser can reap from the doctrines and sentiments which the work contains. The property in the composition does not pass; for those things which are peculiarly and appropriately his, must remain his until he agrees or consents to part with them by compact or donation; "because no man can deprive him of them without his approbation; but the depriver must use them as his when they are not his, in contradiction to truth." For "to have the property" in any thing, and "to have the sole right of using and disposing of it," is the same thing. They are equipollent expressions (*a*).

Primary recognition of copyright.

It was only since the introduction of printing that any question of the extent and duration of copyright could be expected to occur in a court of justice. For the period of about a century from the time of this discovery we have no evidence of the recognition in any public form of the copyright of authors, or of the remedies by which its infraction might be redressed (*b*). The earliest evidence which occurs is to be found in the charter of the Stationers' Company and the decrees of the Star Chamber.

The original charter of the Stationers' Company.

The original charter of the Stationers' Company was granted by Philip and Mary in 1556. It was the declared object of the Crown at that time to prevent the propagation of the reformed religion, and it seems to have been thought that this could most effectually be brought about by imposing the severest restrictions on the press. About this period there are several decrees and ordinances of the Star Chamber regulating the manner of printing, the number of presses throughout the kingdom, and prohibiting all printing against the force and meaning of any of the statutes or laws of the realm. Until the year 1640 the Crown through the instrumentality of the Star Chamber, exercised this restrictive jurisdiction without limit, enforcing by the summary powers of search, confis-

(*a*) Author of 'The Religion of Nature Delineated,' p. 136.
(*b*) Maugham, Lit. Prop.

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cation, and imprisonment, its decrees, without the least obstruction from Westminster Hall or the Parliament in any instance.

In 1556, by a decree of the Star Chamber, it was forbidden, among other things, to print contrary to any ordinance, prohibition, or commandment in any of the statutes or laws of the realm, or in any injunction, letters-patent, or ordinances set forth, or to be set forth by the queen's grant, commission, or authority.

By another decree, dated June 23rd, 1585, every book was required to be licensed, and all persons were prohibited from printing "any book, work, or copy against the form or meaning of any restraint contained in any statute or laws of this realm, or in any injunction made by her Majesty, or her Privy Council; or against the true intent and meaning of any letters-patent, commissions or prohibitions under the great seal, or contrary to any allowed ordinance set down for the good government of the Stationers' Company."

In 1623, a proclamation was issued to enforce this decree; reciting that it had been evaded, among other ways "by printing beyond sea such allowed books, works, or writings as have been imprinted within the realm, by such to whom the sole printing thereof by letters-patent or lawful ordinance or authority doth appertain."

In 1637, the Star Chamber again decreed that "no person is to print or import (printed abroad) any book or copy which the Company of Stationers, or any other person, hath or shall, by any letters-patent, order or entrance in their register book, or otherwise, have the right, privilege, authority, or allowance, solely to print" (*a*).

(*a*) 4 Burr. 2312. "It is natural to suppose," says Mr. Hallam (1 Const. History, 238), "that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free inquiry through the press. The trades of printing and bookselling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors, the council frequently issued proclamations to restrain the importation of books, or to regulate their sale. It was penal to utter, or so much as to possess, even the most learned works on the Catholic side; or, if some connivance was usual in favour of educated men, the utmost strictness was used in sup-

In 1640, however, the Star Chamber was abolished; the King's authority was set at nought; all the regulations of the press, and restraints previously imposed upon unlicensed printers by proclamations, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed and certainly were illegal. The licentiousness of libels induced Parliament to make an ordinance which prohibited printing unless the book was first licensed. The ordinance prohibited printing without the consent of the owner, or importing (if printed abroad), upon pain of forfeiting the same to the owner or owners of the *copies* of the said books, &c. This provision necessarily presupposed the property to exist; it would have been nugatory if there had been no admitted owner. An owner could not at that time have existed otherwise than by common law. In 1649 the Long Parliament made another ordinance; and in 1662 was passed

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On abolition of Star Chamber all restraints on printing deemed illegal.

The Licensing Act of Car. 2.

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pressing that light infantry of literature—the smart and vigorous pamphlets with which the two parties arrayed against the Church assaulted her opposite flanks. Stow, the well-known chronicler of England, who lay under a suspicion of an attachment to popery, had his library searched by warrant, and his unlawful books taken away; several of which were but materials for his history. Whitgift, in this as in every other respect, aggravated the rigour of preceding times. At his instigation, the Star Chamber in 1585, published ordinances for the regulation of the press. The preface to these recites 'enormities, and abuses of disorderly persons professing the art of printing and selling books,' to have more and more increased, in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer, therefore, is enjoined to certify his presses to the Stationers' Company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer who has only set up his trade within six months to exercise it any longer, nor any to begin it in future until the excessive multitudes of printers be diminished and brought to such a number as the Archbishop of Canterbury and Bishop of London for the time being shall think convenient; but whenever any addition to the number of master printers shall be required, the Stationers' Company shall select proper persons to use that calling, with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the Archbishop of Canterbury or Bishop of London, except the Queen's printers, who shall require the license only of the chief justices. Every one selling books printed contrary to the intent of this ordinance, to suffer three months' imprisonment. The Stationers' Company empowered to search houses and shops of printers and booksellers, and to seize all books printed in contravention of this ordinance, to destroy and deface the presses, and to arrest and bring before the council those who shall have offended therein."

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the Licensing Act (13 & 14 Car. 2, c. 33), which interdicted the printing of any book unless first licensed and entered in the registry of the Stationers' Company. It ordered that no person should presume to print "any heretical, seditious, schismatical or offensive books or pamphlets, wherein any doctrine or opinion shall be asserted or maintained which is contrary to the Christian faith, or the doctrine or discipline of the Church of England, or which shall, or may tend or be to the scandal of religion or the church, or the government or governors of the church, state, or commonwealth, or of any corporation or particular person or persons whatever." It further prohibited the publication of unlicensed books, prescribed regulations as to printing, and empowered the King's messengers, and the master and wardens of the Stationers' Company, to seize books suspected of containing matters hostile to the Church or Government. It was necessary to print in the beginning of every licensed book the certificate of the licenser to the effect that the books contained nothing "contrary to the Christian faith, or the doctrine or discipline of the Church of England, or against the state and government of this realm, or contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require." To prevent fraudulent changes in a book after it had been licensed, a copy was required to be deposited with the licenser when application was made for a license.

The Act further prohibited any person from printing or importing without the consent of the owner, any book which any person had the sole right to print by virtue of letters-patent, or "by force or virtue of any entry or entries thereof duly made or to be made, in the register book of the said Company of Stationers, or in the register book of either of the universities." The penalty of piracy was forfeiture of the book and six shillings and eightpence for each copy: half to go to the king, and half to the owner."

The sole property of the owner is here acknowledged in express terms as a common law right; and the legislature

which passed that Act could never have entertained the most distant idea "that the productions of the brain were not a subject matter of property." To support an action on this statute ownership had to be proved or the plaintiff could not have recovered, because the action was to be brought by the owner, who was to have a moiety of the penalty. The various provisions of this Act effectually prevented piracies, without actions at law or bills in equity. But cases arose of disputed property. Some of them were between different patentees of the Crown; some, whether the property "belonged to the author, from his invention and labour, or the king, from the subject-matter."

The ordinance of 1643 prohibited the printing or importing of any book that had been lawfully licensed and entered in the register of the Stationers' Company, "for any particular member thereof, without the license and consent of the owner." The penalty prescribed was forfeiture of the book to the owner, "and such further punishment as shall be thought fit." This clause was repeated in the ordinances of 1647, 1649, and 1652.

It has been questioned whether these clauses were applicable to any than members of the Stationers' Company—in fact bylaws for the regulation of the members *inter se*, but it is doubtful whether any such restriction can be put upon their scope.

The Licensing Act of Car. 2 was continued by several Acts of Parliament, but expired May, 1679; soon after which there is a case in Lilly's 'Eutries of Hilary Term,' 31 Car. 2, B. R. (*a*). In this case an action was brought for printing 4000 copies of the 'Pilgrim's Progress,' of which the plaintiff was the true proprietor, whereby he lost the profit and benefit of his copy. There is no account, however, of the case having been proceeded with.

In 1681, all legislative protection having ceased, the Ordinance of

(*a*) *Ponder* v. *Bradyl*, Lilly's 'Entries,' 67; see Carter, 89; 4 Burr. 2317; Skinner, 234; 1 Mod. 257.

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the Stationers' Company in 1681.

Stationers' Company adopted an ordinance or bylaw, which recited that several members of the company had *great part of their estates in copies*, that by ancient usage of the company, when any book or copy was duly entered in their register to any member, such person had always been reputed and taken to be the proprietor of such book or copy, and ought to have the sole printing thereof. The ordinance further recited that this privilege and interest had of late been often violated and abused; and it then provided a penalty against such violation by any member or members of the company, where the copy had been duly entered in their register. The true view of this ordinance would seem to be, that the members of the Stationers' Company, finding their estates in copies, which belonged to them by the common law, no longer under the protection of the Licensing Act (the repeal of which had incidentally withdrawn the protection that had always been inserted in it, though it had necessarily no connection with the system of licensing), undertook to provide for the failure of legislation, as far as they could, by an ordinance applicable of course to their own members only. The ordinance is not to be cited as any other proof of what the common law right was than that it shows, in connection with other historical proof, what it was then supposed to be. It was much the same as if an association of persons were to agree that any one of their number should pay a penalty for violating the acknowledged rights of property of any other person in the association, provided such rights were duly entered in their common records. It would not be an attempt to create the right, but it would justly be regarded as an acknowledgment of the existence of such a right (*a*).

A bylaw of the Stationers' Company in 1694.

In another bylaw, passed in 1694 (*b*), it was stated that copies were constantly bargained and sold amongst the members of the company as their property, and devised to

(*a*) Curtis on Copy, p. 38.

(*b*) In this year expired finally the Licensing Act of 13 & 14 Car. 2, which had been revived by 1 Jac. c. 7, and continued by 4 W. & M. c. 24.

their children and others for legacies and to their widows for maintenance; and it was ordained, that if any member should, without the consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve-pence.

For many years successively attempts were made to obtain a new Licensing Act. Such a bill once passed the upper house, but the attempt miscarried upon constitutional objections to a licence. Proprietors of copyright had so long been protected by summary measures, that they regarded an action at law as an inadequate remedy. A bill in equity was never even thought of: no hope of its success appears at that time to have been entertained.

A petition presented to Parliament in 1709 for protection of copyright.

In one of the petitions presented to the House in support of applications to Parliament in 1709, for a bill to protect copyright, the last clause or paragraph was as follows: "The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained but by an Act of Parliament. For by common law, a bookseller can recover no more costs than he can prove damage; but it is impossible for him to prove the tenth, nay, perhaps, the hundredth part of the damage he suffers; because a thousand counterfeit copies may be dispersed into as many hands all over the kingdom, and he not be able to prove the sale of them. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. (No man of substance has been known to offend in this particular, nor will any ever appear in it.) Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench or Fleet, and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders" (*a*).

The first Copyright Act, 8 Anne, c. 19.

In response to these applications the Act 8 Anne, c. 19, was passed. It recites that printers, booksellers, and other persons had of late frequently taken the liberty of printing,

(*a*) 4 Burr. 2318.

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reprinting, and publishing books and other writings without the consent of the authors or proprietors, to their very great detriment, and too often to the ruin of them and their families. For preventing, therefore, such practices for the future, and for the encouragement of learned men to compose and write useful books, it was enacted, that the authors of books already printed who had not transferred their rights, and the booksellers or other persons who had purchased or acquired the copy of any books in order to print or reprint the same, should have the sole right and liberty of printing them for a term of twenty-one years from the 10th of April, 1710, and no longer; and that authors of books not then printed, should have the sole right of printing for fourteen years and no longer. It also provided that any person who should publish, import, or sell piratical copies should forfeit such copies to the owner of the copyright, to be by him destroyed, and pay one penny for every sheet found in his possession. One half of this penalty was to go to the Queen and the remainder to any person who should sue for it. There was a proviso, however, which permitted the importation and sale of "any books in Greek, Latin, or any other foreign language, printed beyond the seas." That no person might offend against the Act through ignorance, it was provided that no book should be entitled to protection unless the title to the copy had been entered before publication in the register book of the Stationers' Company, which book should be kept open for inspection at any time without fee. The Act further required that nine copies of each book should be delivered to the warehouse-keeper of the said company for the use of the royal library in London, the Universities of Oxford and Cambridge, the four Universities in Scotland, Sion College in London, and the library of the Faculty of Advocates in Edinburgh, inflicting a penalty in default of such delivery, besides the value of the said printed copies, of the sum of £5 for every copy not so delivered (*a*). If any bookseller or

(*a*) The number was extended to eleven copies by 41 Geo. 3, c. 107,

printer should offer for sale a book at such a price or rate as should be conceived by any person to be too high or unreasonable, the price might be reduced and fixed at a reasonable figure by the Archbishop of Canterbury, the Chancellor or Lord Keeper of the Great Seal, the Bishop of London, the Chief Justices of the Queen's Bench and Common Pleas, or other designated officials (*a*).

The Act prohibited any one from importing a book which had been printed without the written consent of the owner of the copyright. And lastly it provided, that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years Thus by the Act of Anne two classes of books were protected, first, those already published, in which copyright was acknowledged for twenty-one years; second, those not then published, for which a term of fourteen years was secured, with a further term of fourteen years in the event of the author being then living.

The common law right to old copies.

The general question upon the common law right to old copies of works could not arise until the expiration of the full term conferred by the Act of Anne, that is, until twenty-one years from the 10th of April, 1710. Shortly after the expiration of this period, in 1735, in the case of *Eyre* v. *Walker* (*b*), Sir Joseph Jekyll granted an injunction to restrain the defendant from printing the 'Whole Duty of Man,' the first publication of which had been made in December, 1657; and this was acquiesced under.

Injunctions issued in support of this right.

In the same year, in the case of *Motte* v. *Falkner* (*c*), an injunction was granted for printing Pope's and Swift's 'Miscellanies.' Many of the pieces had been published in 1701, 1702, and 1703, and the counsel strongly pressed the objection as to these pieces. Lord Talbot, however,

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s. 6; amended by 54 Geo. 3, c. 156, s. 2, and the number was limited to five by the 6 & 7 Will. 4, c. 110.

(*a*) This provision was repealed by the 12 Geo. 2, c. 36.

(*b*) Cited 4 Burr. 2325; 3 Swans. 673; 1 W. Bl. 331; see 2 Eden, 328.

(*c*) Cited in *Millar* v. *Taylor*, 4 Burr, 2325; *Tonson* v. *Walker*, 3 Swans. 672.

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continued the injunction as to the whole, and it was acquiesced under.

In the following year, in the case of *Walthoe* v. *Walker*, an injunction was granted for printing Nelson's 'Festivals and Fasts,' though the bill set forth that the original work was printed in the lifetime of Robert Nelson, the author, and that he died in 1714. This also was acquiesced under.

In 1739 Lord Hardwicke granted a fourth injunction to restrain the defendant from printing Milton's 'Paradise Lost.' The plaintiffs derived their title under an assignment of the copy from the author in 1667. This injunction was also acquiesced under (*a*). In 1751 Milton's poem again came before Lord Hardwicke, in the form of an application for an injunction to restrain the defendants printing the same with the notes of Dr. Newton and other commentators, all of which belonged to the plaintiff. The bill, as in the former application, derived a title to the poem from the author's assignment in 1667, and a title to the life by Fenton, published in 1727, to Bentley's notes, published in 1732, and to Dr. Newton's notes, published in 1749. The defendants put in an answer, and set up notes of their own, of which it appeared there were twenty-eight, while the notes of the other commentators, belonging to the plaintiffs, and included in the defendants' edition, numbered 1500. Lord Hardwicke gave judgment in 1752, and held that the plaintiffs' notes were within the protection of the statute; and as to the poem, although he said that the general question had never been determined, and there was a doubt, yet he granted the injunction until the hearing (*a*).

Principle on which the injunctions were issued.

All these injunctions were issued and acquiesced in under the presumption that at common law copyright was perpetual and that such common law right remained unaffected by the statute of Anne; had there been a reasonable doubt in the minds of the judges the injunc-

(*a*) *Tonson* v. *Walker*, 3 Swans. 672; 4 Burr. 2325, 2327, 2379, 2380; 1 W. Bl. 345; 2 Eden, 328; 1 Cox. 285.

tions would have been improper (*a*), for no reparation could be afforded to the defendants for the damage sustained thereby, in the case of their being unimpeachable in respect of the piracies complained of. Speaking of these injunctions, Lord Mansfield said, "I look upon them as equal to any final decree" (*b*).

The celebrated cases of *Millar* v. *Taylor* *Donaldson* v. *Becket.*

The common law right was at length disputed and fully discussed in the celebrated case of *Millar* v. *Taylor* (*c*). The work in controversy was Thomson's 'Seasons,' and the copyright secured by the statute of Anne had expired. The action was brought in 1766, and was decided by the Court of King's Bench 1769, judgment being given for the plaintiff on the ground that the common law right to copyright was unaffected by the statute of Anne. However, in a case (*d*) determined on the authority of the last mentioned, the defendant appealed to the House of Lords, on which occasion the following questions were propounded to the judges:

1st. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?

2nd. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition? And might any person afterwards reprint and sell,

(*a*) *Hill* v. *The University of Oxford*, 1 Vern. 275; *Grierson* v. *Jackson*, Ir. Term R. 304; *Univers. of Oxf. and Cam.* v. *Richardson*, 6 Ves. 689; *Bruce* v. *Bruce*, cited 13 Ves. 505; *Harmer* v. *Plane*, 14 Ves. 130; *Hogg* v. *Kirby*, 8 Ves. 224. And see Lord Erskine in *Gurney* v. *Longman*, 13 Ves. 505; *The Assignees of Robinson* v. *Wilkins*, cited 8 Ves. 224.

(*b*) *Millar* v. *Taylor*, 4 Burr. 2399.

(*c*) 4 Burr. 2303.

(*d*) *Donaldson* v. *Becket*, 4 Burr. 2408; 2 Bro. Parl. Cas. 129. Lord Kenyon expressed a decided opinion that no such right existed: *Beckford* v. *Hood*, 7 T. R. 620. Lord Ellenborough inclined to the same view: *Cambridge Univ.* v. *Bryer*, 16 East, 317; and a majority of the judges in *Wheaton* v. *Peters*, 8 Peters (Amer.) 591, arrived at the same conclusion. See *Jefferys* v. *Boosey*, 4 H. L. C. 815.

for his own benefit, such book or literary composition, against the will of the author?

3rd. If such action would have lain at common law, is it taken away by the statute of 8th Anne? And is an author, by the said statute, precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby?

4th. Whether the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity by the common law?

5th. Whether this right is in any way impeached, restrained, or taken away by the statute, 8th Anne.

Eleven judges delivered their opinions *seriatim*; ten to one for the affirmative on the first question; eight to three for the negative on the second question; six to five for the affirmative on the third question; seven to four for the affirmative on the fourth question; and six to five for the affirmative on the fifth question; so that it was declared that, although an author had by common law an exclusive right to print his works, and does not lose it by the mere act of publication, yet the statute of Anne had completely deprived him of the right. It was notorious that Lord Mansfield concurred with the ten upon the first question, with the eight upon the second, with the five upon the third, with the seven on the fourth, and with the five on the fifth; but it being very unusual (from reasons of delicacy) for a peer to support his own judgment upon an appeal to the House of Lords, he did not speak (*a*).

(*a*) In Scotland this question had been tried as early as 1748, and decided against the author's right: *Midwinter* v. *Hamilton*, June 7, 1748; Mor. Dict. of Dec. 19, 20, 8305. On appeal the case went off upon informality in the original summons: Feb. 11, 1751; 1 Cr. & St. 488. The same decision was pronounced in *Hinton* v. *Donaldson*, July 28, 1773, Mor. Dict. of Dec. 19, 20, 8307; 5 Brown's Sup. 508; and in *Cadell & Davies* v. *Robertson*, Dec. 18, 1804, Mor. Dict. of Dec., App., Lit. Prop. 5, as delivered in the House of Lords, July, 16, 1811 (5 Paton, 493), the

The case of *Jefferys* v. *Boosey*.

The more general opinion is certainly now against the common law right after publication. For though in the case of *Jefferys* v. *Boosey* (*a*), the decision of the question was not necessary to the point at issue, yet it being somewhat implicated, many of the judges pronounced their opinion with reference to the right. Of the ten common law judges who delivered their opinions, Erle, J, believed in the existence of the common law right; but Parke, B., Pollock, C.B., and Jervis, C.J., announced the contrary opinion; while Crompton, Williams, Wightman, Maule, Coleridge, and Alderson, expressed no opinion on the point. Lords Cranworth, Brougham, and St. Leonards were unanimous against the right, the last saying: "Upon the claim of common law right, I confess I never have, at least for many years, been able to entertain any doubt. It is a question which I have often, in my professional life, had occasion to consider, and upon which I have arrived, long since, at the conclusion, that no common law right exists after publication. I never could, in my own mind, distinguish between the right to an invention after the publication of that invention, and the right to the description of that invention after the publication of that description. If a mechanical genius should invent a machine of the greatest importance to mankind, it is admitted, nobody attempts to insist or to argue otherwise, and it has always been considered as settled, that after he has disposed of even a single copy of it, it may, so far as the common law is concerned, be copied and made use of without restriction by the purchaser, or by any person who properly obtains possession of it. Now, I do not see how you are to estimate differently different kinds of genius; or how you can say that a man who invents a machine of the greatest importance to the State, shall not have any right the moment he disposes of a single copy of that article,

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author's right was held to depend entirely on the Act of Queen Anne: Bell's Com. See *Payne* v. *Anderson*, Mor. Dict. of Dec. vols. 19, 20, p. 8316; and *Cadell* v. *Anderson*, Mor. Dict. of Dec. 19, 20, 834, cited Philips on Copy, 43.

(*a*) 4 H. L. C. 815.

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but that a man whose mind brings forth a certain collection of words, shall be entitled to an absolute property in it in all time, even after he has published it, and let the world at large have it. It appears to me, therefore, and always has so appeared, that there is no such common law right either in the one case or in the other; and I agree with my noble and learned friend who has last addressed your lordships, that the patent law is decidedly against the common law right in this particular instance, because it shows that the inventor had not the right. . . . Now, when we are talking of the right of an author, we must distinguish (as has been already very accurately done) between the mere right to his manuscript, and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work, a right to that composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of for ever copying his own composition, after he has published it to the world, is a totally different thing."

Notwithstanding the admission that the general current of opinion is against the common law right, there can be no doubt that until 1774 when the case of *Donaldson* v. *Becket* was decided, the universal opinion was the other way, and it has the support of some of the ablest judges who ever adorned the bench.

The point came before the court in a subsequent case (*a*) in which Dr. Reade claimed damages for the infringement of his novel, "It is Never too Late to Mend." Mr. Justice Williams in delivering the judgment of the court, said: "The main reliance of the plaintiff was placed on the general ground that even if his statutable right had not been infringed, yet that as an author, he

(*a*) *Reade* v. *Conquest*, 9 C. B. N. S. 768; 9 W. R. 434.

had a copyright at common law, concurrently with, but more extensive than, his right under that statute, and that such common law right had been invaded by the act of the defendant.

"Now, it is not necessary, in order to decide the present case, to consider the question upon which so much learning has been exhausted; viz. whether anterior to the statute of Anne there existed a copyright at common law in published books, more extensive in its nature and duration than the right conferred or expressed by that statute. There can, we think, be no doubt that the weight of authority in the time of Lord Mansfield was in favour of the existence of such a right, although the doctrine has found less favour in modern times; but the continued existence of any such right, after the passing of the statute of Anne, was distinctly denied by the majority of the judges in *Donaldson* v. *Becket* (*a*), and the case itself expressly decides that no such right exists after the expiration of the period prescribed by the Act.

"The question therefore seems to us narrowed to this, viz. whether the statute of Anne having expressly put an end to such a right if it ever existed after the period it prescribes, has yet preserved it during the currency of such period. That it has done so is a proposition which we think it difficult for the plaintiff to maintain. That a common law right of action attaches upon the invasion of the copyright created by statute, was decided in the case of *Beckford* v. *Hood* (*b*), and followed in several other cases, but we are not aware of any case since *Millar* v. *Taylor* (*c*) was overruled by the House of Lords, which decides and recognises that an author of a published work has any other than the statutable copyright therein.

"In the case of *Murray* v. *Elliston* (*d*), (before the 3 & 4 Will. 4, c. 15) Lord Byron's tragedy of 'Marino Faliero,' the copyright of which belonged to the plaintiff, had been

(*a*) 4 Burr. 2408; 2 Bro. P. C. 129.
(*b*) 7 T. R. 620.
(*c*) 4 Burr. 2303.
(*d*) 5 Barn. & Ald. 657.

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abridged by curtailing the dialogues and soliloquies, and publicly represented in that form by the defendant at Drury Lane Theatre for profit, the advertisements describing it as Lord Byron's tragedy. A bill for an injunction having been filed, a case was sent for the opinion of the Court of Queen's Bench, whether the plaintiff could maintain an action against the defendant under the circumstances. The argument for the plaintiff there was put upon the same ground as in the present case, but the court certified that no action would lie, a decision which appears in point against the plaintiff upon this record.

"That much might be urged in favour of the common law right if the question were *res integra* cannot be doubted by any one who has read the learned judgments of the majority of the court in *Millar* v. *Taylor*, and (on the part of my brother Keating and myself, I must be allowed to add) of Mr. Justice Erle in the case of *Jeffreys* v. *Boosey* (*a*). But it was the opinion of a large majority of the judges and law lords in that case, that the time was passed when the question was open to discussion, and that it must now be considered to be settled, that copyright in a published work only exists by statute.

"The learned counsel for the plaintiff in his argument cited a case of *Turner* v. *Robinson* (*b*), in which it was supposed that the Master of the Rolls in Ireland had taken a view favourable to the plaintiff's claim in the present case. Upon looking to the report, however, it will be found that the opinion of that learned judge is directly opposed to such a claim. In that case the plaintiff had applied for an injunction to prevent the defendant from pirating an original picture of 'The Death of Chatterton,' of which the plaintiff was proprietor, by means of stereoscopic apparatus. The Master of the Rolls being of opinion upon the facts that there had been no publication of the picture, and that the imitation was a piracy, granted the injunction, but his opinion upon the

(*a*) 4 H. of Lords Cas. 876.
(*b*) 10 Ir. Ch. Rep. 121; on appeal 510.

point involved in the claim of the plaintiff upon this record was thus expressed:—'It is not necessary,' said that learned judge, 'to go through the authorities collected in the cases to which I have referred (*a*), as I apprehend it is clear that by the common law copyright or protection exists in favour of works of literary art or science to this limited extent only, that while they remain unpublished no person can pirate them, but that after publication they are by common law unprotected. There has been much difference of opinion on the subject among the judges in England, but the law is now considered to be as I have stated it.' The opinion of the Master of the Rolls in Ireland, may therefore be added to the weight of authority in this country in favour of the position, that copyright or protection to the works of literature after they have been published, exists only by statute."

The universities obtain an Act for the protection of their copyrights.

The universities, alarmed at the consequence of the decision in *Donaldson* v. *Becket*, applied for and obtained an Act of Parliament (15 Geo. 3, c. 53) establishing in perpetuity their right to all the copies given or bequeathed them theretofore or which might thereafter be given to or acquired by them (*b*).

The period for which copyright was capable of existing was somewhat varied by the 54 Geo. 3, c. 156, s. 4, which enacted that instead of enduring for fourteen years, and contingently for fourteen more, authors should have the sole liberty of printing and reprinting their works for the term of twenty-eight years, to commence from the day of the first publication of the same; and further, if the author should be living at the expiration of that period, for the residue of his natural life (*c*).

The present Literary Copyright Act, 1842.

All these Acts have been repealed by an Act of Parliament of the present reign—the 5 & 6 Vict. c. 45, on which the law of literary copyright now depends. To

(*a*) *Prince Albert* v. *Strange*, 1 McN. & Gor. 25; 1 Hall & Twells 1; *Jefferys* v. *Boosey*, 4 H. of Lords Cas. 815.

(*b*) *Vide post.*

(*c*) An author whose works had been published more than twenty-eight years before the passing of this statute was held not to be entitled to the copyright for life: *Brooke* v. *Clarke*, 1 B. & Ald. 396.

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Mr. Serjeant Talfourd is due the honour of obtaining this piece of legislative justice. From 1837 to 1842 he used his best endeavours and expended his most eloquent strains to accomplish its passing. In contending for an extension of the period during which protection was afforded to literary works, he bursts forth:—"There is something peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth, sufficiently full of hope and joys to slight its promises. It gives a bounty to haste, and informs the laborious student, who would wear away his strength to complete some work which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the moment it is most needed; and when the benignity of nature would extract from her last calamity a means of support and comfort to the survivors—at the moment when his name is invested with the solemn interest of the grave—when his eccentricities or frailties excite a smile or a shrug no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country—your law declares that his works shall become your property, and you requite him by seizing the patrimony of his children."

CHAPTER II.

WHAT MAY BE THE SUBJECT OF COPYRIGHT.

The subject of copyright.

THERE can be no copyright in an intellectual creation however defined in the author's mind, unless embodied in written or spoken language, then only can it possess the attributes of property.

The copyright is not in the form of words which are expressive of the intellectual creation, but in the intellectual conception which is so expressed.

Work must be original.

In order to acquire a copyright in a work it is necessary that it should be original. If any part of the composition is copied or adopted by the writer from a prior-existing work, of course the title fails *quoad hoc*, as the writer cannot have been the author of what he has borrowed from another. "It is difficult," says Mr. Curtis (*a*), "to lay down any legal definition of originality in a literary composition that may be resorted to as a universal test. Many intellectual productions present no more difficulty upon the question of their originality than some inventions, or discoveries. The poems of the great masters in every language, and a vast body of other writings, however freely their authors may have used the thoughts of others, are at once seen to be just as original in a legal as they are in a critical sense. But in every species of composition, in all literatures, there is of necessity a constant reproduction of what is old, mixed with more or less that is new, peculiar, and original. There are also large classes of works the materials of which are common to all

(*a*) 'Copyright,' chap. 5.

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writers, existing in nature, art, science, philosophy, history, statistics, &c., where there must be considerable resemblances, however independently of each other the different authors may have written. Over this vast field it is impossible to erect an unvarying general rule, which can be fitted to all cases and capable of determining whether a particular work exhibits the degree of originality necessary to a valid copyright. The laws which protect literary property are designed for every species of composition, from the great productions of genius that are to delight and instruct mankind for ages, to the humble compilation that is to teach children the art of numbers for a few years and then to disappear for ever.

"Hence these laws must be so administered that every literary labourer shall find in them an adequate protection to whatever he can show to be the product of his own labour. Something he must show to have been produced by himself; whether it be a purely original thought or principle unpublished before, or a new combination of old thoughts, and ideas, and sentiments, or a new application or use of known and common materials, or a collection, the result of his industry and skill. In whatever way he claims the exclusive privilege accorded by these laws, he must show something which the law can fix upon as the product of his, and not another's, labour. But in order that the law should do this ample justice, in the great variety of claimants, it is necessary that its rules should be capable of adaptation to the objects of their labours. They must include in their range everything that can be justly claimed as the peculiar product of individual efforts; otherwise they would exclude from the benefit of literary property objects which are as clearly the product of individual labour as the most original thoughts ever written, namely, new and important combinations and arrangements or collections of materials known and common to all mankind."

Copyright may exist in a

The law does not require that the subject of a book should be new, but that the method of treating should

have some degree of originality about it (*a*). Copyright may be claimed by an author of a book who has taken existing materials, from sources common to all writers, and arranged and combined them in a new form, and given them an application unknown before. For in making the selection, arrangement, and combination, he has exercised skill and discretion, and in producing thereby something that is new and useful he is entitled to the exclusive enjoyment of his production.

new arrangement or in novel additions.

Books made and composed in this manner are therefore the proper subjects of copyright; and the author of such a book has as much right in his plan, arrangement, and combination of the materials collected and presented, as he has in his thoughts, sentiments, reflections and opinions, or in the modes in which they are therein expressed and illustrated; but he cannot prevent others from using the old material employed in such combination for a different purpose (*b*).

In the case of 'Gray's Poems,' which had been for many years published and were afterwards collected by a Mr. Mason, and reprinted with the addition of several new poems, the Lord Chancellor granted an injunction against a defendant who had copied the whole, though the plaintiff had but a copyright in the additions (*c*).

'Gray's Poems.'

But where the plaintiff had published a book of roads of Great Britain, comprising Patterson's book, to the copyright of which the plaintiff was not entitled, with improvements and additions obtained by actual survey and otherwise, the court refused an injunction to restrain a publication of an edition of Patterson comprising the plaintiff's improvements and additions. The Lord Chan-

'Patterson's Road Book.'

(*a*) *Cary* v. *Longman*, 1 East, 358; *Sayre* v. *Moore*, *ibid.* 361; *Tonson* v. *Walker*, 3 Swans. 672; *Tonson* v. *Collins*, 1 W. Bl. 321; *Cary* v. *Faden*, 5 Ves. 24; *Motte* v. *Falkner*, cited 1 W. Bl. 331; *King* v. *Reed*, 8 Ves. 223, n.; *Hogg* v. *Kirby*, 8 Ves. 215; *Longman* v. *Winchester*, 16 Ves. 269; *Lewis* v. *Fullarton*, 2 Beav. 6; *Leader* v. *Purday*, 7 C. B. 4; *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1; *Jarrold* v. *Houlston*, 3 K. & J. 708; *Emerson* v. *Davies*, 3 Story (Amer.) 768; *Atwill* v. *Ferrett*, 2 Blatch. (Amer.) 46; *Bartlett* v. *Crittenden*, 5 McLean (Amer.) 32. As to musical compositions see *Reed* v. *Carusi*, 8 Law Rep. O.S. (Amer.) 411.

(*b*) Clifford, J., *Lawrence* v. *Dana* 2 Am. L. T. R. (N.S.) 423.

(*c*) *Mason* v. *Murray*, cited 1 East, 360.

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cellor asked what right had the plaintiff to the original work, and said that if he were to do strict justice he should order the defendants to take out of their book all they had taken from the plaintiff, and, reciprocally, the plaintiff to take out of his all he had taken from Patterson (*a*).

Accounts of natural curiosities, &c.

If a person compiles an account of natural curiosities or of works of art, or of mere matters of statistical or geographical information, his own description may be the subject of copyright (*b*). It is equally competent, however, for any person to compile and publish a similar work; but it must be made substantially new and original, like the first work, by resort to the original sources, and must not be simply a copy or adaptation from the other, under the impression that the subject is common (*c*).

(*a*) *Cary* v. *Faden*, 5 Ves. 24.

(*b*) In like manner, the Court of Cassation, in France, decided that a *compilation* may be the subject of copyright, under the law of July 19, 1793. The book was a devotional work, consisting of extracts from the devotional writings of eminent churchmen, arranged in a particular manner, with reference to the festivals of the Church. The correctional tribunal at Lyons decided that the law of July 19, 1793, extended the privileges of authorship only to those who can strictly be called authors—to those who could claim the first conception of a work of literature or art—and not to one who had only copied from the works of others. They held that the compiler of this book, had only copied passages from the works of others, with slight verbal alterations and additions, and that neither these nor the plan and arrangement of the book gave it the character of a new work, because the greater part of it, which was copied, and was therefore *publici juris*, drew to itself the lesser part, which was really new, and attached to it the same condition of publicity. From this decree the proprietor appealed to the Court of Cassation: and M. Merlin, arguing against the decree, contended that the law applied not merely to works the fruit of the conceptions of genius, but also to the productions of intelligence; and that the decree confounded a compilation which is the fruit of taste, intelligence, and exquisite and ingenious combination and arrangement, with a compilation which implied nothing but an expenditure of time and research, and an indefatigable patience in copying word for word. He maintained that under this decree the Pandects of Pothier would be no subject of property, but would be open to the first occupant. The court held that the law extends to selections, compilations, and other works of that nature, when they require in their execution, discernment, taste, learning, and intelligent labour; when, in short, instead of being simply copies from one or more other books, they are at the same time the product of conceptions foreign and of conceptions peculiar to the author, in the union of which the matter receives a new form and a new character. The work in question possessed these characteristics, and the decree of the court of first instance was therefore annulled: Merlin, Rep. de Jurisp. tit. Contrefaçon, tom 3, pp. 701, 708, cited Curtis on Copyright, p. 184.

(*c*) *Hogg* v. *Kirby*, 8 Ves. 215; *Hotten* v. *Arthur*, 1 H. & M. 603; 32 L. J. (Ch.) 771; 11 W. R. 931; 9 L. T. (N.S.) 199; and in a Scotch case it was

If a man makes an actual survey of certain roads, and depicts such roads on a map, though his map might, and probably would, correspond with many which had previously been published, it would be hard to say that it was not a new work. In such a case it is not a question of the mind, like the 'Essay on the Human Understanding;' it lies *in medio*; every man with eyes can trace it, and the whole merit depends upon the accuracy of the observation; every description will therefore be in a great measure original (*a*). If this be so, every edition will be a new work if it differs as much from the last edition as it does from the last precedent work; either all are original works or none of them. It is an extremely difficult thing to establish identity in a map or a mere list of distances; but there may be originality in casting an index, or pointing out a ready method of finding a place in a map (*b*).

Receipt books.

The composing receipts or arranging them in a book will give a copyright to the compiler; but the mere collecting them and handing them over to a publisher will not (*c*); nor will the mere copying that which is public property, for there is nothing in such case to represent authorship on the part of the editor. However, if there be some new arrangement or classification of the subject, or the copy be at all varied, then a copyright may exist in it (*d*), provided the variation be not merely colourable (*e*).

Similitude between maps.

Thus, where the defendant had used four charts published that the directors of the Customs Annuity and Benevolent Fund have a copyright or right of property in the publication 'The Clyde Bill of Entry and Shipping List,' entitling them to protection against piracy: *Walford* v. *Johnston*, 3rd June, 1846; 20 Sess. Cass. 1160. See *Maclean* v. *Moody*, 23 June, 1858, 20 Sess. Cas. 1154.

(*a*) See Lord Jeffrey's observations in *Alexander* v. *Mackenzie*, 9 Sess. Cass. (N.S.) 758; *Blunt* v. *Patten*, 2 Paine (Amer.) 393.

(*b*) *Carnan* v. *Bowles*, 2 Bro. C. C. 80; *Taylor* v. *Bayne*, Mor. Dict. of Dec. in Ct. Sess. vols. 19, 20, 8308; *ibid.* App. pt. 1, 7; *Alexander* v. *Mackenzie*, *supra*.

(*c*) *Rundal* v. *Murray*, Jac. 314, *per* Lord Eldon; *Matthewson* v. *Stockdale*, 12 Ves. 270.

(*d*) *Newton* v. *Cowrie*, 4 Bing. 234.

(*e*) *Matthewson* v. *Stockdale*, *supra*; *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1.

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lished by the plaintiff in making one large map, but there were very important differences between them, much in favour of the defendant's, and the evidence showed the plaintiff's charts to be founded on a wrong principle, Lord Mansfield left it to the jury to say whether the alteration was colourable or not. "There must be such a similitude," said he, "as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of different prints; no doubt different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart may take advantage of all prior publications." "You are told, that there are various and very material alterations—the chart of the plaintiff is upon a wrong principle, inapplicable to navigation—the defendant, therefore, has been correcting errors, and not servilely copying. If you think so, you will find for the defendant; if you think it is a mere servile imitation, and pirated from the other, you will find for the plaintiff" (*a*). And in *Matthewson* v. *Stockdale* (*b*) Lord Eldon said, "I admit that no man can monopolize such subjects as the English Channel, the Island of St. Domingo, or the events of the world; and every man may take what is useful from the original work, improve, add, and give to the public the whole, comprising the original work, with the additions and improvements" (*c*).

Component parts of a compilation not protected apart from the arrangement.

Protection is not given to the component parts of a compilation independently of their arrangement and combination. Of the component parts the compiler is not the author, and he could not acquire an exclusive right to that which is common to all, neither can the arrangement or combination apart from the materials arranged or combined be the subject of protection (*d*). The copyright vests in

(*a*) *Sayre* v. *Moore*, 1 East, 361, n.

(*b*) 12 Ves. 275; *Wilkins* v. *Aikins*, 17 Ves. 422.

(*c*) And see Sir L. Shadwell in *Martin* v. *Wright*, 6 Sim. 298. This case can scarcely be reconciled with subsequent decisions, see *Mawman* v. *Tegg*, 4 Russ. 385, and Mr. Justice Story in *Emerson* v. *Davies*, 2 Story, 768, 797.

(*d*) Thus a subsequent writer cannot be held to have infringed a book

the materials as arranged and combined, not in the form or the substance apart the one from the other, but in the union of the two.

Mathematical tables.

It follows from what has been said above, that a person may have copyright in mathematical tables *actually calculated by himself*, although on a fresh calculation the same tables would result from the same *data* and the same principles, and although they may have previously been published before his appeared (*a*).

Selections of poems, &c.

Selections of poems or prose compositions, and collections of proverbs, maxims, quotations, hymns, &c., may be the subjects of copyright.

Copyright in private letters.

The copyright of private letters forming literary compositions is in the composer, and not in the receiver, who has only a special property in them; "possibly the property of the paper may belong to him, but this does not give a licence to any person whatever to publish them to the world, for at most the receiver has but a joint property with the writer" (*b*). The right of the writer of the letter to prevent its publication is not founded on considerations of policy or social ethics, but on the principle of property. "The question will be," said Lord Eldon, "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

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where he has not borrowed any of the materials of which his book is composed, but has simply adopted the same arrangement.

(*a*) *Bailey* v. *Taylor*, 3 L. J. 66; 1 Russ. & My. 73.

(*b*) *Per* Lord Hardwicke, *Pope* v. *Carl*, 2 Atk. 342; *Perceval* v. *Phipps*, 2 V. & B. 19; *Forrester* v. *Walker*, 4 Burr. 2331; *Webb* v. *Rose*, *ibid.* 2330; *Macklin* v. *Richardson*, Amb. 694; *Duke of Queensbury* v. *Shebbeare*, 2 Eden, 329; *Millar* v. *Taylor*, 4 Burr. 2303; *Donaldson* v. *Becket*, 2 Bro. P. C. 129; *Oliver* v. *Oliver*, 11 C. B. (N. S.) 139; *Cadell* v. *Stewart*, Mor. Dict. of Dec. vols. 19, 20, App., Lit. Prop. 13; *Palin* v. *Gathercole*, 1 Coll. 565; *Folsom* v. *Marsh*, 2 Story (Amer.) 100; *Boosey* v. *Jeffreys*, 6 Exch. 583, *per* Lord Campbell. See *Hopkinson* v. *Lord Burghley*, L. R. 2 Ch. 447. If the solicitor of a company writes a letter apparently on behalf of the company, he is not entitled to prevent its publication, although he swears it was written in his private capacity: *Howard* v. *Gunn*, 32 Beav. 462.

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interference of the court (*a*)." If a letter by any means gets back into the hands of the sender the receiver is entitled to recover it from him by action. In *Oliver* v. *Oliver* the facts were as follows. The plaintiff and defendant were brothers. The letters for the recovery of which the action was brought, related to family affairs. They were written and sent by the defendant to the plaintiff,—had been given back by the plaintiff to the defendant, and proof was given of a demand and refusal to restore them. There was contradictory evidence as to whether the letters had been given by the plaintiff to the defendant to be kept by him as his own property, or whether they had been merely handed to the defendant as custodian, to be re-delivered to the plaintiff on request. The learned judge told the jury that the receiver of a letter had such a property in the paper as to entitle him to maintain an action against the sender, if, by any means, it got back into his hands; and that it was for them to say whether the letters in question had been given to the defendant that he might retain them as his own property, in which case the defendant would be entitled to their verdict, or whether they were merely deposited with him to take care of them for the plaintiff, in which case the latter would be entitled to the verdict. Erle, C.J., in refusing a rule for a new trial, upheld this direction, and said: "In the case of letters, the paper at least becomes the property of the persons receiving them. Of course it is necessary to distinguish between the property in the paper and the copyright. The former is in the receiver, the latter is in the writer" (*b*).

The letters of Pope (*c*), Swift, and others, and the letters of Lord Chesterfield (*d*), were prevented from a surreptitious and unauthorized publication by injunction, on the ground of copyright in their authors. Lord Hardwicke, in *Pope's Case*, thought it would be extremely

(*a*) *Gee* v. *Pritchard*, 2 Swans. 413.
(*b*) See *Howard* v. *Gunn*, 32 Beav. 462; 2 N. R. 256.
(*c*) 2 Atk. 342.
(*d*) *Thompson* v. *Stanhope*, Amb. 737.

mischievous to draw a distinction between a book of letters, which came out into the world either by the permission of the writer or the receiver of them, and any other learned work. The same objection would, he thought, hold good against sermons which the author may never have intended to be published, but have been obtained from loose papers and brought out after his death.

In the case of the *Earl of Granard* v. *Dunkin* (*a*) the executors of Lady Tyrawley obtained an injunction in the first instance against the defendant publishing letters to Lady Tyrawley from different correspondents, and which he had got possession of by being permitted to reside in her house, and continuing to do so after her death. In 1804 the Court of Session in Scotland interdicted, at the instance of the children, the publication of the manuscript letters of the poet Burns (*b*).

Distinction between commercial or friendly letters and literary compositions.

In the case of *Perceval* v. *Phipps*, though the Vice-Chancellor, Sir Thomas Plumer, held that private letters having the character of literary compositions were within the spirit of the Act protecting literary property, and that by sending a letter the writer did not give the receiver the right to publish it, yet the court would not interfere to restrain the publication of *commercial* or *friendly letters*, except under circumstances (*c*); "for," said he, "though the form of familiar letters might not prevent 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 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

(*a*) 1 Ball & Beattie, 207.

(*b*) *Cadell & Davies* v. *Stewart*, cited 1 Bell's Com. 116, n., cited 2 Kent's Com. 381.

(*c*) 2 V. & B. 19; see *Wetmore* v. *Scoville*, 3 Edw. Ch. (Amer.) 515; *Hoyt* v. *Mackenzie*, 3 Barb. Ch. (Amer.) 320; but see *Woolsey* v. *Judd*, 4 Duer (N. York) 379; and *Eyre* v. *Higbie*, 35 Barb. (N. York) 502.

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extraordinary to describe as a literary work in which the writers have a copyright (*a*).

No such distinction at the present time admitted.

Non nostrum est tantas componere lites; yet this distinction appears to us to have but little foundation, and seems to have existed merely in the imagination of Sir Thomas Plumer. It is true that a court of equity cannot interfere to prevent the publication of private letters simply on the ground that such a publication, without the consent of the writer, as a breach of confidence, and social duty, is injurious to the interests of society; but solely on the ground that the writer has an exclusive property which remains in him, even where the letters have been transmitted to the person to whom they were addressed. A court of equity is not the general guardian of the morals of society. It has not an unlimited authority to enforce the performance or prevent the violation of every moral duty. It would be extravagant to say that it may restrain by an injunction the perpetration of every act which it may judge to be corrupt in its motives or demoralising or dangerous in its tendency. An injunction can never be granted unless it is apparent to the court that the personal legal rights of the party who seeks its aid are in danger of violation, and, as a general rule, that the injury to result to him from such violation, if not prevented, will be irreparable.

Motives why no distinction should be drawn.

The sole foundation is the right which every man has to the exclusive possession and control of the product of his own labour. Why should a writing of inferior composition be precluded from being a subject of property (*b*)?

(*a*) "Another class is the correspondence between friends or relations, upon their private concerns; and it is not necessary here to determine how far such letters falling into the hands of executors, assignees of bankrupts, &c., could be made public in a way that must frequently be very injurious to the feelings of individuals. I do not mean to say that would afford a ground for a Court of Equity to interpose to prevent a breach of that sort of confidence independent of contract and property." *Perceval* v. *Phipps*, 2 V. & B. 19.

(*b*) School books for teaching children are entitled to protection. See *Lennie* v. *Pillans*, 5 Sess. Cas. 2nd series, 416; *Constable & Co.* v. *Brewster*, 3 S. 215 (N. E. 152). So are abstracts and indices of title to land, so long as the compiler retains the ownership of the unpublished manuscript: *Banker* v. *Caldwell*, 3 Min. (Amer.) 94.

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 epistles of a well-known author? The essence of the existence of the property is the labour 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 labour is less in the former than the latter case? Every letter is, in the general and proper acceptation of the term, a literary composition. It is that, and nothing else; and it is so, however defective it may be in sense, grammar, or orthography. Every writing in which words are so arranged as to convey the thoughts of the writer to the mind of the reader is a literary composition; and the definition applies just as certainly to a trivial letter as to an elaborate treatise or a finished poem. Literary compositions differ widely in their merits and value, but not at all in the facts from which they derive their common sense (*a*).

Printing and publishing cannot make a book "literary" which was not so in manuscript; and consequently, the author of a book (for the same doctrine would apply to a book as to a private letter) which may be of a private nature, and not considered as "a literary composition," ought to be excluded from the benefit of the Acts conferring copyright. But surely it is not contended that the copyright of an author should be liable to impeachment and frustration by reason of an inquiry into the merits or value of his work as published.

The author's right of property alone protected by the Court.

The exclusive right which alone a court of equity is bound to protect, and which, from its nature can only be protected by an injunction, is the author's right of property in the words, thoughts, and sentiments which, in their connection, form the written composition—which his

(*a*) 2 Story's Rep., cited *Woolsey* v. *Judd*, 4 Ducr (N. York) 379.

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manuscript embodies and preserves. This composition—whether, as such, it has any value or not, is immaterial—is his work, the product of his own labour, of his hand, and his mind; and it is this fact which gives him the right to say that, without his consent, it shall not be published, and makes it the duty of a court of equity to protect him in the assertion of that right by a permanent injunction. Of this it is a conclusive proof that the right to control the publication of a manuscript remains in the author and his representatives, even when the material property has, with his own consent, been vested in another. The gift of the manuscript, it is settled, unless by an express agreement, carries with it no licence to publish (*a*).

Lord Eldon's opinion of the case of *Perceval* v. *Phipps*.

Lord Eldon intimates in *Gee* v. *Pritchard* (*b*) that he does not understand the Vice-Chancellor, in the case of *Perceval* v. *Phipps*, as denying the property of the writer in the letters, but that he appears to have inferred, from the particular circumstances of that case, that the plaintiff had authorized, and for that reason could not complain of, the publication. "I will not say," he adds, "that there may not be a case of exception, but if there is, the exception must be established on examination of the letters; and I think that it will be extremely difficult to say where that distinction is to be found between private letters of one nature and private letters of another nature."

Mr. Story's opinion.

Mr. Justice Story strongly asserts the propriety of the jurisdiction by injunction for the purpose of restraining the publication of private letters. He thinks the doctrine but sound and just that a court of equity ought to interfere where a letter, from its very nature, as in the case of matters of business, or friendship, or advice, or family or private confidence, imports the implied or necessary intention and duty of privacy and secrecy; or where the publi-

(*a*) *Duke of Queensbury* v. *Shebbeare*, 2 Eden, 329; *Thompson* v. *Stanhope*, Amb. 737.

(*b*) 2 Swans. 418, 426, 427. See *Brandreth* v. *Lance*, 8 Paige's R. (Amer.) 24, 26.

cation would be a violation of *trust* or *confidence* founded in contract, or implied from circumstances (*a*). Cicero has with great force thus spoken of the grossness of such offences against common decency: "*Quis enim unquam, qui paulum modo bonorum consuetudinem nosset, literas, ad se ab amico missas, offensione aliquâ interpositâ, in medium protulit, palamque recitavit? Quid est aliud tollere e vitâ vitæ societatem, tollere amicorum colloquia absentium? Quam multa joca solent esse in epistolis, quæ, prolata si sint, inepta videantur! Quam multa seria, neque tamen ullo modo divulganda!*" (*b*)

Principles on which the determinations of the Court of Session have proceeded.

With these natural feelings on the breach of epistolary confidence the determinations of the Court of Session in Scotland have accorded (*c*); but it must be borne in mind that that court is held to have jurisdiction by interdict to protect, not property only, but reputation from injury, and private feelings from outrage and invasion (*d*).

Ground on which a court of equity will frequently interfere.

Courts of equity will, notwithstanding what we have already intimated, sometimes interfere to stay the publication of letters, on the ground that the publication is a *breach of contract* or *confidence;* and *à fortiori*, when they are intended to be made a source of *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.

Thus, upon the principle of *breach of contract*, an injunction was granted to prevent the 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

(*a*) Story's Com. on Eq. Jur. ss. 947–949.

(*b*) Cic. *Orat. Philipp.* ii. c. 4. See Sir S. Romilly, 2 Swans. 419.

(*c*) So it was held in *Dodsley* v. *M'Farquhar*, Feb. 27, 1775, relative to the publication of Lord Chesterfield's Letters: Mor. Dict. of Dec., Lit. Prop., App. 1, 5; Br. Sup. 509; and again more solemnly in *Cadell and Davies* v. *Stewart*, June 1, 1804, Mor. Dict. of Dec., Lit. Prop., App. 4. *Ibid.* But see, 5 Pat. 493. Here letters written by Burns to a lady whom he distinguished by the name of *Clarinda*, had been by her given to Stewart, a bookseller, who published them. The family of Burns, as interested in his literary reputation, were found entitled to an interdict: Bell's Com.

(*d*) Bell's Com. b. 2, pt. 2, c. 4.

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publish the letters, but to deliver them up for a valuable consideration (*a*).

Were the court to interfere on any other principle than that already stated, individuals would be deprived of their defence 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 (*b*).

Instances in which the publication of private letters has been permitted.

Accordingly an injunction obtained on account of agency and confidence was dissolved by the court when the answer denied confidence, and avowed that the defendant's object in publishing them in a newspaper, of which he was the proprietor, was not to obtain profit, but to *vindicate his own character* from the imputation of having published false intelligence publicly cast on him by the plaintiff; for defective and injurious indeed would be the effect of a law permitting not the publication or production of business letters when necessary for one's own defence (*c*).

Not permissible for the purpose of representing that to be true which has been admitted to be false.

The receiver of a letter, however, will not be permitted to publish it for the purpose of representing to the public as true that which he has, in legal proceedings upon that very question, admitted to be false. The case of *Palin* v. *Gathercole* (*d*) elucidated this point. The circumstances of that case were these: Palin, the plaintiff, had written to Gathercole, the defendant, who was the editor of a newspaper, certain letters containing information respecting one Noakes, and Gathercole from these letters drew up an article which he published in his newspaper. Noakes brought an action against him for libel, and he compromised the action, paying Noakes' costs, and apologizing.

(*a*) *Anon.* v. *Eaton*, cited 2 V. & B. 27; *Perceval* v. *Phipps*, 2 V. & B. 27; *Earl of Granard* v. *Dunkin*, 1 Ball. & B. 247: Story's Eq. Jur. vol. 2, ss. 944–950; *Denis* v. *Laclerc*, 1 Martin (Amer.), 297; *Woolsey* v. *Judd*, 4 Duer. (N. York) 379; *Eyre* v. *Higbie*, 35 Barb. (N. York) 502.

(*b*) See Godson on Copy. p. 350.

(*c*) *Folsom* v. *Marsh*, 2 Story (Amer.) 100; see *Howard* v. *Gunn*, 32 Beav. 462.

(*d*) 1 Coll. 565.

Gathercole then claimed of Palin half the costs that he, Gathercole, had so incurred, and Palin refusing to pay them, Gathercole published in his newspaper a statement that the libel upon Noakes was communicated to him, Gathercole, by Palin. Palin thereupon brought an action against Gathercole; and Gathercole pleaded that the matter, however libellous as between Noakes and Gathercole, was matter of which, as between Palin and Gathercole, Palin was the author; but before trial Gathercole submitted to what was, in effect, a general verdict, establishing in substance, as Vice-Chancellor Knight Bruce expressed it in his judgment, that the libel published by Gathercole on Noakes was not a libel which Palin had communicated to Gathercole. Gathercole then proceeded to shew Palin's letters to third persons, upon which Palin filed his bill for an injunction to restrain Gathercole from publishing or showing the letters, and obtained an *ex parte* injunction. The use which Gathercole desired to make of the letters was, it will be observed, to establish the fact that Palin was the author of the libel upon Noakes, the very fact which he had, by submitting to the general verdict in Palin's action, admitted not to exist. Under those circumstances, the court refused to dissolve the injunction, permitting, however, the defendant to exhibit the letters to his solicitors and counsel in the cause.

Communications sent to editors of periodicals.

Communications received from correspondents by editors or proprietors of periodical publications (if sent impliedly or expressly for the purpose of publication) become the property of the person to whom they are directed, and cannot be published by any other person obtaining possession of them (*a*). The editor or proprietor, however, of any such periodical may not publish them if, previous to publication, the writer expresses his desire to withdraw them (*b*); but though the editor may not publish them

(*a*) 8 Ves. 215.

(*b*) *Davis* v. *Miller*, July 28, 1855; 17 Dec. of Ct. of Sess. 2nd Series, 1166. See 1 Jur. (N.S.) pt. 2, 523.

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he is not bound to preserve them for the benefit of the writers, but may destroy them.

What is a publication of private letters?

To make any public use of the production is to publish it. Hence a letter may be published not only by printing it, but also by reading it in public, or by circulating copies of it, though such copies be in manuscript. Any such public use of the letter, without the consent of the writer, is a violation of his rights. But the receiver may, if he wish, destroy the letter as soon as received, and there is nothing to prevent him giving them to another, or reading them to others, or lending them to others to be read, provided such reading or lending does not amount to a publication.

Letters written by one person for or on behalf of another.

Letters written by one person employed by another, and relating to the business affairs of the latter, will rightly be considered as the property of the employer who pays the writer for his services. Thus it has been held that the letters which an officer of an insurance company had written in the discharge of his official duties became the property of the company (*a*). "If the solicitor of an assurance company, established in London," said the Master of the Rolls in the case cited; "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 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

(*a*) *Howard* v. *Gunn*, 32 Beav. 462.

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 Jamieson [the person to whom it was written] 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."

Power of government to publish or withhold letters.

The government has, moreover, a right to publish or to withhold all letters addressed to the public offices (*a*). This exception in favour of the government is not supposed to make such communications common property, to be published by any person who may see fit, without the sanction of the government, nor to take away the property of the writers or their representatives. "In respect to official letters addressed to government," observed Mr. Justice Story in *Folsom* v. *Marsh* (*b*), "or any of its departments, by public officers, so far as the right of the government extends from principles of public policy to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful whether any public officer is at liberty to publish them, at least in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government, to give them publicity, even against the will of the writers. But this is an exception in favour of the government, and stands upon principles allied to, or nearly similar to the right of private individuals, to whom letters are addressed by their agents, to use them, and publish

(*a*) Curtis on Copy. 98.
(*b*) 2 Story (Amer.) 100.

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them, upon fit and justifiable occasions. But assuming the right of the government to publish such official letters and papers, under its own sanction, and for public purposes, I am not prepared to admit that any private persons have a right to publish the same letters and papers without the sanction of the government for their own private profit and advantage. Recently the Duke of Wellington's despatches have, I believe, been published by an able editor, with the consent of the noble duke and under the sanction of the government. It would be a strange thing to say, that a compilation involving so much expense and so much labour to the editor in collecting and arranging the materials, might be pirated and republished by another bookseller, perhaps to the ruin of the original publisher and editor. Before my mind arrives at such a conclusion, I must have clear and positive lights to guide my judgment, or to bind me in point of authority."

Copyright in lectures.

Copyright may be had in lectures. Lectures are generally more or less literary productions—frequently the result of much thought and research. They are continually being published in the form of books and pamphlets—such publications being in many cases of great value, and it would be unjust and impolitic to deprive lecturers or other persons of the power of securing an exclusive right to their addresses, scarcely less so than to deprive authors generally of copyright in their productions. If a lecture has been reduced wholly or partially into writing, the author has a right of property in it; but when a court of equity is called upon to restrain the publication of such a lecture, the writing must be produced, that the court may compare the original composition with the piracy.

The admission of persons to hear such a lecture affords no presumption that the speaker intends to give them a right to publish the information they may acquire. When the lecture is orally delivered it is difficult to say that an injunction can be granted upon the same principle as that upon which an injunction is issued in the case of a literary

composition; because the court must be satisfied that the publication complained of is an invasion of the written work, and this can only be done by comparing the composition with the piracy. It does not, however, follow that because the information communicated by the lecturer is not committed to writing, but orally delivered, it is therefore within the power of the person who hears it to publish it (*a*). On the contrary, Lord Eldon, in *Abernethy* v. *Hutchinson*, observed that he was clearly of opinion that, whatever else might be done with it, the lecture could not be published for profit. When persons are admitted as pupils or otherwise to listen to lectures orally delivered, although they may go to the extent, if desirous and capable, of taking down the whole by means of shorthand, yet they can do that only for the purpose of their own information; they may not publish.

The Lecture Copyright Act, 5 & 6 Will. 4, c. 65.

The right of property in lectures, whether written or oral, has now been confirmed by statute. The Lecture-Copyright Act is the 5 & 6 Will. 4, c. 65. It provides that, from and after the 1st of September, 1835, the author of any lecture, or the person to whom he has sold or otherwise conveyed the copy 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; 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, 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 has 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, shall forfeit such printed or otherwise copied lecture or

(*a*) *Per* Lord Eldon, in *Abernethy* v. *Hutchinson*, 3 L. J. (Ch.) 209.

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parts thereof, 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 the 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. The 2nd section provides that any printer or publisher of any newspaper who shall without such leave as aforesaid print and publish in such newspaper any lecture shall be deemed to be a person printing and publishing without leave within the provisions of the Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing. The 3rd section declares that no person, allowed for a certain fee and reward or otherwise to attend and be present at any lecture delivered at any place, shall be deemed and taken to be licensed, or to have leave to print, copy, and publish such lecture on account merely of having permission to attend the delivery.

Lectures not within the meaning of the Act.

Lectures published by authority, since the publication of which the period of copyright therein given by 8 Anne, c. 19, and 54 Geo. 3, c. 156, has expired, and lectures printed and published before September, 1835, are excluded from the protection afforded by the above Act; likewise lectures of the delivery of which notice in writing shall not have been given two days previously to two justices living within five miles of the place of delivery (*a*); and those 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.

In consequence of these provisions few lectures are protected by this Act, for seldom is the requisite notice given. And, under this latter clause, it would appear

(*a*) The notice must be given every time such lecture is delivered, and therefore the omission in any one instance to give the requisite notice would render any person at liberty to obtain a copy, which the lecturer would be unable to prevent his publishing.

that sermons delivered by clergymen of the Established Church, in endowed places of public worship, are deemed public property.

It is questionable whether copyright applies under this Act to lectures merely orally delivered even when reduced previously into writing; but with regard to speeches properly so called, or speeches not reduced into writing, there can be no doubt (*a*).

There is nothing in this statute to prevent any person from delivering in public an unpublished lecture without the consent of the author, it only prohibits the printing, copying, publishing, and exposing for sale, though the delivery would seem to be an infringement of the author's common law rights in the manuscript (*b*).

In France, the *cour royale* of Paris had before it in 1828 the interesting question whether, when a course of oral lectures is merely the reproduction of a work previously published by the professor, a person who publishes the lectures from notes taken by a stenographer, can be made responsible for a piracy to the publisher of the work thus reproduced, the decision of the question was given in the affirmative (*c*).

Alterations suggested by Copyright Commissioners.

The alterations in the law suggested by the recent report of the Royal Commissioners on Copyright are set forth in the 84th and three following paragraphs.

They are of opinion that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition as to re-delivery they consider should not extend to

(*a*) See 'Edinburgh Review,' October, 1854.

(*b*) In an American case, *Keene* v. *Kimball*, 16 Gray (82 Mass.) 551. Hoar, J., said: "The student who attends a medical lecture may have a perfect right to remember as much as he can, and afterwards to use the information thus acquired in his own medical practice, or to communicate it to students or classes of his own, without involving the right to commit the lecture to writing, for the purpose of subsequent publication in print or by oral delivery. So any one of the audience at a concert or opera may play a tune which his ears have enabled him to catch, or sing a song which he may carry away in his memory, for his own entertainment or that of others, for compensation or gratuitously, while he would have no right to copy or publish the musical composition."

(*c*) See Renouard, tom. 2, p. 146, cited Curtis on Copy. 103.

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lectures which have been printed and published. They also recommended that the term of copyright in lectures should be the same as in books, namely, the life of the author and thirty years after his death.

"In the course of our inquiry," they report, "it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control, so as to prevent such publication if he wishes to do so; and we, therefore, suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

"By the present law, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known, and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest that this provision should be omitted from any future law.

"We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired."

The commissioners also thought that in case of piracy either by publication or re-delivery without the author's consent, there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication

or re-delivery. If the piracy were committed by printed publication they were of opinion that the author should also have power to seize copies (*a*).

Copyright in abridgments.

Copyright may likewise exist in a genuine and just abridgment, for it is said that an abridgment may with great propriety be called a new book (*b*).

What constitutes an abridgment.

To constitute a true and equitable abridgment the entire work must be preserved in its precise import and exact meaning, and then the act of abridgment is an exertion of the understanding, employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive, and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size of a work by copying some of its parts and omitting others, confers no title to authorship; and the result will not be an abridgment entitled to protection. To shorten a work by leaving out the unimportant parts is not to abridge it in a legal sense. To abridge in the legal sense of the word is to preserve the substance, the essence of the work, in language suited to such a purpose; language substantially different from that of the original. To make such an abridgment requires the exercise of the mind; labour, skill, and judgment are brought into play, and the result is not merely copying.

In the case known as *Newbery's* (*c*), Lord Chancellor Apsley, having spent some hours in consultation with Mr. Justice Blackstone, decided that an abridgment, where 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. It requires both invention and judgment, and displays frequently a deal

(*a*) Para. 181.
(*b*) *Bell* v. *Walker*, 1 Bro. C. C. 451. An abstract also was held no piracy: *Dodsley* v. *Kinnersley*, Amb. 403; 4 Esp. 168; 1 Camp. 94.
(*c*) Lofft. 775; *Dodsley* v. *Kinnersley*, *supra*; *Butterworth* v. *Robinson*, 5 Ves. 709.

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of learning. Lord Hardwicke thus states the rule (*a*):—"Where books are colourably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment; for abridgments 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 shewn in them, and in many cases are extremely useful (*b*), though in some instances, prejudicial, by mistaking and curtailing the sense of an author."

On these considerations the Master of the Rolls refused an injunction to restrain the publication of an abridgment of Dr. Johnson's 'Rasselas,' it appearing that not one-tenth part of the first volume had been abstracted, and that the injury alleged to be sustained by the author arose from the abridgment containing the narrative of the tale, and not the moral reflections (*c*).

Considerations in discriminating a *bonâ fide* abridgment from a piracy.

The question in such a case must be compounded of various ingredients: whether it be a *bonâ fide* abridgment, or only an evasion by the omission of some important parts, whether it will in its present form prejudice or supersede the original work, whether it will be adapted to the same class of readers, and many other considerations of the same sort, which may enter as elements, in ascertaining whether there has been a piracy or not. Although the doctrine is often laid down in the books, that an abridgment is not piracy of the original copyright, yet this proposition must be received with many qualifications.

Impropriety of the rule respecting abridgments.

The rule appears very unreasonable, and has been the subject of much criticism by late writers. Why should an abridgment, tending to injure the reputation, and to lessen the profits of the author, not be considered an invasion

(*a*) *Gyles* v. *Wilcox*, 2 Atk. 141. See also the case of *Read* v. *Hodges*, referred to in *Tonson* v. *Walker*, 3 Swans. 672, *per* Lord Eldon; *Bell* v. *Walker*, 1 Bro. C. C. 451; *Tinsley* v. *Lacy*, 11 W. R. 877; 1 H. & M. 747.

(*b*) See *Hodges* v. *Walsh*, 2 Ir. Eq. Rep. 266.

(*c*) Amb. 403.

of his property? (*a*). In many cases the question may naturally turn upon the point, not so much of the quantity as of the value of the selected materials. As was significantly said on one occasion: *Non numerantur; ponderantur.* The quintessence of a work may be practically extracted so as to leave a mere *caput mortuum*, by a selection of all the important passages in a comparatively moderate space.

In a late case (*b*), the Vice-Chancellor, Sir W. P. Wood, considered that the court had gone far enough in the sanction it had given to abridgments, and that it was difficult to acquiesce in the reason sometimes given, that a compiler of an abridgment is a benefactor to mankind, by assisting in the diffusion of knowledge.

Quantum but little criterion of piracy.

In the case of *Bramwell* v. *Halcomb* (*c*) it was held that the question whether one author has made a piratical use of another's work does not necessarily depend upon the quantity of that work which he has quoted, or introduced into his own book. On that occasion Lord Cottenham said, "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, which is looked at. It is useless to look to any particular case about quantity."

The general principle is, that the proper object of the copyright is the *peculiar expression of the author's ideas*, meaning by this, the structure of the work, the sequence of his remarks, and, above all, his language; and that this peculiarity is always distinguishable, as, by a law of nature, every human production is stamped with the idiosyncrasy of the author's mind. If these views be correct, it follows that any abridgment of the work, in the original author's language, is an infringement of his right; and

(*a*) Lord Campbell's 'Lives of the Chancellors,' vol. 5, chap. 131.
(*b*) *Tinsley* v. *Lacy*, 1 H. & M. 747, 754.
(*c*) 3 My. & Cr. 737; *Bell* v. *Whitehead*, 3 Jur. 68; *Sweet* v. *Shaw*, 3 Jur. 217; *Saunders* v. *Smith*, 3 My. & Cr. 711, 728; *Wheaton* v. *Peters*, 8 Peters. (Amer.) 591; *Gray* v. *Russell*, 1 Story (Amer.) 11; *Mawman* v. *Tegg*, 2 Russ. 385; *Butterworth* v. *Robinson*, 5 Ves. 709.

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indeed any quotation will be, *pro tanto*, a violation, unless excused on the ground of its inconsiderable extent, or on the presumed assent of the author, which, in works of criticism, might be justly implied (*a*).

Copyright in digests.

Copyright may also be had in a digest. A digest, or a compilation differs from an abridgment. A digest or a compilation consists of selected extracts from different authors; an abridgment is a condensation 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 to be a faithful abridgment. The former infringes the copyright if the matter transcribed when published impairs the value of the original book, while a fair abridgment, though it may injure the original, is, as we have seen, lawful.

Head-notes of reports.

The digest of a report, usually included in and known as the head-note, is a species of property which will receive protection. "The head-note, or the side or marginal note of a report," said Mr. Justice Crowder, in *Sweet* v.

(*a*) 2 Kent's Com. 382, note; Curtis on Copy. 252. On the subject of abridgments the Royal Commissioners on Copyright in their recent report say: "Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the legislature, could govern all cases that occur. There is one form of user of the works of others, however, to which we wish specially to draw attention as being capable of some legislative control in a direction we think desirable. We refer to abridgments.

"At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author.

"We think this should be prevented, and upon the whole we recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright." Par. 67-69.

Benning (*a*), "is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principles of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within the same principle or rule of law or of practice." It may indeed be considered, perhaps, as in itself a species of brief and condensed report, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgment at length; and in the other, an abstract of the decision, conveying the principle upon which it is founded and the pith and substance of the case. But whether thus regarded, or viewed in the manner adopted by Mr. Justice Maule, in the above cited case, namely, in the nature of an independent deduction from the report, and a succinct statement of the legal principles involved, or of the doctrine of law established by the decision, there is a sufficient exertion of mental power in the formation to render it substantially a subject of copyright.

Selections from reports and judgments.

The right of selecting passages from books of reports (including entire judgments) in treatises upon particular subjects is not disputed. Had it been otherwise decided, the greater part of our law libraries would be much thinned and attenuated, and we should be deprived of many valuable works; for a considerable portion consists of mere transcripts from books of report (*b*).

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? What would become of the modern treatises upon astronomy, mathematics, natural philosophy and chemistry? What would

(*a*) 16 C. B. 491; 1 Jur. (N.S.) 543. *Vide D'Almaine* v. *Boosey*, 1 Y. & C. 288, 301; 4 L. J. (N.S.) Ch. 21; but there Lord Lyndhurst referred to digests such as Viner's 'Abridgment' and Comyns' 'Digest.'

(*b*) See *Butterworth* v. *Robinson*, 5 Ves. 709; Evans' 'Statutes,' 2nd ed. vol. 2, p. 25.

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become of the treatises in our own profession, the materials of which, if the work 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 deemed that it was not a work which, in the highest sense, might be considered an original work, since never before were the same materials so admirably combined and exquisitely wrought out, with a judgment, skill and taste absolutely unrivalled (*a*).

Copyright in forms or precedents.

In a Scotch case the validity of the complainant's copyright in a collection of legal forms or "styles" was questioned, on the ground that in preparing them he had simply followed the directions prescribed by the statute; and that under the circumstances the forms prepared by two or more persons must be substantially the same. The Court held that if the statute had contained the forms themselves and the complainant had simply copied them, his copyright would have failed through want of originality. But, as the statute gave simply directions, it was an act of authorship to prepare the forms pursuant to such directions (*b*). Lord Fullerton in the case referred to observed: "It is said that owing to the particular nature of the styles they cannot be the subject of copyright, because they are drawn up precisely after the form prescribed in the statute, and because any styles relating to the same subjects as those given by the complainer must, if the directions of the statutes and phraseology of conveyancers were used, be expressed in the same manner exactly as those proposed by the complainer. Now it may be quite true that if the statute had supplied certain forms by which the operations intended to be thereby regulated were to be done, if the statute had contained, as such statutes sometimes do, an

(*a*) Story, J., in *Gray* v. *Russell*, 1 Story (Amer.) 17.
(*b*) *Alexander* v. *Mackenzie*, 9 Sc. Scss. Cas. 2nd Scr. 748.

appendix exhibiting certain schedules of forms which it was only necessary for any one to copy in order to avail himself of the provisions of the Act, then I hold that the reprinting of such forms in a separate publication would not give him a copyright in these forms. But the case here is different, for the statute only gives very general directions and descriptions of the styles that are to be used. The schedules are very general in their terms, and it is no doubt of great practical importance to suit these general directions to each case falling under the statute as it may arise. The preparing and adjusting of such writings require much care and exertion of mind. As to invention, that is a different thing: it does not require the exercise of original or creative genius, but it requires industry and knowledge."

As to whether copyright may exist in a work not claiming originality in the doctrines contained therein.

The question has been raised whether there can be copyright in a work not claiming originality in the doctrines contained therein (*a*). And this argument was put forth in the case of *Jarrold* v. *Houlston* (*b*) respecting Dr. Brewer's 'Guide to Science,' in which work the author does not profess to have made any discovery in science, or to do more than to provide for the young and other persons who have not been in the habit of making observations for themselves, information by which some of the ordinary phenomena of common life may be explained to them on scientific principles, and that they may themselves be led to observe and to reflect upon those wonderful laws of nature, by which the most ordinary phenomena are governed. And it was determined that, if any one by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those ques-

(*a*) As to the amount of originality required in a musical composition in America, see *Jollie* v. *Jaques*, 1 Blatch. (Amer.) 626. It has been there held that a good title to copyright is acquired by representing on a map boundaries of townships which are fixed by statute: *Farmer* v. *Calvert Lithographic Engraving and Map Publishing Co.*, 5 Am. L. T. R. 168.

(*b*) 3 K. &. J. 708; 3 Jur. (N.S.) 1051.

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tions, and explanations of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of the questions so collected, with such answers, under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected.

No copyright in that which has no present existence.

Copyright can only exist in respect of some already published or some composed and not yet published literary production. Therefore there can be no copyright in the prospective series of a newspaper. Copyright may attach upon each successive publication; but that which has no present existence as a composition cannot be the subject of this species of property (*a*).

The mere declaration of the intention to publish any articles bearing a particular name or mark, even though made public by registration at Stationers' Hall, cannot create a right to the exclusive use of such name or mark. So in the cases of *Maxwell* v. *Hogg*, and *Hogg* v. *Maxwell*. Messrs. Hogg, in 1863, registered an intended new magazine to be called 'Belgravia.' In 1866, such magazine not having appeared, Mr. Maxwell, in ignorance of what Messrs. Hogg had done, projected a magazine with the same name, and incurred considerable expense in preparing it, and extensively advertising it in August and September as about to appear in October. Messrs. Hogg knowing of this, made hasty preparations for bringing out their own magazine before that of Mr. Maxwell could appear, and in the meantime accepted an order from Mr. Maxwell for advertising his (Mr. Maxwell's) magazine on the covers of their own publications, and the first day on which they informed Mr. Maxwell that they objected to his publishing a magazine under that name was the 25th of September, on which day the first number of Messrs. Hogg's magazine appeared. Mr. Maxwell's magazine appeared in October. Under these circum-

(*a*) *Platt* v. *Walter*, 17 L. T. (N.S.) 157.

stances, on a bill filed by Mr. Maxwell, it was held, that Mr. Maxwell's advertisements and expenditure did not give him any exclusive right to the use of the name 'Belgravia,' and that he could not restrain Messrs. Hogg from publishing a magazine under the same name, the first number of which appeared before Mr. Maxwell had published his; and on a bill filed by Messrs. Hogg, that the registration by them of the title of an intended publication could not confer upon them a copyright in that name, and that, in the circumstances of the case, they had not acquired any right to restrain Mr. Maxwell from using the name as being Messrs. Hogg's trade-mark (*a*).

In *Maxwell* v. *Hogg*, Lord Cairns seemed to think that there could not be what is termed copyright in a single word, although the word were used as a fitting title for a book. He considered that the copyright contemplated by the Act must be not in a single word, but in some words in the shape of a volume or part of a volume, which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work (*b*). But his lordship was dealing with a case in which the defendant had nothing but the name, publication not having been effected.

Copyright in a title.

The title of a periodical or newspaper was held under the former statutes to be a proper subject of copyright, as characterising the particular publication (*c*); that it cannot therefore be assumed by another with impunity although a similar title distinguishable may be assumed (*d*). Even if innocently assumed, and unconsciously made use

(*a*) *Maxwell* v. *Hogg*; *Hogg* v. *Maxwell*, 15 L. T. 204; 15 W. R. 84, 464; 36 L. J. (Ch.) 433; Law Rep. 2 Ch. Ap. 307, 12 Jur. (N.S.) 916.

(*b*) See *Maxwell* v. *Hogg*, L. R. 2 Ch. 307.

(*c*) *Hogg* v. *Kirby*, 8 Ves. 215; *Keene* v. *Harris*, cited 17 Ves. 338; *Constable & Co.* v. *Brewster*, 3 Sess. Cas. 215 (N. E. 152). *Prowett* v. *Mortimer*, 2 Jur. (N.S.) 414; *Ingram* v. *Stiff*, 5 Jur. (N.S.) 947; see *Bradbury* v. *Dickens*, 27 Beav. 53; *Correspondent Newspaper Co.* v. *Saunders*, 11 Jur. (N.S.) 540; 13 W. R. 804; *Kelly* v. *Hutton*, L. R. 3 Ch. Ap. 703; *Clowes* v. *Hogg*, W. N. (1870) 268; and see *Bradbury* v. *Beeton*, W. N. (1869) 221; 18 W. R. 33.

(*d*) 8 Ves. 222. Where assumed for the purpose of deceiving the public, see *Bell* v. *Locke*, 8 Paige R. (Amer.) 75; and see *Cruttwell* v. *Lye*, 17 Ves. 335.

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of, to the injury of another, the owner is entitled to protection (*a*). On the point nothing is said in the Copyright Act, 1842, unless the words "sheet of letterpress" or "part of a volume," be held to include a title; yet there is, at least, nothing to sanction any alteration of the grounds upon which the former judgments stood (*b*).

The titles to books, newspapers, and periodicals, though often coming before the courts on the question of copyright therein, seem not to be in themselves the proper subjects of this right. A title is no doubt, in one sense, a part of the work itself, for one cannot read a book or turn over the title page without finding that the title is at the commencement of the work and sometimes on every page, yet it is rather the index to the whole than part thereof —and certainly when registered before the publication, or perhaps even before the creation of the work whereof it is intended to be the title, could hardly be deemed to be part of the same; and if it were, then as copyright could not subsist in that which has no actual existence, the right to the title would fail on this ground, except it could be argued that the title being part of the work, and the only part in existence, could be registered as having an intrinsic value of its own.

However intimately connected with the copyright in the work to which it is prefixed, the title is more properly a trade-mark (*c*). It is not protected on the ground of any intrinsic merit or value possessed by itself, but, like other trade-marks, is protected for the purpose of insuring the genuineness of the article to which it is attached.

There can be no doubt that there is in a title a right

(*a*) *Clement* v. *Maddick*, 1 Giff. (Ch.) 98; 5 Jur. (N.S.) 592.

(*b*) Bell's Com. 6th ed. 549.

(*c*) Lord Cottenham in *Spottiswoode* v. *Clarke*, 2 Ph. 154, seems to have thought that the title-page of an almanack was quite a different thing from a trade-mark, but his reasoning is not convincing, and hardly capable of being sustained in view of subsequent decisions. And in *Mack* v. *Petter*, L R. 14 Eq. 431, 20 W. R. 964, Lord Romilly used the word "copyright" as applied to the title of a book; "but it is impossible," says V.-C. Bacon in *Kelly* v. *Byles*, 40 L. T. (N.S.) 633, "to read his judgment and to doubt that the injunction he granted was to restrain the defendant's colourable imitation of the actual book which the plaintiff had first sent into the world."

capable of protection, and in the case of 'Bell's Life' this right was asserted by Vice-Chancellor Stuart to be a right of property (*a*).

Titles infringed.

The registered proprietors of 'Bell's Life in London and Sporting Chronicle,' published weekly, at the price of 5*d*., filed a bill against the proprietors and publishers of a new newspaper, called 'The Penny Bell's Life and Sporting News,' which was published at the price of a penny. The evidence produced shewed that from the similarity of the two names mistakes had occurred, and were likely to occur, on the part of the public, and that inquiries had been made at the office of 'Bell's Life in London,' for 'The Penny Bell's Life.' On motion on behalf of the plaintiffs, the Court granted an injunction to restrain the defendants from the use of the words 'Bell's Life' in the title of their newspaper (*b*). So also in *Ingram* v. *Stiff* (*c*) an injunction was granted by Sir W. P. Wood, V.C., to restrain the defendant from printing, publishing, or selling any newspaper or other periodical under the name of 'The Daily London Journal,' or under any other name or style of which the words 'London Journal' should form part, and from doing or committing any act or default which might tend to lessen or diminish the sale or circulation of the plaintiff's periodical called 'The London Journal.' The facts of the case were these: In October 1857, A., being the proprietor of a weekly publication called 'The London Journal,' the price of which was a penny, assigned his copyright and interest therein to B. for value, and entered into a covenant with B. not to publish, either alone, or in partnership with any other person, any weekly periodical of a nature similar to 'The London Journal.' In May 1859, A. issued an advertisement announcing the publication by him on June 1st following of a daily newspaper, to be called 'The Daily London

(*a*) See *Clement* v. *Maddick*, 1 Giff. 98; *Kelly* v. *Hutton*, L. R. 3 Ch. 703; 16 W. R. 1182; *Leather Cloth Company* v. *American Leather Cloth Company*, 12 W. R. 289; 4 De G. J. & S. 137; *Maxwell* v. *Hogg*, L. R. 2 Ch. 307, 15 W. R. 467.

(*b*) *Clement* v. *Maddick*, 1 Giff. (Ch.) 98; 5 Jur. (N.S.) 592.

(*c*) 5 Jur. (N.S.) 947.

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Journal,' which he intended should be sold at a penny. B. thereupon filed a bill against A. for an injunction to restrain A. from publishing, which was granted by the Vice-Chancellor in the terms before referred to. Upon appeal Sir J. L. Knight Bruce, L.J. (*dissentiente* Sir G. J. Turner, L.J.) confirmed the order for an injunction, upon B. undertaking to abide by any order the Court might make as to damages, and to bring an action against B. within one week.

In the case of the *Correspondent Newspaper Company* v. *Saunders* (*a*), where the publishers of 'The Correspondent' newspaper sought to restrain the defendant from publishing another paper under the name of 'The Public Correspondent,' Lord Hatherley, when Vice-Chancellor, after holding that registration of a newspaper was of no avail without actual publication, went on to express a doubt whether in any case registration would protect the title of the paper as being included in the copyright.

And in a later case (*b*) the same judge, when Lord Justice, said that there appeared to him to be nothing analogous to copyright in the name of a newspaper; but that the proprietor had a right to prevent any other person from adopting the same name for any other similar publication.

Where the precisely same title taken.

In the more recent case of *Weldon* v. *Dicks* (*c*) the question as to whether there could be copyright in a title, again came before the court. In the year 1874, the plaintiff, Mr. Weldon, bought the copyright of a portion of a work called 'The Parlour Library,' which was a series of volumes consisting partly of original works, and partly of works which had been previously published. The particular novel, 'Trial and Triumph,' was originally published in 1854, in a separate form in three volumes. It was not an unsuccessful publication, and Mr. Darton, the proprietor of the 'Parlour Library' at that time, arranged

(*a*) 13 W. R. 804; 11 Jur. (N.S.) 540.
(*b*) *Kelly* v. *Hutton*, L. R. 3 Ch. 703; 16 W. R. 1182.
(*c*) 10 Ch. D. 247; 27 W. R. 369.

with the publishers to make it part of that work, and it was published about the year 1860 in the 196th number. In 1876 the copyright in the 'Parlour Library' series was assigned to the plaintiff, and an entry made accordingly at Stationers' Hall. The plaintiff immediately after the assignment to him of the copyright commenced to re-issue the series, and had published a new edition of eleven of the books in such series, and was preparing for publication a new edition of 'Trial and Triumph,' which would shortly be published by him at the price of two shillings. The defendant had recently commenced to issue a series of books and novels under the general title of 'Dick's English Novels,' and he had since the date of the assignment to the plaintiff, published in such series a novel under the title of 'Trial and Triumph,' at the price of sixpence. And the plaintiff claimed an injunction to restrain the defendant from publishing or selling any book or publication under the title 'Trial and Triumph.' It was stated by the defendant that in the year 1873 the Rev. Henry V. Palmer offered him the manuscript of an entirely original work in the form of a novel with the proposed title of 'True to the Core,' but before purchasing the work the defendant discovered that the title 'True to the Core' had already been used as a title of a drama, and he therefore requested the author to choose another title, and 'Trial and Triumph' was then proposed and adopted by the defendant in entire ignorance that it had ever been used by any other person or applied to any other work. The defendant's work was entirely distinct in its plot and subject matter from the plaintiff's book. It also appeared that both before and after the date of the first publication by the plaintiff of his books, more than one book was published by other persons under the same title or one substantially the same. Vice-Chancellor Malins held that the plaintiff was entitled to an injunction.

Where exact title not taken.

But when the exact title is not copied, an injunction will not be granted unless the title and appearance of the defendant's publication are designed to deceive persons

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who are ordinarily intelligent and careful. Thus in a case where the well-known title of 'Punch' was taken, with the addition thereto of 'Judy,' although the court held that the defendant would not be at liberty to use 'Punch' or 'Judy' singly as a title, yet it refused to restrain the use of a title made up of the two words, on the ground that in combination they did not form such a title as to deceive persons of ordinary intelligence. "The defendants," said Vice-Chancellor Malins, "clearly have no right to use a name which is calculated to mislead or deceive the public in purchasing; and if I thought, on the whole, that their journal was calculated to mislead persons of ordinary intelligence (for these are the persons I must consider) I should grant the injunction. Now 'Punch' is well known both in name and appearance, and its price is threepence. Could any one be misled into buying this other paper instead, which has the words 'Punch and Judy,' printed on it in distinct letters with a different frontispiece, and its price a penny? I am clearly of opinion that the mass of mankind would not be so misled"(*a*).

So where the proprietor of the 'Era' newspaper sought to restrain the use of his title with the addition of 'New,' by a rival publication, the Lord Justices reversed the decision of Vice-Chancellor Bacon, and held that there was no ground for granting any injunction. They considered that the real question was this, "Is what appears on the front of the paper calculated to deceive an ordinary purchaser into the belief that the article sold to him is other than what it is, and what it seeks to imitate?"

The law on this subject cannot be considered to be in a satisfactory state, for it is perfectly clear that a publication may be seriously injured by the similarity of name of a rival publication, without the wrappers or general style or appearance being in any way copied. Thousands of copies are purchased through advertisements, and without the purchaser until delivery seeing the subject of his purchase.

It is usually considered that as the injury caused by

(*a*) *Bradbury* v. *Beeton*, 18 W. R. 33.

the infringement is an injury to property, the fraudulent intent is not necessary to prove. This is true so far as it goes, but at the same time it must be remembered that unless fraud in a sense is proved, or at least a probability of deception or imposition on the public is established (*a*), a plaintiff cannot well succeed. Where there is a close resemblance in general style and arrangement of the contents of the book itself (*b*), or a claim of certain attributes which are known to belong to the original work (*c*), or a sudden change from an unobjectionable title, style of publication, and arrangement of contents to a style more closely resembling the plaintiff's (*d*), an intention to deceive may be established.

Where necessary to show fraud.

Thus in *Hogg* v. *Kirby* (*e*) the proprietor of 'The Wonderful Magazine' succeeded in stopping the publication of 'The Wonderful Magazine, New Series, Improved.' So in *Chappell* v. *Sheard* (*f*), and *Chappell* v. *Davidson* (*g*), where the plaintiff's song was entitled 'Minnie,' and those of the respective defendants 'Minnie Dale,' and 'Minnie, Dear Minnie;' and where the purchaser of 'The Britannia' newspaper incorporated it with the 'John Bull,' under the name of 'The John Bull and Britannia,' and the former publisher of 'The Britannia' began to publish 'The True Britannia' (*h*), injunctions were issued.

But, as already stated, the taking of *part of the title* of a registered work without fraud, and without any circumstances from which an *animus furandi* could be inferred, and where no deception is to be apprehended, will not be deemed an offence, and this is clearly shown in a

Taking a part of title without fraud.

(*a*) See *Hall* v. *Barrons*, 4 De G. J. & S. 150; 12 W. R. 322; *Chappell* v. *Davidson*, 2 K. & J. 123.

(*b*) *Mack* v. *Petter*, L. R. 14 Eq. 431: 20 W. R. 964: *Corns* v. *Griffiths*, W. N. (1873) 93.

(*c*) *Chappell* v. *Sheard*, 2 K. & J. 177.

(*d*) *Corns* v. *Griffiths*, *supra*. *Metzler* v. *Wood*, 8 Ch. D. 606; 26 W. R. 577.

(*e*) 8 Ves. 215.

(*f*) 2 K. & J. 117; 3 W. R. 646.

(*g*) 2 K. & J. 123.

(*h*) *Prowett* v. *Mortimer*, 4 W. R. 419; see *Edmonds* v. *Benbow*, Seton on Decrees, 3rd ed. 905.

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recent case. It was an action by the proprietor of a book entitled 'Post Office Directory of West Riding of Yorkshire,' which included the town of Bradford, to restrain the intended publication by the defendants of a directory of Bradford with the words 'Post Office' forming part of the title. It appeared that many years ago an officer of the London Post Office published, with the assistance of the letter carriers, a directory which he called 'Post Office' Directory. Subsequently a brother of the plaintiff became the publisher and proprietor of the work, which was carried on by him till 1846, with the assistance of the letter carriers as before. After 1846 the plaintiff's brother was prohibited by the Post Office authorities from employing the letter carriers, and he thereupon employed a large staff of private agents to obtain the information necessary for the continuance of his directory, which was still called the 'Post Office' Directory. In 1852 the plaintiff began publishing country directories, making use of his brother's staff of agents, and, with his brother's consent, called his directories 'Post Office' Directories. The plaintiff alleged that his directories were distinguished and known in the trade and to the public as 'Post Office Directories,' and that the term 'Post Office' was a very valuable trade distinction. The defendants had received assistance of the post-master at Bradford, and it was not alleged that there had been any copying or colourable imitation of any part of the text of the plaintiff's work, neither was there any similarity in price or appearance between the two directories, and the only question was as to the plaintiff's exclusive right to the use of the word 'Post Office' as applied to directories. Vice-Chancellor Bacon was of opinion that to support a claim to restrain the use by another of a name on the ground of it being a *quasi* trade-mark, it was necessary to shew that the wares offered for sale were so nearly identical that the use of the particular trade-mark or name might mislead unwary purchasers. He considered that the defendants were clearly entitled to publish a directory of Bradford, and as

no person wishing to possess the plaintiff's 'Post Office Directory for the West Riding of Yorkshire' could be misled or deceived into buying the defendant's 'Post Office Bradford Directory,' judgment must be given for the defendants (*a*), and on appeal the court affirmed the judgment of the Vice-Chancellor (*b*).

Assuming a title which has been disused.

Should a periodical change its name for another, there would be no ground for preventing another periodical assuming the name which has been thus cast off, after a reasonable lapse of time, provided the latter periodical did not hold itself out to the world as a continuation of the periodical whose title it had adopted (*c*).

Copyright in encyclopædias and periodicals.

With regard to encyclopædias, periodicals, and works published in series, reviews, or magazines (*d*), it is provided by the Copyright Act, 1842, that the copyright in every article shall belong to the *proprietor* of the work for the same term as is given by the Act to authors of books, whenever any such article shall have been or shall be

(*a*) *Kelly* v. *Byles*, 46 L. T. (N.S.) 623, on appeal 13 Ch. Div. 682; see *Barnard* v. *Pillow*, W. N. (1868) 94; *Snowden* v. *Noah*, Hopk. (Amer.) 347; *Bell* v. *Locke*, 8 Paige (Amer.) 75; *Stephens* v. *De Cento*, 30 N. Y. Sup. Ct. 343; *Tallcot* v. *Moore*, 13 N. Y. Sup. Ct. 106.

(*b*) *Jollie* v. *Jaques*, 1 Bl. C. C. (Amer.) 618, was a suit to restrain an imitation of a musical composition entitled 'The Serious Family Polka'; it having been decided that the plaintiff's claim to copyright could not be supported, it was held that the plaintiff not being entitled to the copyright in the composition, he was not entitled to protection in respect of the title. Nelson, J., said, "The title or name is an appendage to the book or piece of music for which the copyright is taken out, and if the latter fails to be protected, the title goes with it, as certainly as the principal carries with it the incident." So in another American case, where the plaintiffs were the proprietors and publishers of a monthly magazine for the young, published at Boston, Mass., under the title 'Our Young Folks; an Illustrated Magazine for Boys and Girls,' and the defendant began to advertise and publish, and sell at Augusta, Maine, a fortnightly illustrated paper for the young, under the title 'Our Young Folks' Illustrated Paper.' A suit being instituted for an injunction to restrain the defendant from using the words 'Our Young Folks' as the title of the publication, the Court held that the title of a copyrighted publication was not capable of protection as copyright, except in conjunction with the publication which it was used to designate, and that the copyright in the paper not having been infringed, that in the title had not been: *Osgood* v. *Allen*, 1 Holmes (Amer.) 185; 6 Am. L. T. 20.

(*c*) The *Cour Royale* at Paris in 1834 sanctioned the publication of a journal under the title of *Gazette de Santé*, which another journal had formerly borne, but which it had for seven months abandoned for the title *Gazette Médicale de Paris*. Renouard, tom. 2, p. 128, cited Curtis on Copy. 297.

(*d*) See *Henderson* v. *Maxwell*, 4 Ch. Div. 163.

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composed on the terms that the copyright therein shall belong to such proprietor and be paid for by him; but payment must be actually made by the proprietor before the copyright can vest in him (*a*). There is a special proviso in the case of essays, articles, or portions forming part of, and first published in reviews, magazines, or other periodical works of a like nature, to the effect that after the term of twenty-eight years from the first publication of any such article the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by the Act; and during such term of twenty-eight years the proprietor shall not publish any such article separately, without the previous consent of the author or his assigns, unless the article was written on the express terms that the copyright therein should belong to the proprietor, for all purposes (*b*). But any author may reserve to himself the right to publish any such composition in a separate form, and he will then be entitled to the copyright in such composition, when published separately, without prejudice to the right of the proprietor of the encyclopædia, review, or other periodical in which it may have first appeared (*c*).

Reservation by author of right to separate publication.

In order to give the proprietor of a periodical a copyright in articles composed for him by others, it is not necessary that there should be an express contract that he should have the property in the copyright. The fact of the author being paid by the proprietor for articles supplied expressly for the periodical, raises the presumption that the copyright is intended to be the property of the proprietor (*d*). Otherwise, the articles might be published by

(*a*) A contract for payment is not sufficient: *Richardson* v. *Gilbert*, 1 Sim. (N.S.) 336; 20 L.J. (Ch.) 553; 15 Jur. 389. See *Brown* v. *Cooke*, 11 Jur. 77; 16 L. J. (N.S.) Ch. 140.

(*b*) *Hereford* (*Bishop of*) v. *Griffin*, 16 Sim. 190; 17 L. J. (Ch.) 210. See 1 J. & H. 112; 3 L. T. (N.S.) 466. As to the course to be adopted on dissolution of partnership, and the withdrawal of one partner from the periodical publication by the firm, see *Bradbury* v. *Dickens*, 27 Beav. 53; 28 L. J. (Ch) 667, cited Philips on Copy. 181, note.

(*c*) 5 & 6 Vict. c. 45, s. 18.

(*d*) Where the publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine, *semble*, the copyright in such articles is not vested in the publishers: *Brown*

the writers thereof simultaneously, or shortly afterwards; possibly to the detriment and injury of the purchasers of the articles for particular periodicals.

Consent that the proprietor of a periodical should have the copyright for all purposes may be implied from the attending circumstances. Thus, in *Sweet* v. *Benning* (*a*) the plaintiffs were the publishers of 'The Jurist,' and had employed various lawyers to prepare reports of cases for that periodical. Nothing was said as to the copyright. The Court of Common Pleas held that there must be presumed an implied agreement that the copyright was to be the property of the employers. "It was urged," said Maule, J., "that these reports were not written on the terms that the copyright therein should belong to the proprietors of 'The Jurist,' because there were no express words in the contract under which they were written conferring upon them the right to the copyright. But, though no express words to that effect are stated in this special case, I think that where a man employs another to write an article, or to do anything else for him, unless there is something in the surrounding circumstances, or, in the course of dealing between the parties, to require a different construction, in the absence of a special agreement to the contrary, it is to be understood that the writing or other thing is produced upon the terms that the copyright therein shall belong to the employer, subject of course, to the limitation pointed out in the 18th section of the Act."

This case was decided by reason of the particular circumstances attending it, amounting in the opinion of the court to an implied consent on the part of the author to relinquish his copyright. And it is clear that where no consent is expressed, and no consent from the surrounding circumstances can be implied, the copyright continues in the author.

Thus, in the *Bishop of Hereford* v. *Griffin* (*b*), where it

v. *Cooke*, 16 L. J. (N.S.) Ch. 140; 11 Jur. 77; *Richardson* v. *Gilbert*, 1 Sim. (N.S.) 336.

(*a*) 16 C. B. 459.

(*b*) 16 Sim. 190; *Boucicault* v. *Fox*, 5 Blatchf. (Amer.) 87.

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appeared that the plaintiff, at the request of the publishers, had written an article on Thomas Aquinas for the 'Encyclopædia Metropolitana,' and no special agreement had been made as to the copyright, Vice-Chancellor Shadwell held that the publishers had acquired merely the right to publish the article in the encyclopædia. He said: "Then the defendants say that they believe that the ordinary terms of contract were adopted between the plaintiff and the publishers of the encyclopædia, and that no special agreement was entered into with respect to the reservation of any right of publication by the plaintiff. But it must be observed that, according to the law, the copyright was in the plaintiff, except so far as he parted with it; therefore no reservation was necessary to constitute a right in him."

Right of separate publication, in whom vested.

If the absolute copyright vests in the owner of the periodical, he alone is entitled to publish the production in a separate form. If he has acquired merely the right of publication in a specified work, the ownership of the copyright continues in the author, and the owner is a mere licensee without authority to publish the production in a separate form.

In the case of *Smith* v. *Johnson*, where the plaintiff had composed certain tales, under the common title of 'The Chronicles of Stanfield Hall,' for the defendant to publish in the 'London Journal,' of which he was the proprietor, it was held that the subsequent publication of such tales in a weekly supplementary number, for sale with or without the current number, was "a publication separately," within the meaning of the 18th section of the Copyright Act. And Vice-Chancellor Stuart then adopted the same view as did the Vice-Chancellor of England, in the *Bishop of Hereford* v. *Griffin*, and also that subsequently taken by Vice-Chancellor Wood, who considered that the meaning of the proviso in the 18th section, taken with the whole clause, was, not to vest a copyright in the proprietors or publishers of a periodical work, but simply to give them a licence to use the matter for a particular purpose. "Keep-

ing in view," says the Vice-Chancellor, "this principle of construction—that the Act of Parliament was intended to give a licence only to the proprietors of periodical works purchasing and paying for a literary composition to be published as a part or portion of a periodical work—the construction of the words in the proviso which prohibit them from publishing these parts or portions which 'alone' are the property of the author—from publishing these portions 'separately and singly,' seems reasonably plain. 'Publishing separately' must mean publishing separately from something. What is that 'publishing' which the Act of Parliament says shall not be separately made? It must be the publishing of the part or portion separately from that which has been before published. That is the view which has been previously taken, and the language in the case of *Mayhew* v. *Maxwell* was to the effect that the defendant should be prohibited from publishing the literary work then in question, otherwise than as part of the Christmas number of the 'Welcome Guest.' Now, that Christmas number was a thing called 'a part' in the Act of Parliament, which describes these periodical works as being published in a series of parts and numbers. The Christmas number is part or portion of the other composition. The order of this court peremptorily prohibited the defendant Maxwell from publishing it separately from the other part or number. What has the defendant in this case done? He has acquired, under the first clause of the Act of Parliament, an actual property in this literary composition, which is called 'The Stanfield Hall Tales,' published in portions or parts of a certain periodical work. The Act of Parliament says the publishers shall not publish these portions separately from those parts for the publication of which they have obtained a licence already. What they have done is to print the portions already published of these antecedent parts in what is called a supplementary number, and which may be purchased with or without the number in which the 'portions' were originally pub-

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lished. That is a separate publication; separate from the 'parts' in which it was originally published. To reprint in numbers, which may be had with or without the concurrent number of the work, is an act not permitted by the legislature" (*a*).

Proprietors of periodicals may acquire copyright by contract of employment.

The proprietor of a review, magazine, or like periodical, as well as the proprietor of any other publication embraced within the 18th section, as a cyclopædia or a work published in a series of books or parts may acquire by virtue of the contract of employment the copyright in an article, and in such case his rights will not be restricted to the use of the article in the periodical only for which it was written. But the copyright in the case of a magazine, or like periodical, will revert to the author at the end of twenty-eight years; whereas in the case of any work not included in the proviso above quoted the copyright will continue in the proprietor during the entire term given by the statute.

Suggestions of Copyright Commissioners as to periodicals, &c.

The report of the Royal Commissioners on Copyrights thus deals with this subject: "It has been provided that in the case of encyclopædias, reviews, magazines, periodical works, and works published in a series of books or parts, for which various persons are employed by the proprietor to write articles—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles, or portions of reviews, magazines, or other periodical works of a like nature, and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after twenty-eight years for the remainder of the period of copyright, and during the

(*a*) Vice-Chancellor Stuart, *Smith* v. *Johnson*, 4 Giff. 637; 33 L. J. (Ch.) 137; 9 Jur. (N.S.) 1223; 12 W. R. 122; 9 L. T. (N.S.) 437; *Mayhew* v. *Maxwell*, 1 J. & H. 312. See *Wallenstein* v. *Herbert*, 15 W. R. 838; 16 L. T. (N.S.) 453.

twenty-eight years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves, during the twenty-eight years, a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight. As we have reason to believe that proprietors of periodicals have not, as a rule, insisted on the right given them by the existing law, we think there would be no objection to making this provision retrospective.

"It has been pointed out to us that, under the existing law, the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorized separate publication."

Registration of periodicals.

The 19th section of the Copyright Act, 1845, provides that the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or a work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under the Act, on entering in the registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of

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the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published before the passing of the Act, and the name and place of abode of the proprietor thereof, and of the publisher thereof when he is not also the proprietor. Under this section it is clear that as each part of a periodical is a book within the meaning of the Act, and copyright runs from the date of publication of any book, that the copyright in each part accrues from the publication of each part, so that if a subsequent part be published twelve years after the publication and registration of the first part all the benefit of registration will accrue for forty-two years from the publication of the subsequent part, notwithstanding that registration has only been effected of the first part.

Copyright in translations.

Copyright may exist in a translation, whether it be the result of personal application and expense, or donation (*a*). In the case of *Wyatt* v. *Barnard* (*b*), Lord Eldon states this to be the law: The plaintiff was the proprietor of a periodical called 'The Repository of Arts, Manufacture, and Agriculture.' He claimed the sole copyright of the work, containing, amongst other articles, translations from foreign languages. The defendants were publishers of another periodical which contained various articles, being translations from foreign languages, copied or taken from the plaintiff's work without his consent. The defendants, by their affidavit, stated that it was the usual practice among publishers of magazines, &c., to take from each other articles translated from foreign languages, or become public property by reason of their having appeared in other works. They relied on the custom of the trade, and contended that neither of the works was original, both being mere compilations; that it had never been decided

(*a*) *Wyatt* v. *Barnard*, 3 V. & B. 77. If a foreigner translates an English work, and then an Englishman re-translates the foreign work into English, that is an infringement of the original copyright: *Murray* v. *Bogue*, 17 Jur. 219; 1 Drew. 353; 22 L. J. (Ch.) 457.

(*b*) 3 V. & B. 78. *Vide Stowe* v. *Thomas*, 2 Amer. L. Reg. 231.

that a translator might have a copyright in a translation; supposing, what was not proved, that these translations were made by the plaintiff himself. The Lord Chancellor said that the custom among booksellers could not control the law; and upon an affidavit stating that all the articles were translated by a person employed and paid by the plaintiff, and were translated from foreign books imported by the plaintiff at considerable expense, his Lordship granted an injunction.

The work from which the translation was taken in the present case was, of course, unprotected by the copyright law in existence here, and the cases which have treated translations from foreign works, having no copyright in this country, as original, would not necessarily form a precedent in the case of a translation of an English copyright work. But in the case above cited, Lord Eldon drew no distinction between translations of works unprotected and those protected in this country, indeed it was not necessary to do so for the decision of the point involved in the case before him. This case is sometimes cited for the purpose of shewing that every translation is an original work and entitled to protection, whether made from an unprotected or a protected work. But it does not go to this extent, and notwithstanding the dicta of Mr. Justice Yates, in *Millar* v. *Taylor* (*a*), and Lord Macclesfield, in *Burnett* v. *Chetwood* (*b*), and of the late Lord Justice Knight Bruce, when Vice-Chancellor (*c*), it appears to be the better opinion that a work in which copyright is still subsisting cannot be translated without the consent of the proprietor of the copyright. Lord Justice Knight Bruce, in the well-known case of *Prince Albert* v. *Strange* (*d*), thought that a work lawfully published, in the popular sense of the term, stood in this respect differently from a work which had never been in that situation. The former was liable to be translated, abridged,

Every fair translation an original work.

(*a*) 4 Burr. 2348.
(*b*) 2 Mer. 441.
(*c*) *Prince Albert* v. *Strange*, 2 De G. & Sm. 693.
(*d*) 2 De G. & Sm. 693.

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analyzed, exhibited in morsels, complimented, and otherwise treated in a manner that the latter was not. There has been a decision in America in accordance with the opinion of Lord Justice Knight Bruce (*a*), but it is not likely to be followed in this country. It is unsupported by authority and opposed to the principles of the copyright law.

The Queen may now direct that the authors of books published after a specified day in any foreign country, their executors, administrators, or assigns, shall have the power (subject to the provisions of the 15 & 16 Vict. c. 12) to prevent the publication in the British dominions of any translations of such books as are not authorized by them, for a period (to be specified by her Majesty) not exceeding five years from the first publication of an authorized translation; and in the case of books published in parts, for a period not exceeding, as to each part, five years from the first publication of an authorized translation of that part (*b*).

No copyright in a libellous, immoral, or obscene work.

Copyright cannot exist in a work of libellous, immoral, obscene, or irreligious tendency (*c*); because in order to establish such a claim the author must, in the first place, shew a right to sell; and this he cannot possibly do, he himself not being able to acquire a property therein. *Nemo plus juris ad alium transferre potest quam ipse haberet* (*d*).

The property here referred to is that consisting in the right to take the profits of the work when published. But in *Southey* v. *Sherwood* (*e*) Lord Eldon seems to have carried the rule still further, and refused to admit a right in the author of a work of a non-innocent nature to the

(*a*) *Stowe* v. *Thomas*, 2 Wall. Ir. 547; 2 Am. Law Reg. 210.
(*b*) 15 & 16 Vict. c. 12, s. 2.
(*c*) *Stockdale* v. *Onwhyn*, 5 B. & C. 173; 7 D. & R. 625; *Hime* v. *Dale*, 2 Camp. 28; *Walcot* v. *Walker*, 7 Ves. 1; *Poplett* v. *Stockdale*, 1 R. & M. 337; *Gee* v. *Pritchard*, 2 Swans. 413; *Southey* v. *Sherwood*, 2 Mer. 435; *Murray* v. *Benbow*, 1 Jac. 474; *Lawrence* v. *Smith*, *ibid*, 471; *Forbes* v. *Johnes*, 4 Esp. 97; *Gale* v. *Leckie*, 2 Stark. N. P. C. 107; and see an article in 'Quarterly Review' for April, 1822, and 'Blackwood's Magazine' for July, 1822; *Dodson* v. *Martin*, Sol. Journ. 29th of May, 1880.
(*d*) Ulpian: *Nemo potest plus juris ad alium transferre quam ipse habet*; Co. Lit. 309; Wing. 56.
(*e*) 2 Mer. 435.

possession and control of his manuscript. He appears to have overlooked the fact that the law recognised two kinds or degrees of property in a literary work. There is a right of property which consists in the right to take the profits of a book when published: and there is also a right to the exclusive possession and control of a manuscript, or the right to publish or to withhold from publication altogether (*a*).

"The first of these rights," says Mr. Curtis, in his examination of Lord Eldon's judgment in the last-mentioned case (*b*), "depends now in England and in America upon statute. The other is a right at common law, independent of the property created or recognised by statute. The law of England has never said that an author has no property in his manuscript *quâ* manuscript, or in the ideas and sentiments written upon it before publication. If it had, it would only be necessary to steal a manuscript in order to be able to print it with impunity; and the author could only take the profits, or obtain an injunction, by shewing that he himself intended to publish and to take the profits. It has long been settled, however, that the author and proprietor of a manuscript has the sole dominion over it, and may obtain an injunction to prevent its publication by another: and in no case has it been considered that his right depends on his intention to publish and to make a profit. But the cases proceed upon the ground of *a right of property*: and what seems to be intended by this is a right to the possession and control of the manuscript, and to publish or to withhold from publication. In the great case of *Donaldson* v. *Becket*, in the House of Lords, in which the perpetual right of authors after publication was held to have been taken away by the Act of Anne, eleven of the judges (including those who decided against some of the claims of authors) affirmed the sole right and dominion of an author over his own manuscript, as a right at common

(*a*) See *Wheaton* v. *Peters*, 8 Peters, S. C. R. (Amer.) 591; cited Curtis Copy. 158.

(*b*) Copyright, p. 158.

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law. 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 cannot arise, because that question, according to principle and the decisions, affects only so much of his right of property as consists in the right to take the profits of the publication. It is in this sense that the law declares there can be no property in an immoral, irreligious, or seditious publication; and not that there can be no right to the exclusive possession and control of whatever a man writes, before publication, unless it be innocent."

Lord Eldon's decision in *Southey* v. *Sherwood* has been severely criticised by Lord Campbell, who states that in consequence of the refusal of the injunction asked for, hundreds of thousands of copies of Wat Tyler, the poem the publication of which was sought to be restrained, at the price of one penny were circulated over the kingdom (*a*).

Not to protect such works, it has been argued, is to increase the circulation by allowing the publication of pirated editions; but it is an open question whether the circulation is not more effectually restrained by holding that there can be no property in such a work, than by protecting it; for the inducement to the publisher will be less if other persons may copy and publish *ad infinitum*.

In answer to the remark, that by refusing to interfere in cases where the work is of an evil tendency, the court virtually promotes, in some instances, the multiplication of mischievous productions, it must be borne in mind, that a court of equity professes to decide only upon questions of property, concerning itself merely with the civil interests of the parties, and disclaiming interference to prevent or to punish injuries of a criminal nature; and it therefore leaves the offending person to be dealt with at law (*b*). And adopting such a course is not merely to act in conformity with its own general principles, but

(*a*) 'Lives of Chancellors,' vol. 10.
(*b*) *Vide* 7 Ves. 2; 2 Mer. 438; 2 Swans. 413; 1 Jac. 473.

also with the constitution of the country; for, to assist a person who has exerted himself to the prejudice of national or of individual welfare, by deciding upon questions of a criminal character, the court would be assuming a power of adjudication in instances which, according to our notions of political freedom, ought not to be determined without the intervention of a jury. And it is also observable, that although interposition is refused in cases of this kind, except upon the plaintiff's right receiving the sanction of a court of law, the court of equity does not thereby bereave the party applying, of any redress which he might otherwise obtain, or of the means of seeking it, but merely withholds that extraordinary relief which is adapted to other cases (*a*).

Dr. Priestley's case.

The first case establishing the doctrine that there could not be property in a work of the above description, is that known as Dr. Priestley's. The plaintiff brought an action against the hundred to recover damages for injury sustained by him in consequence of the riotous proceedings of a mob at Birmingham, and, among other property alleged to have been destroyed, claimed compensation for the loss of certain unpublished manuscripts, offering to produce booksellers as witnesses to prove that they would have given considerable sums for them. On behalf of the hundred it was alleged that the plaintiff was in the habit of publishing works injurious to the government of the State; but no evidence was produced to that effect. Upon this the Lord Chief Justice Eyre remarked, that if any such evidence had been produced, he should have held it was fit to be received as against the claim made by the plaintiff. Several passages were read from the work itself in support of the charge as to its tendency.

Though Lord Eldon appears to base his decision in *Southey* v. *Sherwood* upon this case before Lord Chief Justice Eyre, yet it will be at once perceived that there is a material difference between them, for in the case before Lord Eldon, Southey claimed the right to prevent

(*a*) Jer. Eq. Jur. bk. 3, ch. 2.

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publication, whereas in the case before Lord Chief Justice Eyre, Dr. Priestley sued for the loss of profits, which he alleged he might have realised by publication—a point to which he never could have lawfully proceeded.

No copyright in a work of an irreligious tendency.

The above cases were followed in *Walcot* (*Peter Pindar*) v. *Walker* (*a*), and in *Lawrence* v. *Smith* (*b*). In the latter case the doctrine was carried very far. The plaintiff having published a work under the title of 'Lectures on Physiology, Zoology, and the Natural History of Man,' filed a bill to restrain the defendant from selling a pirated edition, and obtained an injunction upon motion made *ex parte*. The defendants then moved to dissolve the injunction, and argued that the nature and general tendency of the work in question was such that it could not be the subject of copyright, and in support of this argument several passages in it were referred to, which, it was contended, were hostile to natural and revealed religion, and impugned the doctrines of the immateriality and immortality of the soul. Lord Eldon, in dissolving the injunction, said: "I take it for granted that when the motion for the injunction was made, it was opened as quite of course; nothing probably was said as to the general nature of the work, or of any part of it; for we must look not only to the general tenor, but at the different parts; and the question is to be decided, not merely by seeing what is said of materialism, of the immortality of the soul, and of the Scriptures, but, by looking at the different parts, and inquiring whether there be any which deny, or which appear to deny, the truth of Scripture; or which raise a fair question for a court of law to determine whether they do or do not deny. Looking at the general tenor of the work, and at many particular parts of it, recollecting that the immortality of the soul is one of the doctrines of the Scripture, considering that the law does not give protection to those who contradict Scripture (*c*),

(*a*) 7 Ves. 1. See *Stockdale* v. *Onhwyn*, 5 B. & C. 173; *Poplett* v. *Stockdale*, Ry. & M. 337.

(*b*) 1 Jac. 471.

(*c*) "Christianity is part and parcel of the law of the land:" Kelly, C.B., in *Cowan* v. *Milbourn*, L. R. 2 Ex. Div. 230.

and entertaining a doubt, I think a rational doubt, whether this book does not violate the law, I cannot continue the injunction. The plaintiff may bring an action, and when that is decided, he may apply again." From a note by the editor, we learn that in 1822, in *Murray* v. *Benbow*, Mr. Shadwell, on the part of the plaintiff, moved for an injunction to restrain the defendants from publishing a pirated edition of Lord Byron's poem of 'Cain.' The Lord Chancellor, after reading the work, refused the motion, on grounds similar to those stated in the above judgment. He said "that the Court of Chancery, like other courts of justice in this country, acknowledged Christianity as part of the law of the land; that the jurisdiction of the court in protecting literary property was founded on this: that, where an action would lie for pirating a work, then the court, attending to the imperfection of that remedy, granted its injunction, because there might be publication after publication, which one might never be able to hunt down by proceeding in other courts. But where such an action did not lie, he did not apprehend that it was according to the course of the court to grant an injunction to protect the copyright. That the publication, if it were one intended to vilify and bring into discredit that portion of Scripture history to which it related, was a publication with reference to which, if the principles on which that case at Warwick (Dr. Priestley's) was decided were just principles of law, the party could not recover damages in respect of a piracy of it. That the court had no criminal jurisdiction; it could not look on anything as an offence; but in those cases it only administered justice for the protection of the civil rights of those who possessed them, in consequence of being able to maintain an action. Milton's immortal work had been alluded to; it so happened that in the course of the previous long vacation, amongst the *solicitæ jucunda oblivia vitæ*, he had read that work from beginning to end; it was therefore quite fresh in his memory, and it appeared to him that the great object of its author was to promote the cause of Christianity; there

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were, undoubtedly, a great many passages in it of which, if that were not its object, it would be very improper by law to vindicate the publication; but, taking it altogether, it was clear that the object and effect were not to bring into disrepute, but to promote, the reverence of our religion. That the real question was, looking at the work before him, its preface, the poem, its manner of treating the subject, particularly with reference to the Fall and the Atonement, whether its intent was as innocent as that of the other with which it had been compared; or whether it was to traduce and bring into discredit that part of sacred history. This question he had no right to try, because it had been settled, after great difference of opinion among the learned, that it was for a jury to determine that point; and where, therefore, a reasonable doubt was entertained as to the character of the work (and it was impossible for him to say he had not a doubt, he hoped it was a reasonable one), another course should be taken for determining what was its true nature and character" (*a*).

"Don Juan."

In a case which came before the Vice-Chancellor in 1823, an injunction which had been obtained to restrain the publication of a pirated edition of a portion of the poem of 'Don Juan,' was dissolved on a similar principle. His Honour ordered that the defendant should keep an account.

Referring to Lord Eldon's decisions in the above cases, Mr. Justice Story says: "The soundness of the general principle can hardly admit of question. The chief embarrassment and difficulty lie in the application of it to particular cases. If a court of equity, under colour of its general authority, is to enter upon all the moral, theological, metaphysical and political inquiries, which in the past times have given rise to so many controversies, and in the future may well be supposed to provoke many heated discussions, and if it is to decide dogmatically upon the character and bearing of such discussions, and the rights of authors growing out of them; it is obvious

(*a*) *Murray* v. *Benbow*, in Ch. 1822, MS., cited 6 Peters. Abr. 558.

that an absolute power is conferred over the subject of literary property, which may sap the very foundations on which it rests, and retard, if not entirely suppress, the means of arriving at physical as well as at metaphysical truths. Thus, for example, a judge who should happen to believe that the immateriality of the soul, as well as its immortality, was a doctrine clearly revealed in the Scriptures (a point upon which very learned and pious minds have been greatly divided), would deem any work anti-christian which should profess to deny that point, and would refuse an injunction to protect it. So, a judge who should be a Trinitarian might most conscientiously decide against granting an injunction in favour of an author enforcing Unitarian views; when another judge, of opposite opinions, might not hesitate to grant it" (*a*).

'Life of Jesus.'

The very case surmised by Mr. Justice Story arose a short time since (February, 1874) in the Scotch Courts. A work entitled 'The Life of Jesus re-written for Young Disciples,' by Mr. Page Hopps, Unitarian minister, Glasgow, was published by Messrs. Trübner & Co., London, at 1s. a copy. The defendant Harry Alfred Long, Protestant missionary, about a year after its appearance, issued a review containing the whole of Mr. Hopps's book, with notes and criticisms attached to each chapter, and this publication was sold at 6*d*. Hopps applied for an interim interdict, which being granted, he subsequently sought to have it declared perpetual. The plea put forward by the defendant was that the pursuer could not claim the protection of the law for the book, as it was blasphemous and heretical, denying tacitly or expressly the divinity of Christ. To this the pursuer replied that apart from the fact that it was written by a Unitarian, and set forth the Unitarian view of the Saviour's life, a more unobjectionable book did not exist. Mr. Sheriff Buntine, of the Sheriff's Court of Lanarkshire, declared the interdict perpetual, and found Long liable in expenses, holding that, though the doctrine that Jesus Christ is

(*a*) 2 Story's Eq. Jur., p. 938.

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the second person of the Trinity is statute law, yet the public are entitled to criticise and controvert any part of the statute law, provided they do it in such a way as not to endanger the public peace, safety, or morality. Mr. Hopps, the sheriff considered, violated none of these conditions, and was entitled to the protection of the law.

No copyright in a work of a scandalous nature.

In the case of *Hime* v. *Dale*, referred to in *Clementi* v. *Goulding* (*a*), counsel called attention to the libellous nature of the publication, and contended that it was of such a description that it could not receive the protection of the law. It professed to be a panegyric upon money, but was in reality a gross and nefarious libel upon the solemn administration of British justice. The mischievous tendency of the production would sufficiently appear from the following stanza:

> "The world is inclined
> To think *Justice* blind,—
> Yet what of all that?
> She will blink like a bat
> At the sight of friend Abraham Newland!
> Oh! Abraham Newland! magical Abraham Newland!
> Tho' Justice, 'tis known,
> Can see through a milestone,
> She can't see through Abraham Newland."

Lord Ellenborough, however, stated that though if the composition had appeared on the face of it to be a libel so gross as to affect the public morals, he should advise the jury to give no damages, as he knew the Court of Chancery on such an occasion would grant no injunction, yet he thought the above ought not to be considered one of that kind. But in another case (*b*) where an action was brought for the purpose of recovering compensation in damages for the loss alleged to have been sustained by the publication of a copy of a book which had been first published by the plaintiff; and at the trial it was proved

(*a*) 2 Camp. 30.

(*b*) *Stockdale* v. *Onhwyn*, 5 B. & C. 173; see *Poplett* v. *Stockdale*, Ry. & M. 337, where it was held that the printer of the work, the subject of the last case, could not maintain an action for his bill against the publisher who employed him, Best, C.J., said the defendant was equally guilty with the plaintiff, but that he would not, as Lord Kenyon once said, sit to take an account between two robbers on Hounslow Heath.

that the work was the memoir of Harriette Wilson, which professed to be a history of the amours of a courtezan, that it contained in some parts matter highly indecent, and in others matter of a slanderous nature upon persons named in the book, Abbott, C.J., directed a nonsuit, and in refusing a rule nisi for a new trial said: "In order to establish such a claim (*i.e.* to compensation for infringement of his copyright), he must, in the first place, shew a right to sell, for if he has not that right, he cannot sustain any loss by an injury to the sale. Now I am certain no lawyer can say that the sale of each copy of this work is not an offence against the law. How then can we hold that by the first publication of such a work a right of action can be given against any person who afterwards publishes it? It is said that there is no decision of a court of law against the plaintiff's claim. But upon the plainest principles of the common law, founded as it is, where there are no authorities, upon common sense and justice, this action cannot be maintained. It would be a disgrace to the common law could a doubt be entertained upon the subject, but I think that no doubt can be entertained, and I want no authority for pronouncing such a judicial opinion."

No copyright in works intended to deceive the public.

Neither can there be copyright in works intended to deceive purchasers, and therefore, in an action for pirating a work of a devotional character, falsely professing to be a translation from the German, of an author who had a high reputation for writings of this kind, the object being to deceive purchasers, and give the work a value which it would not otherwise have possessed, judgment was given for the defendants. Chief Justice Tindal, in the case referred to (*a*), drew a distinction between such a work and books of instruction or amusement which have been published as translations, whilst they have, in fact, been original works, or which have been published under an assumed instead of a true name. Such, for instance, as 'The Castle of Otranto,' professing to be translated from

(*a*) *Wright* v. *Tallis*, 1 C. B. 893; 14 L. J. (C.P.) 283; 9 Jur. 946.

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the Italian, and such the case of innumerable works published under assumed names—voyages, travels, biographies, works of fiction or romance, and even works of science and instruction; for, in all these instances the misrepresentation is innocent and harmless. But the facts stated in the pleas in the case under consideration imported a serious design on the part of the plaintiff to impose on the credulity of each purchaser, by fixing on the name of an author who had a real existence, and who possessed a large share of weight and estimation in the opinion of the public. The object of the plaintiff was, not merely to conceal the name of the genuine author, and to publish opinions to the world under an innocent disguise, but it was to practise upon some of the best feelings of the public, namely, their religious feelings; and thus to induce them to believe that the work was the original work of the author whom he named, when he knew it not to be so. The transaction, therefore, ranged itself under the head of *crimen falsi*. It was a species of obtaining money under false pretences; and as the very act of publishing the work, and the sale of the copies to each individual purchaser, were each liable to the objection above stated, the chief justice thought the plaintiff could not be considered as having a valid and subsisting copyright in the work, the sale of which produced such consequences, or that he was capable of maintaining an action in respect of its infringement. Cases in which a copyright has been held not to subsist, where the work is one which is subversive of good order, morality, or religion, did not bear, he thought, on the case before him, but they had so far analogy, that the rule which denied the existence of copyright in those cases, was the rule established for the benefit and protection of the public.

So decided on the ground of fraud.

This decision proceeded more on the ground of fraud than invasion of literary property, and to the principle of this decision may also be referred the case of *Seeley* v. *Fisher* (*a*), where an injunction was granted to restrain A.

(*a*) 11 Sim. 581.

from putting forth his work under advertisements which the court below thought tended to produce the impression, contrary to the truth, that it contained matter which was in fact the property of B. But if there be no such fraudulent misrepresentation, but only statements which, whether true or false, tend merely to encourage a belief that the matter contained in A.'s work is truly valuable matter, and that contained in B.'s is spurious and of no value, an injunction will not be granted to restrain such representations; and on the ground that such was the true effect of the advertisements, in the last cited case, the Lord Chancellor dissolved the injunction.

But where the plaintiff was the well-known writer and composer of songs and music called 'Claribel,' the defendants were the music publishers carrying on business under the name of "Sinclair & Co." and it appeared that four songs named respectively 'Under the Willows,' 'Spinning by her Cottage Door,' 'I'll cast my Rose on the Waters,' and "Spring Carol,' the words only of which were written by 'Claribel,' had been published and sold by the defendants, with the name of 'Claribel' appearing on them thus, "'Under the Willows,' song written by Claribel," no mention being made of the name of the composer of the music of the song; and it was contended by the plaintiff that the above mode of publication was intended to deceive, and had deceived, people into the belief that not merely the words, but also the music of these songs was by 'Claribel,' and he prayed that the defendant might be restrained from so publishing; the Master of the Rolls held that the injunction must be refused, as he was of opinion that the words "written by" referred only to the words of the songs, and did not mean "written and composed," and that ordinary purchasers using ordinary caution could not be deceived into thinking that the music was composed by 'Claribel' (*a*).

Where a publisher advertised for sale certain poems, which he represented to be the work of Lord Byron, who

(*a*) *Barnard* v. *Pillow*, W. N. (1868) 94.

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was abroad, an injunction was granted until answer or further order to restrain the publication, Lord Byron's agents deposing to their belief that the poems were not Lord Byron's work, and to circumstances rendering it highly improbable that they were so, and the defendant refusing to swear to his belief that they were written by Lord Byron (*a*).

No copyright in a dry catalogue of names.

There can be no copyright in specifications of patents (*b*), nor in a catalogue consisting of a mere dry list of names. But where a bookseller's catalogue contained a description of the books offered for sale, with short anecdotes relating to them, protection was afforded (*c*).

Wood, V.C., opinion on copyright in descriptive catalogues.

And in the case referred to, Sir W. Page Wood, V.C., said that he could not conceive on what principle it was supposed that there was no copyright in a catalogue such as the one in the case before him. It was not a mere dry list of names, like a Postal Directory, Court Guide, or anything of that sort, which must be substantially the same by whatever number of persons issued and however independently compiled. It was a case of a bookseller who issues an account of his stock, containing short descriptions of the contents of the books, calculated to interest either the general public or the persons who might take an interest in the questions treated of by particular books. "For example," continues the learned judge, "suppose one of the books to be a History of Cheshire; then he gives you a slight account of it, from which it appears that it contains a number of anecdotes respecting county families and other things of that nature, it might well be that a person who did not previously know anything of the work, would be guided by the description and induced to purchase the work. There is another point of view in which this case appears to me to be even clearer. Suppose the case of a professional

(*a*) *Lord Byron* v. *Johnston*, 2 Meriv. 29.
(*b*) *Wyatt* v. *Barnard*, 3 V. & B. 77.
(*c*) *Hotten* v. *Arthur*, 1 H. & M. 603; 32 L. J. (Ch.) 771; 11 W. R. 934; 9 L. T. (N.S.) 199. So there may be copyright in a descriptive catalogue of tricks and magical apparatus: *Bland* v. *Hiam*, 'Times,' 15th Jan. 1873.

writer (there may well be such), whose peculiar department it is to make out "Catalogues Raisonnés" of this kind, and to write such abstracts of the noticeable points in the various books of the catalogue as we have here. A man who is an author for this purpose would naturally expect that the very fact that he had printed such notes for one publisher would lead to his employment for a similar purpose by another. Suppose now this other to say to him, 'I have no occasion for your services, paste and scissors work will give me all I want,' would it be denied that he would have a right to come here to prevent this unremunerative use of his labour? In this case the plaintiff is both author and publisher; but I do not see any reason for putting him in any worse position on that account. True, the principal value may be in the books themselves, but I cannot therefore refuse to recognise the property which this gentleman has in the product of his mental exertion; mental exertion used for this particular purpose, and in print. So soon as these notes are printed, I consider them completely protected by the Copyright Acts."

Catalogues raisonnés.

This case was followed by Sir Charles Hall, V.C., in *Grace* v. *Newman* (*a*). The plaintiff there was a "cemetery stone and marble mason," and had published a book containing, with some letterpress, lithographic sketches of monumental designs taken from tombstones in cemeteries. The publication was intended to serve as an advertisement of the plaintiff's business, and to enable customers to whom it was given to select designs to be executed by the plaintiff, yet the court held it to be a proper subject of copyright.

Tradesmen's catalogues.

But an advertisement which has no other use or value than to make known the place and kind of business of the advertiser is not within the scope of the copyright law.

No copyright in advertisement of place and kind of business only.

The point to be determined is whether the advertisement is merely such, useful for no other purpose than to make

(*a*) L. R. 19 Eq. 623; see also *Hogg* v. *Scott*, 18 Id. 444; *Collender* v. *Griffith*, 11 Blatchf. (Amer.) 212.

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Illustrated furniture guide, copyright in.

known the business of the advertiser, or if it has any value as a contribution to knowledge. The matter came before the court in the case of *Cobbett* v. *Woodward* (*a*) The plaintiff, an extensive dealer in upholstery and house furniture, had published and registered an illustrated guide for furnishing houses, and circulated it as an advertisement of his business. The defendant, who was engaged in the same line of business, copied fifty-five of the illustrations and a large portion of the text. In defence it was contended that the plaintiff's book was a mere advertisement, and was, therefore, not within the Copyright Act. The court held that the drawings in the plaintiff's book were not entitled to protection, on the ground that they were mere advertisements. With regard to the text, a distinction was drawn between that part "which bears the trace of original composition," and that which "simply describes the contents of a warehouse, the exertions of the proprietors, or the common mode of using familiar articles." The court held that matter of the latter kind was not entitled to protection: but that the plaintiff was entitled to an injunction restraining the defendant from publishing about sixty words of "original composition" which had been copied. In the case referred to, Lord Romilly considered that the distinction between directories, concordances, dictionaries, &c. and the work then in question was, that such works were compiled and published for the information and use of the public, and were bought by the public without any reference to individual benefit—nothing in the shape of advertisements of articles specified in the work forming a part of the work, whereas in the case before him the work was a mere advertisement for the sale of particular articles which any one might advertise for sale. "If a man," said he, "not being a vendor of any of the articles in question, were to publish a work for the purpose of informing the public of what was the most convenient species of articles of house furniture, or the most graceful

(*a*) L. R. 14 Eq. 407.

species of decorations for articles of house furniture, what they ought to cost, and where they might be bought, and were to illustrate his work with designs and with drawings of each article he described—such a work as this could not be pirated with impunity, and the attempt to do so would be stopped by the injunction of the Court of Chancery; yet, if it were done with no such object, but solely for the purpose of advertising particular articles for sale, and promoting the private trade of the publisher by the sale of articles which any other person might sell as well as the first advertiser, and if in fact it contained little more than an illustrated inventory of the contents of a warehouse, I know of no law which, while it would not prevent the second advertiser from selling the same articles, would prevent him from using the same advertisement, provided he did not in such advertisement by any device suggest that he was selling the works and designs of the first advertiser. At the same time, I am bound to say that where it is shewn that the second advertiser has been making use literally of the drawings of the first advertiser and copying them precisely, I think that the court, though it could not stop him from taking that course, must feel that a use has been made of the works of the first advertiser which would not be considered fair amongst gentlemen, nor (for the rules are the same as regards the usual intercourse of life) amongst fair traders, and would not give costs to the man who deliberately endeavoured to profit by the exertions of his fellow-tradesmen.

"But at the last it always comes to this, that in fact there is no copyright in an advertisement. If you copy the advertisement of another, you do him no wrong, unless in so doing you lead the public to believe that you sell the articles of the person whose advertisement you copy. A different rule applies to the letterpress which is said to be copied. Wherever this letterpress bears the trace of original composition it is entitled to protection, but not where it simply describes the contents of a warehouse, the

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exertions of the proprietor, or the common mode of using familiar articles."

Principles on which copyright in an advertising medium depends.

The principles to be extracted from this decision are not very obvious, but the only consistent view which can be drawn from it seems to be that there may be copyright in matter, whether pictorial or literary, designed or used as an advertisement, provided it be original, and have a value *apart from its use as a mere advertising medium.*

It is submitted that the distinction drawn in the above decision between the different sources from which the work may emanate is not sound. The question whether an author of a work is entitled to copyright therein, depends neither upon the vocation of the author or the purpose for which he has designed or may use it, but on the character, the inherent qualities of the production itself.

Copyright in a diagram.

It has been held in America that a diagram with directions for cutting garments, printed on a single sheet, is a book within the meaning of the statute, and the author entitled accordingly to copyright (*a*), but that a mere label, capable of no other use than to be pasted on a bottle, is not a book and does not entitle the author to copyright (*b*); and in this country it has been held that a

Scoring-tablet.

scoring sheet or "tablet," used in the game of cricket, is not a book, and the author thereof is not entitled to copyright therein (*c*).

No copyright in a mere plan.

There can be no copyright in the mere plan of a work; nor any exclusive property in a general subject or in the particular method of treating it. Any number of persons may use the same common materials, in a like manner and for a similar purpose. Their productions may contain the same thoughts and ideas; and resemblance to each other is immaterial so long as there is no unlawful copying.

Copyright in newspaper telegrams.

There can of course be copyright in newspaper

(*a*) *Drury* v. *Ewing*, 1 Bond (Amer.) 540.
(*b*) *Scoville* v. *Toland*, 6 West. Law Jour. 84.
(*c*) *Page* v. *Wisden*, 20 L. T. (N.S.) 435.

telegrams. A case not long since came before the Supreme Court in Melbourne. It appeared that the proprietors of the 'Melbourne Argus' pay a large sum for the purpose of obtaining the latest telegrams from Europe, and any newspaper proprietors who may wish to publish the telegrams so obtained can do so by paying a contribution towards the expenses incurred. The proprietor of the 'Gipps' Land Mercury' made an agreement to pay for the right of republishing the telegrams, but after carrying out the arrangement for some months cancelled the agreement. The European telegrams received by the 'Argus' were, however, re-published in another form, as from a Melbourne correspondent of the 'Mercury,' with the preliminary words "It is reported," or "The news about town is." This was considered a breach of the copyright which the proprietors of the 'Argus' possessed in the telegrams, and a suit was instituted in the Equity Court to restrain the proprietor of the 'Mercury' from republishing the telegrams. It was argued for the defendant that, as the telegrams were matters of news, any one could re-publish them without breach of the Copyright Act; but Mr. Justice Molesworth held that the plaintiff had a property in the telegrams, and that no one could re-publish them without the permission of the person to whom they had been sent in the first instance. An injunction was, therefore, granted to restrain the defendant from publishing the telegrams.

How far new editions the subject of copyright.

Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject for copyright. A new edition of a book may be a reprint of the original edition, which does not entitle the author to a new term of copyright running from the new edition; or it may be so enlarged and improved as to constitute in reality a new work; for example, a scientific work twenty or thirty years old may be comparatively worthless, owing to the progress of science in the interval: but a new edition, particularly if it be the production of the original author, would be as valuable at a later period as

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the original edition of the book was at the time it was published. There are many courses which lay between the two extremes, and the difficulty would be to lay down any general rule as to what amount of additions, alterations, or new matter would entitle the second or 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 to the additions and improvements themselves as distinguished from the rest of the book (*a*).

The general rule is, that each successive edition, which is substantially different from the preceding ones, or which contains new matter of substantial amount or value, becomes entitled to copyright as a new work, and it is immaterial whether the new edition is produced by condensing, expanding, correcting, re-writing, or otherwise altering the original work; or by introducing notes, citations, or other additions. Nor is it essential that the new edition should be an improvement on the old, the sole question is whether it is substantially different. A few mere colourable alterations in the text or the addition of a few unimportant notes will not be enough to sustain copyright as in a new work. As Lord Kinloch said in *Black* v. *Murray* (*a*), 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 colourable, 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. 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 proper sense of the

(*a*) 9 Sc. Sess. Cas. 3rd Ser. 341; *Hedderwick* v. *Griffin*, 3 Sc. Sess. Cas. 2nd Ser. 383.

word. 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.

An action was raised in the Scotch Court of Session at the instance of Messrs. Black against Messrs. Murray & Son for a breach of copyright, and the infringement was said to be contained in a book published by the defenders in 1869, which purported to be an edition of the 'Minstrelsy of the Scottish Border,' collected by Sir Walter Scott, and it was stated in the title page to be a reprint of the original edition. The peculiarity of the case was that the original edition of the 'Minstrelsy of the Scottish Border' was no longer protected by copyright; and therefore, if the book was what its title represented it to be, a mere reprint of the original edition, the complaint of the pursuers could not be maintained. But they alleged that this was a false pretence on the face of the title page, and that while all the poems and ballads contained in the original edition of the 'Minstrelsy' were reproduced in this volume, there was a considerable amount of other matter borrowed from works the copyright of which had not expired. The Lord President said that in the first complaint the pursuers alleged that the defenders had illegally copied and pirated from the copyright edition of the 'Minstrelsy of the Scottish Border' the advertisement, or part thereof, prepared by Mr. John Gibson Lockhart, and that they had printed the same, or part thereof, as a preface to their volume, and, further, that they had copied from the 'Minstrelsy' the notes, quotations, illustrations, and references, or the essential parts thereof. The defenders could have no excuse, if this were the case, for it was distinctly stated in that advertisement that this copyright edition contained matter which was not to be found in the original edition. That there might be a copyright of notes, even when the text was not copyright, was a fixed principle in law, and

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most deservedly so; for there was no doubt that the addition of good notes to a standard work was a task worthy of the highest literary talent and reputation; and it must be remembered that Mr. Lockhart stood in a position of peculiar advantage as the editor and annotator of Sir Walter Scott's works, being his son-in-law and literary executor, and having opportunities during the lifetime of Sir Walter Scott to collect materials for the performance of such a task. His lordship, after quoting numerous passages, said there was no doubt that the editor of the defenders' book of 1869 had copied these notes of Mr. Lockhart in the most slavish manner, without even verifying or attempting to make them more accurate than Mr. Lockhart's. It was quite clear to his mind that there had been an appropriation of original matter and quotations, and therefore he held that this part of the pursuers' case had been completely made out. In the said complaint it was alleged that the defender had used notes from 'Old Mortality' with reference to the skirmish of Drumclog, and a letter written by Claverhouse to the Earl of Linlithgow, and also a description of the Battle of Drumclog on Loudon-hill. He was of opinion that the note with the reference to the Battle of Drumclog stood in the same position as the notes to the 'Minstrelsy,' and there again he held that piracy had been committed. In regard to the next complaint—that the defender had copied from volume 8 of the poetical works, containing the 'Lady of the Lake' and other poems, and an account of the 'Massacre of Glencoe'—he was of opinion that there had been the same kind of piracy as in the notes to the 'Minstrelsy.' The Court granted costs to the plaintiffs (*a*).

Copyright in each edition.

The copyright in each edition will extend from the date of that edition, and will be wholly independent of the copyright in any preceding one. Copyright may be obtained for any number of editions and it is immaterial

(*a*) *Black* v. *Murray*, Sol. Journ. Dec. 31, 1870.

whether copyright has existed or not in any previous one. And though no person but the proprietor of the copyright may bring out a new edition of the work, supposing the copyright to be subsisting, without his consent; yet if the work be not protected there is nothing to prevent any person from bringing out a new edition of the work and obtaining a valid copyright therein.

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TERM OF COPYRIGHT, AND IN WHOM VESTED.

Term of copyright.

MANY have agitated for the establishment of a perpetual copyright, together with the bestowal upon authors of the exclusive power of abridging, dramatizing, and metamorphosing their own works at will, turning prose into poetry, romances into plays, and *vice versâ*. The claim of authors resulting from the principles of natural right involves the perpetual duration of the property. But in order that such property should be of value, it is necessary that society should interfere actively for its protection. Society will not ordinarily be willing to apply penal remedies in favour of an exclusive right, further than it finds such a course beneficial to its own interests, in the broadest sense of the term. It is argued, however, that the concessionary allowance of a perpetuity in copyright would encourage publication, and tend greatly to the promotion and furtherance of science and literature. But, admitting that learning and science should be encouraged, that everything tending or conducible to the advancement of knowledge, and consequently to the happiness of the community, should be favoured and tenderly cherished by the legislature, and that the labour of every individual should be properly recompensed, it does not follow that the same or a similar end might not be obtained by different and less objectionable means.

If the individual is a gainer by the existence of perpetual copyright, society is a loser. The absurdity of the assertion that authors are alone inclined to make known their

works from the specific benefit arising from an absolute perpetual monopoly, is manifest. What a studied indignity to those who have devoted their [illegible] to the advancement of every science that adorns the annals of literature! Ambition cannot be deemed a cipher; benevolence will ever exist in the heart of man, and they at least act as powerfully by way of conducives to the communication of knowledge between man and man, as avaricious or mercenary motives.

Considerations respecting a perpetuity in copyright.

A perpetuity in copyright would have the effect of impeding the progress of literature and science, and among other serious inconveniences we will mention one. The text of an author, after two or three generations, if the property be retained so long by his descendants, would belong to so many claimants, that endless disputes would arise as to the right to publish, which in all probability might prevent the publication altogether. The Emperor Napoleon is reported to have stated this objection in council with his characteristic practical wisdom as follows:—

The effect of a perpetuity in copyright.

"*Napoléon dit que la perpétuité de la propriété dans les familles des auteurs aurait des inconvénients. Une propriété littéraire est une propriété incorporelle qui, se trouvant dans la suite des temps et par le cours des successions divisée entre une multitude d'individus, finirait, en quelque sorte, par ne plus exister pour personne; car, comment un grand nombre de propriétaires, souvent éloignés les uns des autres, et qui, après quelques générations, se connaissent à peine, pourraient-ils s'entendre et contribuer pour réimprimer l'ouvrage de leur auteur commun? Cependant, s'ils n'y parviennent pas, et qu'eux seuls aient le droit de le publier, les meilleurs livres disparaîtront insensiblement de la circulation.*

The Emperor Napoleon's opinion of a perpetuity.

"*Il y aurait un autre inconvénient non moins grave. Le progrès des lumières serait arrêté, puis qu'il ne serait plus permis ni de commenter, ni d'annoter les ouvrages; les gloses, les notes, les commentaires ne pourraient être séparés d'un texte qu'on n'aurait pas la liberté d'imprimer.*

"*D'ailleurs, un ouvrage a produit à l'auteur et à ses*

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héritiers tout le bénéfice qu'ils peuvent naturellement en attendre, lorsque le premier a eu le droit exclusif de le vendre pendant toute sa vie, et les autres pendant les dix ans qui suivent sa mort. Cependant, si l'on veut favoriser davantage encore la veuve et les héritiers, qu'on porte leur propriété à vingt ans" (a).

Though we could not, therefore, uphold a perpetual copyright, believing that its existence would by no means tend to the spread or encouragement of literature, we would willingly offer our support to the extension of the period during which literary copyright is at present protected.

Present term of copyright.

The 3rd section of the 5 & 6 Vict. c. 45, enacts that the copyright in every book which shall after the passing of that Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns; provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

As to copyright subsisting at the time of passing of Copyright Act, 1842.

In case of books published before the passing of the Act and in which copyright then subsisted, the 4th section provides that the copyright shall be extended and endure for the full term provided by the Act in cases of books thereafter published, and shall be the property of the person who at the time of the passing of the Act shall be the proprietor of such copyright. But it is further provided that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall

(a) Locré, *Législation civile de la France*, tit. ix. pp. 17–19; Renouard, *Droits d'Auteurs*, tom. 2, p. 387.

have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by the Act, but shall endure for the term which shall subsist therein at the time of the passing of the Act, and no longer, unless the author of such book if he shall be living, or his personal representative if he shall be dead, and the proprietor of such copyright, shall before the expiration of such term consent to accept the benefits of the Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to the Act to be entered in the registry at Stationers' Hall, in which case such copyright shall endure for the full term provided in cases of books published after the passing of the Act, and shall be the property of such person or persons as in such minute shall be expressed.

Judicial Committee of Privy Council may license republication of certain books.

The 5th section, in order to provide against the suppression of books of importance to the public, provides that the Judicial Committee of Her Majesty's Privy Council may, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit (*a*).

Suggestion of Copyright Commissioners as to extension of term of copyright.

The Royal Commissioners in their recent report on copyright recommend that the term shall be for life and thirty years from his death in cases of books published in the author's lifetime and with his name; and for thirty years from the date of the deposit of the book for the use of the British Museum as to works published anonymously or after the death of their authors, and as to cyclopædias; but that if the author of an anonymous work publishes in his lifetime an edition bearing his name he should be entitled to copyright therein for his life and thirty years after his death.

(*a*) This section seems to have been put in force with regard to Sir Kenelm Digby's 'Broadstone of Honour.'

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Meaning of the word "book."

The term "book" by virtue of the interpretation clause is to be construed to signify and include every volume, part, or division of a volume (*a*), a pamphlet, sheet of letterpress (*b*), sheet of music, map, chart, or plan separately published. But a separate article, advertised to form part of a periodical publication, is not a book within the meaning of the Act, and therefore does not require registration under the 24th section (*c*).

What is a publication?

The copyright is, we have seen, to run from the date of the publication of the work, consequently it will be necessary to inquire what, in the eye of the law, may be regarded as equivalent to publication (*d*). In *Coleman* v. *Wathen* (*e*), it was said that the acting of a dramatic composition on the stage was not a publication within the statute. The plaintiff, it appears, had purchased from O'Keefe the copyright of an entertainment called the 'Agreeable Surprise,' and the defendant represented this piece upon the stage. The mere act of repeating such a performance from memory was held to be no publication. On the other hand, to take down from the mouths of the actors the words of a dramatic composition, which the author had occasionally suffered to be performed, but never printed or published, and to publish it from the notes so taken down, was deemed a breach of right; and the publication of the copy so taken down was restrained by injunction (*f*).

By the 20th section of the Copyright Act, 1842, it is declared, that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent to the first publication of any book (*g*).

(*a*) See the *University of Cambridge* v. *Bryer*, 16 East. 317; *The British Museum* v. *Payne*, 2 Y. & J. 166; *Clayton* v. *Stone*, 2 Paine (Amer.) 383; *Scoville* v. *Toland*, 6 West. L. J. (Amer.) 84. But a label used in the sale of an article is not a book: *Coffeen* v. *Brunton*, 4 McLean (Amer.) 517.

(*b*) See *Clementi* v. *Goulding*, 2 Camp. 25; 11 East, 244; *Hime* v. *Dale*, 2 Camp. 27 a; *White* v. *Geroch*, 2 B. & Ald. 298.

(*c*) *Murray* v. *Maxwell*, 3 L. T. (N.S.) Ch. 466.

(*d*) The use of letters as evidence in a court is not publication: 7 Byth & Jarm., by Sweet, 628, note (*a*).

(*e*) 5 T. R. 245: see *Roberts* v. *Myers*, 13 Mo. Law. Rep. (Amer.) 397; *Crowe* v. *Aiken*, Amer. Law. Rep. L. Jour. vol. 5, No. 226. 1870.

(*f*) *Macklin* v. *Richardson*, Amb. 694, cited 2 Kent's Com. 378.

(*g*) *Post*.

A presentation of copies, on the part of the author, may not amount to a publication, but the gratuitous circulation generally would seem to be so (*a*).

Gratuitous circulation when a publication.

Abbott, C.J., in *White* v. *Geroch* (*b*) considered that a *sale* of copies of a work in manuscript amounted to a *publication* of the work from which the statutory period would commence to run, and, referring to this opinion, Mr. Sweet, in his notes to Bythewood and Jarman's Conveyancing (*c*), says "this construction, if well founded, would apply to the recent Act." He admits there is no direct authority on the point; but he states that it seems clear that a *gratuitous* circulation of copies of a work among friends and acquaintances would not amount to a publication; quoting in support of this proposition the *Duke of Queensbury* v. *Shebbeare*; and *Dr. Paley's Case*, where the bookseller was restrained from publishing manuscripts left by Dr. Paley for the use of his own parishioners only. The distinction is in the limit of the circulation, if limited to friends and acquaintances it would not be a publication, but if general, and not so limited, it would be.

Private distribution of lithographic copies.

So the distribution of lithograph copies of music for private use, and not for the purpose of sale or exportation, has been held to be a publication, but on the other hand it is clear that a private circulation for a restricted purpose is not a publication. Thus, in *Prince Albert* v. *Strange* (*d*), it appeared that her Majesty and the late Prince Consort had given to their intimate friends lithographic copies of drawings and etchings which they had made for their own amusement. This was held to be a private circulation of copies, and hence not a publication.

Circulation among pupils of a system of book-keeping.

In an American case (*e*) it appeared that the plaintiff, who was a teacher of book-keeping, had written his system of instruction on separate cards, for the convenience

(*a*) *Vide Novello* v. *Ludlow*, 12 C. B. 177; 16 Jur. 689; 21 L. J. (C.P.) 169; *Dr. Paley's Case* cited 2 V & B. 23; *Alexander* v. *Mackenzie*, 9 Sess. Cas. 2nd series, 748.

(*b*) 2 B. & A. 998; S. C. 1 Chit. Rep. 24.

(*c*) Vol. 7, p. 626. (*d*) 2 De G. & Sm. 652; 1 Mac. & G. 25.

(*e*) *Bartlett* v. *Crittenden*, 4 McLean, 300; 5 Id. 32; *Rees* v. *Peltzer*, 75 Ill. (Amer.) 475.

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of giving instruction to his pupils. He had permitted them to copy these cards for their own convenience, and to enable them to instruct others. The defendant published copies of the cards, which he had obtained while a pupil in the school, and maintained that the plaintiff, by permitting his manuscripts to be so copied, had abandoned them to the public. The court, however, held this to be a private circulation of copies, which did not prejudice the owner's common law rights. "The students of Bartlett who made these copies," said Mr. Justice McLean, "have a right to them and 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 . . . . 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."

The question of publication does not depend on the number of copies sold or given away; because a sale of one copy only is as clearly a publication as is the sale of ten thousand. Nor can it be essential that a single copy be disposed of before the work can be said to be published, for the work is published when it is publicly offered for sale. The act of publication is the act of the author, and cannot be dependent upon the act of a purchaser. Printing does not amount to publication, for it is obvious that it may be withheld from the public long after it is in print. To constitute publication it is necessary that the work shall be exposed for sale or offered gratuitously to the general public, so that any person may have an opportunity of enjoying that for which copyright is intended to be secured.

Work must be first published in this

The previous publication of a work abroad disqualifies it for copyright in this country (*a*). If, however, the pub-

(*a*) See *Clementi* v. *Walker*, 2 B. & C. 861; *Guichard* v. *Mori*, 9 L. J. (Ch.) 227; *Delondre* v. *Shaw*, 2 Sim. 237; *Page* v. *Townsend*, 5 Sim. 395; *Boucicault* v. *Delafield*, 1 H. & M. 597; 23 L. J. (N.S.) Ch. 38; *Hedderwich* v. *Griffin*, 3 Sess. Cas., 2nd Series, 383.

lication here and abroad be simultaneous, the publication abroad will not stand in the way of copyright in this country (*a*). The legislature contemplates publication *here* and *here only*, and it contemplates such publication only when made by the author, or with such consent and authority from him as the statute requires; and it contemplates publication of foreign books only when they are capable of advancing literature here, that is to say, before the work is published here by a person who has obtained it fairly and *bonâ fide* under a previous assignment by the author in a foreign country (*b*).

Country, or simultaneously with that in another.

So where the work was composed before June, 1814, and in that month the author sanctioned a publication of it in France, and five copies of it were deposited in a musical depôt at Paris; in July, 1814, the author made a verbal arrangement with the plaintiff, and the latter published in the September following; it was held, that the publication was not such a publication by the author as to entitle him to the statutory privilege (*c*).

That the publication must be in the United Kingdom scarcely admits of a doubt. The words of the 3rd section are "every book which shall be published," without saying where; but it would be inconsistent with the usual practice of the Imperial Parliament to create a system of copyright law for all the colonies and dependencies of the empire, many of which have representative institutions of their own, without any consultation with those colonies or dependencies, and without any consideration whether a uniform and arbitrary system, such as that introduced by the Act, would be suitable to the varied circumstances, states of civilization, and systems of jurisprudence and judicature in these different colonies and possessions (*d*). In deciding this question Lord Cairns

Publication must be in United Kingdom.

(*a*) Phillips on Copy. 52, citing Erle, J., in *Cocks* v. *Purday*, 2 Car. & Kirw. 269; *Routledge* v. *Low*, L. R. 3 H. L. 100.

(*b*) *Per* Bayley, J., *Clementi* v. *Walker*, 2 B. & C. 861; *Chappell* v. *Purday*, 4 Y. & C. 485; 14 M. & W. 303; *Guichard* v. *Mori*, 9 L. J. (Ch.) 227.

(*c*) *Clementi* v. *Walker*, *supra*.

(*d*) *Per* Lord Cairns, *Routledge* v. *Low*, L. R. 3 H. L. 100.

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said: "But there are, as it seems to me, still clearer indications in the Act of the intention of the legislature on this point. By the 8th section copies of every book are to be delivered to various public libraries in the United Kingdom within one month after demand in writing; an enactment which in the case of a publication at the antipodes could not be complied with. By the 10th section penalties for not delivering these copies are to be recovered before two justices of the county or place where the publisher making default shall reside, or by action of debt in any court of record in the United Kingdom. By the 11th section the book of registry of copyrights and of assignments is to be kept at Stationers' Hall, in London, and no registry is provided for the colonies. By the 14th section a motion to expunge or vary any entry in this registry is to be made in the Court of Queen's Bench, Common Pleas, or Exchequer. These clauses are intelligible if the publication is in the United Kingdom, but hardly so if it may be in India or Australia. Finally by the 17th section there is a provision against any person importing into any part of the United Kingdom, or any other part of the British dominions, for sale or hire, any copyright book first composed or written, or printed and published in any part of the United Kingdom, and reprinted in any country or place out of the British dominions; a provision shewing clearly, as it appears to me, that publication in the United Kingdom is indispensable to copyright (*a*)."

An Englishman resident abroad may have a copyright.

A residence abroad by an English subject, or the fact of the work having been composed abroad, either by an Englishman or a foreigner, would not have the effect of preventing the author from acquiring a copyright in this country. On this point there can be no doubt, for independent of the peculiar wording of the copyright statute and under the old Act of Queen Anne this was decided, the reason assigned being, that an English subject, though resident abroad, does not by such residence throw off his

(*a*) *Per* Lord Cairns, *Routledge* v. *Low*, L. R. 3 H. L. 100.

natural allegiance; he cannot be relieved from it, and therefore carries with him the natural rights of a subject of England wherever he goes (*a*). That gives him, though resident abroad, the right of publishing and acquiring a copyright here, because he has always fulfilled the implied condition of being a subject of, and owing allegiance to, the crown of Great Britain. This of course could not be said of a foreigner who was not actually resident here (*b*). Nor could he (being resident abroad) under the Act of Queen Anne have acquired a copyright in this country, though, as we shall presently see, there have been conflicting opinions on the point.

Copyright no existence in the law of nations.

Copyright has no existence in the law of nations; it acquires a power simply by the municipal law of each particular community. "As soon," observes Mr. Curtis (*c*), "as a copy of a book is landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

Persons who may claim copyright.

The only persons who can claim the copyright in a book published before the 1st of July, 1842, are the proprietor on that day of the copyright therein, or his assigns; and in the case of a book since published, the author or his assigns. And as the word "author" is used without limitation or restriction, it is equally applicable to foreigners as to British subjects. There is nothing in any part of the Act to restrict the word "author" to British subjects (*d*).

As to aliens, the following rules have been laid down at

(*a*) But British subjects under certain circumstances may, under the Naturalization Act of 33 Vict. c. 13, free themselves from their allegiance, and may resume it again.

(*b*) *Per* Lord St. Leonards in *Jefferys* v. *Boosey*, 4 H. L. C. 985; but see *Routledge* v. *Low*, L. R. 3 H. L. 100.

(*c*) 'Copyright,' 22.

(*d*) The case of *Jefferys* v. *Boosey* was a decision under the Statute of Anne.

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How aliens may acquire copyright in this country.

various times, though not without much discussion and difference of opinion:—That an alien may acquire copyright in this country on three conditions: first, publication must be in the United Kingdom; secondly, there must have been no previous publication; and, thirdly, the author must be at the time of publication within the British dominions (*a*).

Whether a foreigner resident abroad can obtain a copyright in a work first published in this country.

In *D'Almaine* v. *Boosey* (*b*) the two principal questions that arose were, whether the law would protect the assignee of foreign copyright at all, and whether any protection could exist where the work had been first published abroad. Alluding to *Delondre* v. *Shaw*, Lord Abinger said, "If the Vice-Chancellor had decided expressly that a foreigner, *quâ* foreigner, had no protection in England in regard to copyright, I confess I should have doubted the correctness of that decision; though, certainly, I should not have decided in opposition to him, but should have put this case to the course of further investigation, out of respect to his authority. But the case which has been cited upon the subject does not go that length; it is in principle not quite intelligible; but there was clear ground for an injunction independently of the question of copyright. Besides, that was a case where one of the parties resided abroad. Now, the Acts give no protection to foreigners resident abroad in respect of works published abroad; and all the Vice-Chancellor said was, that the publisher of a work at Paris could not protect himself in a court of justice in England, either by action or injunction."

Again, in *Bentley* v. *Foster* (*c*), Vice-Chancellor Shadwell said, that if an alien friend wrote a book, whether abroad or in this country, and gave the British public the advantage of his industry and knowledge by first publishing the

(*a*) The United Kingdom embraces England and Wales, Scotland and Ireland; while the British dominions include "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired." 5 & 6 Vict. c. 45, s. 2.

(*b*) 1 Y. & C. 288.

(*c*) 10 Sim. 329: see also *Page* v. *Townsend*, 5 Sim. 395; *Tonson* v. *Collins*, 1 W. Bl. 301; *Bach* v. *Longman*, 2 Cowp. 623; *contrà*, *Chappell* v. *Purday*, 14 M. & W. 303.

work here, he was entitled to the protection of the laws relating to copyright in this country.

The question was fully discussed in *Bach* v. *Longman* (*a*). Bach was a musical composer, who had come into this country from Germany. He sued Longman for pirating a sonata, which the latter had published in England, and he was successful in his suit. In accordance with these decisions, in the year 1845, Chief Baron Pollock, in delivering the judgment of the Barons of the Exchequer in *Chappell* v. *Purday* (*b*), stated the result of the cases at that time decided on the subject to be that if a foreign author, not having published abroad, first publishes in England, he may have the benefit of the statutes; and on the authority of these cases, and the general rule that an alien may acquire personal rights and maintain personal actions in respect of injuries to them (*c*), it was determined in *Cocks* v. *Purday* (*d*), that an *alien amy* resident abroad, the author of a work of which he is also the first publisher in *England*, and which he has not made *publici juris* by a previous publication elsewhere, has a copyright in that work, whether it be composed in this country or abroad. This determination was supported in *Boosey* v. *Davidson* (*e*), and subsequently considered by the Court

(*a*) 2 Cowp. 623.

(*b*) 14 M. & W. 303, 320.

(*c*) See *Pisani* v. *Lawson*, 8 Scott, 182; 6 Bing. (N.S.) 90; 8 Dowl. 57; *Tuerloote* v *Morrison*, 1 Bulst. 134; Yelv. 198; Dyer, 2 b.

(*d*) 5 C. B. 860, since overruled.

(*e*) 18 L. J. (Q.B.) 174; 13 Q. B. 257. In *Buxton* v. *James* (5 De G. & Sm. 80; 16 Jur. 15), an alien residing abroad composed three musical pieces in a foreign country, and sold the copyright in this country to the plaintiff, a British subject, who published the work in London. The work was published on the same day in Prussia. On motion in a suit instituted by the purchaser of the copyright against a person who had, without leave, published the musical compositions in this country, the Court granted an injunction restraining the unauthorized publication. And in *Ollendorf* v. *Black* (4 De G. & Sm. 209; 14 Jur. 1088; 20 L. J. (Ch.) 165), it was held that an alien resident abroad might himself have copyright in a work written by himself, and published for the first time in this country, at all events if he were resident here at the time of publication. In this case an alien author had first published a work while resident in this country, and an edition of the same work was published in Frankfort, and copies were imported into this country and sold by a London bookseller, and the alien filed a bill for an injunction to restrain the sale, and on motion the same was granted, the plaintiff undertaking to bring an action if the defendants desired it.

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of Exchequer in *Boosey* v. *Purday* (*a*), when that court held that a foreigner had no such capacity.

This last was the case of a foreigner domiciled abroad sending his work to Great Britain for first publication, and endeavouring to confer a valid title upon a British subject. Baron Pollock there said: "Our opinion is that the legislature must be considered *primâ facie* to mean to legislate for its own subjects, or those who owe obedience to its laws; and, consequently, that the Acts apply *primâ facie* to British subjects only in some sense of that term, which would include subjects by birth or residence being authors; and the context or subject matter of the statutes does not call upon us to put a different construction upon them. The object of the legislature clearly is not to encourage the importation of foreign books and their first publication in England as a benefit to this country; but to promote the cultivation of the intellect of its own subjects."

Case of *Jefferys* v. *Boosey*.

In this unsettled state of the law arose the case of *Jefferys* v. *Boosey*, which was ultimately carried on appeal to the House of Lords.

Bellini, a foreign musical composer, resident at that time in his own country, composed a certain work, in which, by the laws there in force, he had a copyright. He then assigned to Ricordi, another foreigner also resident there, according to the laws of their country, his right to the copyright in the composition of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and, before publication, assigned it, according to the forms required by the laws of this country, to an Englishman. The first publication took place in this country. The work was subsequently pirated, and proceedings instituted which ultimately reached the Upper House. The judges were called upon for their opinions, which they delivered *seriatim*, and judgment was finally pronounced by the House in favour of the defendant. The grounds of the decision were that an Act of Parliament of this country,

(*a*) 4 Ex. 145.

having within its view a municipal operation only, and being therefore limited to this kingdom, cannot be held to extend beyond our own subjects, except as both statutes and common law so provide for foreigners *when they become resident here*, and owe at least a temporary allegiance to the sovereign, and thereby acquire rights just as other persons do; not because they are foreigners, but because being here, they are here entitled, in so far as they do not break in upon certain rules, to the general benefit of the law for the protection of their property, in the same way as if they were natural-born subjects. "Where an exclusive privilege," said Lord Cranworth (*a*), "is given to a particular class at the expense of the rest of Her Majesty's subjects, the object of giving that privilege must be taken to have been a national object; and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. When I say that the Legislature must *primâ facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects,' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here, and composing and publishing a book here, is an author within the meaning of the statute; he is within its words and spirit. I go further; I think that if a foreigner having composed, but not having published a work abroad, were to come to this country, and the week or day after his arrival, were to print and publish it here, he would be within the protection of the statute. This would be so if he had composed the work after his arrival in this country, and I do not think any question can be raised as to when and where he composed it. So long as a literary work remains unpublished at all, it has no existence, except in the mind of its author, or in the papers in which he, for his own convenience, may have

(*a*) *Jefferys* v. *Boosey*, 4 H. L. C. 815; 1 Jur. (N.S) 615; 24 L. J. (Ex.) 81; *Low* v. *Routledge*, 10 Jur. (N.S.) 922; 10 L. T. (N.S.) 838; 11 Jur. (N.S.) 939; *Routledge* v. *Low*, Law Rep. 3 H. L. 100; 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874.

embodied it. Copyright, defined to mean the exclusive right of multiplying copies, commences at the instant of publication; and if the author is at that time in England, and while here he first prints and publishes his work, he is, I apprehend, an author within the meaning of the statute, even though he should have come here solely with a view to the publication. The law does not require or permit any investigation on a subject which would obviously, for the most part, baffle all inquiry, namely, how far the actual composition of the work itself had, in the mind of its author, taken place here or abroad. If he comes here with his ideas already reduced into form in his own mind, still, if he first publishes after his arrival in this country, he must be treated as an author in this country. If publication, which is (so to say) the overt act establishing authorship, takes place here, the author is then a British subject, wherever he may, in fact, have composed his work. But if at the time when copyright commences by publication, the foreign author is not in this country, he is not, in my opinion, a person whose interests the statute meant to protect."

Extension of copyright by the Act of 1842.

Copyright under the statute of Anne was confined to Great Britain. The case of *Jefferys* v. *Boosey* decided that this statute gave the copyright in a work only to British subjects or to foreign authors who at the time of the first publication were in this country. But by the 29th section of the 5 & 6 Vict. c. 45, it is enacted "that the Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions." This section of the Act requires for its full effect, that the area over which the copyright prevails should be limited, only by the extent of the British dominions. And then it follows that the term "author" must have a similar extension. For in the case of *Jefferys* v. *Boosey* it was not doubted that the term "author," though intended to express a British subject, would apply to a foreigner taking up residence within the limits to which copyright extended under the 8 Anne, and those limits being now

enlarged by the 5 & 6 Vict., the residence which confers the rights of a British subject, as to copyright, upon a foreigner, may be in any part of the Queen's dominions.

It must be remembered that the case of *Jefferys* v. *Boosey* was decided under the old Copyright Act of Queen Anne, and not under the present Copyright Act, and though Lord Cranworth in a late case (*a*) said he could see no difference between the two statutes so far as relates to the subject of the residence of foreign authors; yet in the same case Lord Cairns was inclined to a different opinion, and in the opinion of Lord Westbury the case of *Boosey* v. *Jefferys* was a decision attached to and dependent on the particular statute of which it was the exponent; and that statute having been repealed, and replaced by another Act, with different enactments expressed in different language, could not be considered a binding authority on the exposition of this latter statute. "The Act," said his Lordship, "secures a special benefit to British subjects by promoting the advancement of learning in this country, which the Act contemplates as the result of encouraging all authors to resort to the United Kingdom for the first publication of their works. The benefit of the foreign author is incidental only to the benefit of the British public. Certainly the obligation lies on those who would give the term 'author' a restricted signification to find in the statute the reasons for so doing." "The Act," he remarks in another place, "appears to have been dictated by a wise and liberal spirit, and in the same spirit it should be interpreted, adhering of course to the settled rules of legal construction. The preamble is, in my opinion, quite inconsistent with the conclusion that the protection given by the statute was intended to be confined to the works of British authors. On the contrary, it seems to contain an invitation to men of learning in every country to make the United Kingdom the place of first publication of their works, and an extended term of copyright throughout the

(*a*) *Routledge* v. *Low*, L. R. 3 H. L. 114; and Lord Chelmsford was of the same opinion.

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the whole of the British dominions is the reward of their so doing. So interpreted and applied, the Act is auxiliary to the advancement of learning in this country. The real condition of obtaining its advantages is the first publication by the author of his work in the United Kingdom. Nothing renders necessary his bodily presence here at the time, and I find it impossible to discover any reason why it should be required, or what it can add to the merit of the first publication. It was asked, in *Jefferys* v. *Boosey*, why should the Act (meaning the statute of Anne) be supposed to have been passed for the benefit of foreign authors? But if the like question be repeated with reference to the present Act the answer is, in the language of the preamble, that the Act is intended 'to afford greater encouragement to the production of literary works of lasting benefit to the world;' a purpose which has no limitation of person or place . . . . If the intrinsic merits of the reasoning on which *Jefferys* v. *Boosey* was decided be considered (and which we are at liberty to do, for it does not apply to this case as a binding authority), I must frankly admit that it by no means commands my assent."

Necessity for alien to be in the British dominions, and to publish in United Kingdom, to obtain copyright.

It was admitted in *Jefferys* v. *Boosey* and expressly held in *Routledge* v. *Low* that an alien author may acquire copyright by first publishing in the United Kingdom, provided he be within the British dominions at the time of publication. It matters not where he has composed the work, nor whether he goes into the realm with the sole purpose of being there at the time of publication, and leaves when publication has taken place. The presence of the author is not necessary for any definite period, it is only necessary that he be on British soil at the time of publication (*a*). The author must be there in person—the presence of his assignee, publisher or agent is not sufficient. "Every alien coming into a British colony," said Turner, L.J. (*b*), "becomes temporarily a subject of the Crown—bound by, subject to, and entitled

(*a*) Suppose he went on board a British vessel?
(*b*) *Low* v. *Routledge*, L. R. 1 Ch. Ap. 42, 47.

to the benefit of the laws which affect all British subjects. He has obligations and rights both within and beyond the colony into which he comes. As to his rights within the colony he may well be bound by its laws, but as to his rights beyond the colony he cannot be affected by those laws; for the laws of a colony cannot extend beyond its territorial limits." And on appeal in the case last cited to the House of Lords (*a*), two of the greatest law lords on the Bench—Lord Cairns and Lord Westbury—were of opinion that the Act of Parliament gives a copyright to every author who first publishes his book in the United Kingdom, no matter where he lives, or under what dynasty he serves. "Protection," said the former learned judge, "is given to every author who publishes in the United Kingdom, wheresoever that author may be resident, or of whatever state he may be the subject. The intention of the Act is to obtain a benefit for the people of this country by the publication to them of works of learning, of utility, of amusement. The benefit is obtained, in the opinion of the legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his work here. This is, or may be, a benefit to the author, but it is a benefit given, not for the sake of the author of the work, but for the sake of those to whom the work is communicated. The aim of the legislature is to increase the common stock of the literature of the country; and if that stock can be increased by the publication for the first time here of a new and valuable work, composed by an alien, who never has been in the country, I see nothing in the wording of the Act which prevents, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the protection of the Act, in return and compensation for the addition he has made to the literature of the country. I

Lord Cairns' and Lord Westbury's opinions on the interpretation of the Copyright Act.

(*a*) *Routledge* v. *Low*, L. R. 3 H. L. 100; 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874.