A

TREATISE

ON THE

LAWS OF LITERARY PROPERTY,

COMPRISING

THE STATUTES AND CASES

RELATING TO

BOOKS, MANUSCRIPTS, LECTURES; DRAMATIC AND MUSICAL COMPOSITIONS; ENGRAVINGS, SCULPTURE, MAPS, &c.

INCLUDING

PIRACY AND TRANSFER OF COPYRIGHT;

WITH AN

HISTORICAL VIEW,

AND

DISQUISITIONS ON THE PRINCIPLES AND EFFECTS OF THE LAWS.

By ROBERT MAUGHAM,

SECRETARY TO THE LAW INSTITUTION,

Author of the "Law of Attornies," &c.

"I have entered into a work touching Laws, in a middle term, between the speculative and reverend discourses of Philosophers, and the writings of Lawyers."—BACON.

8°

LONDON:

PUBLISHED BY LONGMAN, REES, ORME, BROWN, AND GREEN, PATERNOSTER ROW;
HENRY DIXON, 19, CAREY STREET, LINCOLN'S INN;
ADAM BLACK, EDINBURGH.

1828.

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

TO

THE RIGHT HONORABLE

JOHN SINGLETON, LORD LYNDHURST,

LORD HIGH CHANCELLOR OF GREAT BRITAIN,

ETC. ETC. ETC.

My Lord,

Having composed a Treatise on the progress and present state of the Laws of Literary Property, with some Disquisitions on their Principles, and an examination of their effect on the interests of Literature, I was naturally desirous to dedicate my labors to the distinguished Chief of that Court where those laws are the most appropriately administered---where they have ever received the most liberal construction---and where the most effectual remedy is afforded for the injuries of authors, and the proprietors of their copyright.

A work thus devoted to the investigation of the rights and interests of the *Scholar* and the *Artist*, it is no small privilege to be permitted to dignify with the name of a Nobleman, alike distinguished by his profound knowledge of the law, and his taste for the elegant arts, and the pursuits of literature.

It was not long ago observed by your Lordship, during a debate in the Senate, " That it would be wise not to over-
" whelm the Judges with business; making them, in too
" many instances, slaves to the *technical* part of their profession
" —that they should have the opportunity of *cultivating general*

" *literature,* and be allowed the leisure to return to the pleasant
" pursuits of early years, which, it was to be lamented, too
" many of the Bar (greatly to the injury of the profession)
" were obliged to suspend."

Since the expression of these enlightened sentiments, your Lordship has been elevated to those seats of Legislation and Justice, where the influence of such opinions will embellish Wisdom with the grace of Refinement.

To the friends of literature it must be peculiarly gratifying that your Lordship has spared, from the weighty duties of your high office, some moments to the encouragement of genius, and bestowed your presiding sanction at assemblies convened for its stimulus and reward.

Encouraged by the noble interest which your Lordship has thus evinced in the cause of letters, and grateful for the permission with which I have been distinguished, I beg to dedicate this work to ONE, who, by a rare combination of excellence, has attained the highest judicial station in this great Empire.

I have the honor to be,

MY LORD,

With the deepest respect,

Your Lordship's

Much obliged and very humble Servant,

ROBERT MAUGHAM.

Great James Street,
October 24th, 1828.

LAWS OF LITERARY PROPERTY.

Introductory Dissertation.

The promotion of learning seems, at the earliest periods of our history, to have been a favorite object, not only of our ancestors in their individual capacity, but of our system of jurisprudence. Thus schools and colleges were established and endowed in all parts of the kingdom, by the munificence even of private men. Scarcely a town existed, where an edifice of splendour or utility (now too often crumbling to ruins) was not devoted, like the halls of classic instruction, to the purposes of intellectual improvement. It was not beneath the dignity of the law to co-operate, in a noble spirit of protection, with this general feeling towards the cultivation of letters. It was not deemed inconsistent with the policy of our legal system (however objectionable it may now appear to the legislative philosopher) to grant to the *scholar* a partial immunity in the administration of its criminal code, which was denied to the uneducated offender. Justice relaxed its severity in favor of Learning; and, in veneration for those rare attainments of the mind by which the world has been humanized, Mercy interposed its hand, and saved the "learned clerk" from an ignominious fate. Still further,—the prompt and efficacious remedy with which the lords of the soil had armed themselves, in the form of distress for rent, for suit, or services, was superseded, not only in favor of the needful implements of husbandry and trade, but the *books of a*

scholar were also respected as sacred property, devoted to the service of mankind.

The contrast is singular between the favor which was thus shown to literature in times comparatively savage, and the discouragement it encountered during the refinement of the last century. In the ages of semi-barbarism we perceive every inducement presented to the ingenious student for the improvement of his faculties, and the cultivation of letters. In the era of boasted enlightenment, we witness the curtailment of rights, and the imposition of burthens!

The dawning of a better day seems, however, of late to have appeared in our system of jurisprudence. The legislature, moved by the enlightened spirit of some of its members, has indicated a liberality of feeling, on many recent occasions, towards the interests of science, literature, and art, which may reasonably encourage the expectation, that the claims of justice will, in future, be more favorably considered than on former occasions, and the injury diminished, if not entirely removed.

The principles which now prevail on the Law of Copyright, it is well known, are totally at variance with the opinions of many distinguished judges, and especially of Lord MANSFIELD and Mr. Justice BLACKSTONE. It has, therefore, been remarked by Professor CHRISTIAN, that every person may still be permitted to indulge his own opinion upon the propriety of the law, without incurring the imputation of arrogance.

We shall accordingly avail ourselves of the privilege thus conceded, and discuss the several statutes by which the interests of literature are affected; trace their successive stages, and examine the principles on which they are founded.

In this preliminary part of the Treatise, the disquisition will be brief and general; but we deem it necessary to advert to some of the leading points in this great literary controversy, before we enter on the details of the subject; the

more especially as some of them must necessarily be of a technical nature, and we are desirous of engaging the attention, not of the professional student alone, but of every one who is interested in the progress of learning and science.

Although the view which we must take of this subject will be unpalatable to many, there are, happily, several encouragements to the undertaking, which in no slight degree lead us to expect a favorable reception, as well with the public in general, as the liberal of all classes, and the learned in particular.

"Indeed, all arguments in support of the rights of learned men in their works must ever be heard, said Lord KENYON, with great favor, by men of liberal minds, to whom they are addressed(1)."

The enlightened spirit in which this feeling was expressed, was entertained in an equal degree by Lord HARDWICKE. The Attorney-General of his time had argued that the Copyright Act, being a monopoly, ought to receive a strict construction. "I am quite of a different opinion," said his lordship; "it ought to receive a *liberal* construction. It is very far from being a monopoly. It is intended to secure the property of books in the authors themselves, or the purchasers of the copy, as some recompense for their pains and labor in composing works useful to the learned world(2)."

Fortified by these high authorities, we may venture to arraign the present code, under which we think that literary property is oppressed with severer restrictions and greater burthens than any other production of human industry.

Not only is its *duration* limited to the short period of twenty-eight years, but it is *taxed* for the benefit of wealthy corporations, to an amount always burthensome, and frequently destructive of all the remuneration it would otherwise afford. Indeed, the impolicy, as well as the injustice,

(1) 7 T. R. 627.

(2) 2 Atk. 143.

of the existing laws, must be admitted by every one who is in the least degree acquainted with the subject, and possessed of the smallest share of impartiality. Even the Universities acknowledge (as well they may) that the limitation of the term is grossly unjust; and all classes must pronounce the imposition of eleven copies of all kinds of publications, to be contrary to every principle of equity.

That it may not be supposed we enter on this critical part of our task with a feeling drawn only from the complaints of disappointed authors, or that we are disposed to put a forced and unmerited construction on the acts of the legislature, it may be remarked, that Sir *John Dalrymple*, one of the counsel (in the cause of Donaldson v. Beckett) who opposed the perpetuity of copyright, expressly urges that "this Act of Queen Anne, which was ushered in under the idea of encouraging literature, was very far from having such a tendency. What (he demanded) did the authors and booksellers gain? Why, a perpetuity was changed to a term of fourteen years only. A price was fixed, and a clause inserted, to force them to send copies to public libraries. What encouragements are these? They, on the contrary, were discouragements."

The history of these statutes regarding literary property, and the construction which they have received, present a striking proof of the injustice of their nature.

Nothing, in the first place, could be worse than their *origin;* and they have consistently continued in a state of undeviating oppression and severity. They were established in the most despotic periods of our political annals, and were designed for the express purpose of suppressing all free inquiry, and the diffusion of all kind of knowledge, in any way relating to the affairs of the church and state.

But although no book of any kind whatever could then be published without the license of the constituted authorities, and though (compared with the present laws) *the moderate number of three copies* were required to be delivered to

the King's librarian and the Vice-Chancellors of the two Universities, still there was *no restraint* on the *duration* of an author's rights. So long as the press could be held in sufficient subjection, it was not the intention, even during the most arbitrary administration of the affairs of Government, to curtail the property of inoffensive writers, or burthen them with exactions unknown to other classes of the community. Barring the sacred ground of theology and politics, the learned and ingenious of those times were allowed to exercise their talents, and reap the fruits of their intellectual labor, like every other subject of the realm, liable only to the tax, which, although obnoxious enough in *principle*, was comparatively mild in *amount*.

"When," to use the language of MILTON, "books were as freely admitted into the world as any other birth; when the issue of the brain was no more stifled than the issue of the womb; when no envious junto sat cross-legged over the nativity of any man's intellectual offspring,"—when the licensing system ceased, and men were permitted to publish their works on their own responsibility,---this exaction of three copies soon ceased altogether.

It was reserved for the "Augustan age of English literature,"—for the days of Pope, Swift, and Addison,—to revive this odious impost, and to increase it in a *threefold* degree! To the same enlightened era we are indebted for the reduction of the *perpetual* right, which the justice of the ancient law of the land had previously protected, down to a space, often briefer than that which was occupied in the composition of the work!

Still, it seems that a remnant continued of the juster feeling of the olden time; for though the *language* of the statute limited the administration of justice to fourteen years, (as modern ingenuity construed it) its *spirit* was understood to apply only to the penal enactments against piracy,---leaving untouched the ancient remedy for the recovery of actual damages. This, it seems, was an *honest blunder*, into which

even the marauders on literary property had fallen; and in future they were enlightened by the expounders of the law, and permitted to rove at large over the legalized spoil.

We reserve to another part of the Treatise the investigation of the reasoning or sophistry by which it was thus established, to the satisfaction of *five* out of *eight* judges, that the Act of Anne,—in its preamble expressly professing "to prevent injury to authors, and to encourage learned men to write useful books,"—really reduced the perpetuity in copyright (which existed, according to a majority of the judges, at common law) to fourteen years! yet, such had been the plain interpretation by the common sense of all parties, that not one of the graduates or students of any of the Universities, nor even the lower order of publishers, however piratically inclined,—no one, from the 8th of Anne, in 1710, until 1774, ever dreamt of such a construction. After no less, however, than sixty-four years, some one, with more technical ingenuity than love of literature, enjoyed "the bad eminence" of overthrowing the evident spirit and intention of the act, by the supposed ambiguity of its language.

We have seen thus far, that whenever the rights of authors were brought before Parliament, they were generally abridged, or their burthens increased. Even the favorable construction which the legislature itself put upon the statute of Anne, with regard to those books which (requiring not the aid of penalties to protect them) were not registered, their interpretation was so inefficiently expressed, that it was held by the judges not to control the literal meaning of the previous statute. Hence, in the year 1812, it was decided that the eleven copies of every book, whether it sought the protection of the statute or not, must be delivered according to its provisions.

It was soon after the infliction of this last blow to the interests of literature, that the injuries of authors were again introduced to Parliament. Some mitigation of the library tax was requested. The Committee to which the subject was referred, recommended that *one* copy should be delivered

to the British Museum *only*, or at all events that the number should be restricted to *five* copies. The House, however, was inexorable. The whole eleven copies were persisted in, and the only advantage which the proprietors of copyright obtained—wrung, it seems, with a "slow consent," but which for very shame could not be refused,—was the extension of the term to twenty-eight years *certain*, which had previously depended on the life of the author, and a further term in case he lingered beyond that time, until the close of his existence, leaving his family to be provided for by precarious benevolence, or the stinted relief of parochial charity.

Although the advocates of the Universities were thus inflexible in exacting the full penalty of their "bond;" it must be allowed they liberally and strongly enforced the rights of authors in some other important respects.

Professor Christian stated, with considerable ability, the hardship and absurdity of the law as it then existed. "If an author when he is advanced in age offer a valuable work for sale, as the production of the labor of a long life, he will have the mortification to be told, that the price of his work must necessarily be much lower, than if he had completed it twenty or thirty years sooner at an earlier period of life. Thus, (said he) when the work is more valuable to the rest of the world, it becomes less profitable to the author and his family."

Whilst the learned Professor thus does justice, with good feeling and eloquence to the cause of letters, on a topic in which his *alma mater* was unprejudiced, it may be useful to notice what has been done on this important part of the subject by the legislature, in reference to the same kind of rights, when *in the hands of a powerful corporate body*, instead of a helpless individual.

The decision which the House of Lords, in its judicial capacity, pronounced in the year 1774, upon the construction of the statute of Anne, equally affected the Universities as

the public in general; and as there was no exception in the statute in favor of copyrights held by the Universities, their duration was brought down, like those of individuals, to twenty-eight years; and the clause in favor of surviving authors could not apply to a corporate body. The Universities therefore applied to Parliament to restore, in their collective case, the right which had been taken from individual authors, and they succeeded in their application. A legal anomaly, somewhat curious, must follow this enactment.—The copyrights held by the Universities consist of works, which of course are not composed by a body of men appointed by the Universities, or paid out of their funds. They have been either purchased of individual authors (which we may conjecture is not often the case), or bequeathed by them. Now the author can convey or bequeath that only which by law he possesses, namely, a short lease in the property; yet the corporate purchasers or legatees receive, as it were, the freehold inheritance to themselves and their successors for ever! Such is the measure of equal justice, and legal consistency, which is manifested on the face of these statutes.

The state of the law in other countries affords not only a strong and additional argument in favor of the policy of extending the rights of authors, and diminishing the burthens of literature; but indicates the sentence of other nations on the injustice of our regulations.

In the NETHERLANDS, *three* copies only are required to be deposited in the public libraries.—In AUSTRIA, *two*.—In FRANCE, before the revolution, four copies, but since that event, *two* only are required for the national library. In AMERICA, PRUSSIA, SAXONY, and BAVARIA, only *one* copy can be demanded.

It is remarkable, also, that in all these instances the copies are not required unless the exclusive copyright is reserved. And whilst such is the state of the law over all Christendom, (except in this part of it) in regard to the imposition of the library copies, it is observable that there,

too, the *duration of the right* is either perpetual, or considerably more extensive than the term allowed in this country.

Thus, in *France*, the term of copyright is twenty years after the decease of the author. In most, if not all, of the *German* states, it is perpetual.

If the comparative superiority of the practice on the continent were not well authenticated, we should have anticipated the contrary to be the case. We have been too much accustomed, amidst the conflicts with our neighbours, to laud our own laws and institutions, and utterly to condemn every thing belonging to those by whom we were opposed. We suspect, that besides the evident improvement which might be effected by imitating this better code of literary jurisprudence, there may yet be made other discoveries, by which it will appear that we have not altogether monopolized the maxims of wisdom and justice.

There can indeed be no subject which ought to engage the attention of the friends of literature, and the reading public, in a higher degree than the rights of authors and publishers, and the means by which the literature of Great Britain may be enabled to *compete* with, if it cannot surpass, the excellence and cheapness of the continental press.

It may fairly be asked, what is the consequence to literature in general, and the community at large, of this juster system of literary protection, which thus prevails amongst the other nations of Europe? Following the objections which have been raised by the adversaries of improvement, it may be demanded, Do the continental writers and their publishers *abuse* the power which the laws afford them? Do they (as it has been idly imagined would be the case here) *suppress* valuable works, or limit their diffusion and usefulness by *exorbitant prices*? No!

In France, as Dr. Johnson observed, they have a book on every subject. In Germany, the abundance of literary

works is still more extensive. In both countries, the price of books is beyond all proportion lower than in Great Britain. Compare, also, the literature of France and Germany, where the one is limited (though not to the contracted period of twenty-eight years), and the other is free. Does the perpetuity of German copyright render the writers of that country less original or profound than those of France? Does it tend to a superficial manner of writing? No! we believe there are of late years more great and original works of enduring excellence published by the German press, than by that of any other country.

Let it be recollected, also, that the limited and stinted protection which is here allowed to intellectual labor, was not declared to be the law of the land until the year 1774. Anterior to that time, a more liberal rule was *understood*, if not expressed; and it seems not that the wider latitude of literary rights which then prevailed, was productive of the mischiefs that have been anticipated.

Many of the great and lasting works, which constitute the glory of English literature, and shed a bright lustre upon the age in which they arose, were composed before this exposition of the law was announced. True it is, that, in spite of that interpretation, numerous accessions of a standard nature have been made to the treasures of national learning; but these have been encouraged by other means than Acts of Parliament---they have been produced, in spite of them, by the irrepressible energy of a few of our distinguished countrymen.

It cannot be urged that we have no EXPERIENCE to guide us in the melioration of the law. It was not, as we have seen, until about fifty-three years ago, that the construction now put upon the old statutes was attempted; so that in all time, since the first book was published in this country, until the reign of Queen Anne, did a perpetuity in copyright exist,---not only without prejudice, but with benefit to the public; and since the passing of the statute in question

until the year 1774, no evil was imagined to arise by extending to literary property the common protection afforded to all other. Nay more, to show that the chain of experience has been unbroken,---before the lapse of a single year, the Universities obtained the restoration of *their* rights, and have enjoyed them to the present time. No disadvantage has arisen to the interests of literature, or the public, by allowing to the Universities that privilege which has been denied to the authors of the very works they possess. If an experiment were necessary before justice could be done to literary men, it has therefore been sufficiently made; and the time, we should presume, has now arrived, when this deep stain on our statute-book may be for ever erased, and even-handed justice dealt alike to all.

It cannot be denied that private interest should yield to the public good; but in this instance, the community, so far from being benefited by the united evils of unequal restraint and anomalous taxation, evidently sustains an injury.

If, however, there be a reasonable doubt on the policy of administering just and equal laws, surely those who devote their lives to the interests of literature and philosophy, are entitled to the "benefit of the doubt." Surely no man of honorable spirit,---not to say of a liberal one,---can hesitate on the propriety of giving unlimited copyright, at least, a *fair trial.*

If, contrary to all reason, as well as all experience, mischief should arise, then, but *not till then,* let the fetters be new riveted, and let the yoke and the burthen be replaced on the shoulders of the ingenious and the intelligent.

We have thus given a brief sketch of the condition in which literary property is situated, and the circumstances which have attended it. We trust that the wrongs at which we have taken a hasty glance, are calculated to excite some degree of attention, even in the minds of those whom they do not personally affect, and that a full examination of the subject will be patiently encountered. The public have an equally

strong interest, and a positive duty, in promoting the general adoption of just principles—each man being individually concerned in enforcing and upholding that which is right and just; since the mischief that is done to his neighbour to-day, may be perpetrated on himself to-morrow.

In arranging the PLAN AND GENERAL DIVISIONS OF THE WORK, it has beenthought most desirable in the *first* book—after defining the nature oliterary property, and considering its claims to protection under the comprehensive provisions of the common law—to take a historical view of the origin and progress of the legislative regulations—subdivided under the general heads, of the *duration* of copyright, and the *tax* imposed upon the publication of books. We shall thus be enabled fully to trace thesubject from the memorable invention of printing, through the interesting periods in our history which immediately succeeded. And we shall also have an opportunity of shewing the interest which many celebrated works have attained in the annals of the law, as well as of literature.

This course indeed appeared necessary as well as interesting; for although the last Act of Parliament on the copyright of books has incorporated the provisions of the former statutes, the *past* require to be referred to for the purpose of assisting the construction of the *present*. The old statutes, however, will be printed in the smallest type, and appended to their analysis by way of notes.

The various classes who are interested in literary undertakings —in securing them from invasion, or avoiding the consequences of violating the law—in the mode of transferring copyright and the contingent interests of authors—must naturally be desirous to ascertain the decisions which have occurred in the courts of justice regarding these subjects. And although in some respects the law remains imperfectly defined, still it appears highly important to collect, and appropriately arrange, the legal doctrines which have been pronounced, and the facts and principles on which they are grounded. In the *second* book, therefore, besides treating of the duration and extent of copyright, of the library tax, and the registry at Stationers' Hall, it has been deemed necessary to devote a considerable portion of the treatise to the details of *pirating copyright*, its *transfer*, &c. These, it is presumed, will be found of great practical utility, both to authors and publishers.

The *third* book, and the notes which follow it, contain the disquisitions on the principles of the laws and their effect on literature.

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BOOK I.

Historical View.

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OF THE DURATION OF COPYRIGHT.

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SECT. 1.——*Of the definition and nature of Literary Property.*

LITERARY PROPERTY, or COPYRIGHT, may be defined to be the ownership or rightful possession to which an author, or the person to whom he assigns it, is entitled in the *copy*(1) or original manuscript of his literary works; and it comprises the exclusive right of printing and publishing copies of any literary performance, including engravings, musical compositions, maps, &c.(2)

Lord MANSFIELD adopted the word "copy" in the *technical sense* in which, he said, that name or term had been used for ages, to signify an *incorporeal right* to the *sole* printing and publishing of something intellectual, communicated by letters(3).

Mr. Justice ASTON also observed, that "the copy of a book seemed to have been not familiarly only, but *legally*, used as a technical expression of the author's sole right to print and publish: and that these expressions in a variety of instruments were not to be considered as the creators or origin of that right or property, but as speaking the language of a known and acknowledged right; and, as far as they were active, operating in its protection(4).

The right of an author to the exclusive use and publi-

(1) "Copy," the autograph, the original, the archetype; that from which any thing is copied. *Johnson.*——"The first of them I have forgotten, and cannot easily retrieve, because the *copy* is at the press. *Dryden.*

(2) Tomlin's Law Dict. Articles "Literary Property" and "Copyright."

(3) 4 Burr. 2396.

(4) Ib. 2346. "*Copy* of a book," was likewise described by Mr. Justice *Willes* as the term which had been used for ages to signify the sole right of printing, publishing, and selling copies thereof. 4 Burr. 2311.

cation of his own literary compositions, is classed by Sir W. BLACKSTONE amongst the species of property acquired by *occupancy*, being grounded on labor and invention(1).

When a man, says the learned Commentator, by the exertion of his rational powers has produced an original work, he seems to have clearly a right to dispose of that *identical* work as he pleases; and any attempt to vary the disposition he has made of it, appears to be an invasion of the right. Now the identity, says he, of a literary composition, consists entirely in the *sentiment* and the *language*. The same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited; and no other man, it hath been thought, can have a right to exhibit it, especially for profit, without the author's consent(2).

It will not be necessary to enter into any elaborate consideration of the arguments on the origin of property. There seems no rational ground for creating a distinction between literary and any other species of property. The rights of each are equally entitled to protection. Such a distinction cannot be founded upon the degree of *labor* bestowed in the acquisition of other objects of property. Even the right to the possession of land has been acquired as often by good fortune as by merit, and is frequently retained without the bestowment of labor. The property in a literary work may be acquired in the same way. The first thought may have been accidental, which labor has enlarged and improved. The descendants of those who have produced intellectual treasures, are as well entitled to inherit them, as the posterity of the accumulators of land or money. To say, that the *definition of property* in the old legal authorities does not include the property in question, can be nothing to the purposes of justice. If it does not include it, the definition is a bad one, because it is not sufficiently comprehensive. Besides, if literary works possess none of the usual characteristics of property, according to its present technical de-

(1) 2 Blac. Com. 405.

(2) Ib. 406. The Roman law adjudged, that if one man wrote any thing on the paper or parchment of another, the writing should belong to the owner of the blank materials; meaning thereby the *mechanical* operation of writing, for which it directed the *scribe* to receive satisfaction; for, in works of *genius and invention*, as in painting on another man's canvas, the same law gave the canvas to the painter. As to any other property in the works of the understanding, the law is silent; though the sale of literary copies, for the purposes of recital or multiplication, is certainly as ancient as the times of Terence(*a*), Martial(*b*), and Statius(*c*).

(*a*) Prol. in Eunuch, 20. (*b*) Epigr. i. 67, iv. 72, xiii. 3, xiv. 194.

(*c*) Juv. vii. 83.

scription, let them form a class of themselves. Injustice should not be done for the sake of preserving consistency in verbal or metaphysical distinctions, which have nothing but their antiquity to support them.

It is held by all the law authorities, that an author possesses a strictly legal property in his literary labors, whilst they remain in manuscript. There can be no real distinction in the nature of the property, in the sentiments or ideas and language, before and after publication. The law which prohibits the publication of his *manuscript* without his consent, should also protect the *printed copy*, and prevent the appropriation of the profit of publication by any other person than the author.

The definitions adduced by those who argue that there is a *want of* "*property*" in literary works, are evidently very inadequate to the objects of property in the present advanced state of society. They are adapted to things in a *primitive*, not to say imaginary, state; when all things were in common; when that common right was to be divested by some act to render the thing privately and exclusively a man's own, which, before it was so separated and distinguished, was as much the property of another.

These definitions also, it has been justly observed(1), will be found principally to apply to the *necessaries of life*, and the grosser objects of dominion, which the immediate natural occasions of men called for; and therefore the property so acquired by occupancy, was required to be an object *useful* to men, and capable of being *fastened on*. Enough was to be left for others. As much as any one could use to the advantage of life before it spoiled, in so much he could fix a property. Whatever was beyond this, was more than his share, and belonged to others.

These definitions give a sort of property little superior to the legal idea of a beast-common; the bit of mouth snatched, or taken for necessary consumption to support life. Thus ruminating back to the *origin* of things, men lose sight of the *present* state of the world, and *end* their enquiries at that point where they should *begin* their improvements.

But distinct properties, says Pufendorf(2), were not settled at the same time, nor by one single act, but by successive degrees, nor in all places alike; but property was gradually introduced, according as either the condition of things, the number and genius of men required, or as it appeared requisite to the common peace.

Since those supposed times of universal communion, the objects of property have been much enlarged by discovery, invention, and arts. The mode of obtaining property by occupancy has been abridged; and the precept of abstaining

(1) Millar v. Taylor, 4 Burrow, 2339. (2) B. 4, c. 4, sec. 6.

from what is another's, enforced by laws. The rules attending property must therefore keep pace with its increase and improvement, and must be adapted to every case.

A DISTINGUISHABLE EXISTENCE in the thing claimed as property, *an actual value* in that thing to the true owners, are its essentials; and these are not less evident in the case of literary property, than in the immediate objects of those definitions which relate to the primitive condition of things.

There is a material difference greatly in favor of this sort of property, from that gained by *occupancy*, which before its occupation was common to every one; because a literary work is *originally* the *author's;* and therefore unless clearly rendered common by his own act, and full consent(1), it ought still to remain his property.

The *utility* of the thing to man required by the definition in Pufendorf(2) to make it an object of property, has been long exploded, as appears from Barbeyrac's note on this very passage, where it is held an unnecessary and superfluous condition(3).

The best rule both of reason and justice seems to be, to assign to every thing *capable of ownership* a legal and determinate owner.

For the capacity to "fasten on," as a thing of corporeal nature, being requisite in every kind of property, plainly partakes of the narrow and confined sense in which property has been defined by authors in the *original* state of things. A capacity to be *distinguished,* answers every end of reason and certainty, which is the great favorite of the law, and is all that wisdom requires to secure their possessions and profits to men, and to preserve the peace(4).

"Nothing," says Professor Christian, "is more erroneous than the practice of referring the origin of moral rights, and the system of natural equity, to that savage state which is supposed to have preceded civilized establishments, in which literary composition, and of consequence the right to it, could have no existence. But the true mode of ascertaining a moral right, is to inquire whether it is such as the reason, the cultivated reason, of mankind must necessarily assent to. 'No proposition seems more conformable to that criterion, than that every one should enjoy the reward of his labo the harvest where he has sown, or the fruit of the tree which he has planted." Whether literary property is *sui generis,* or under whatever denomination of rights

(1) The *constructive* consent, deduced from the act of publication to the world, will be discussed in the next section.

(2) Lib. 4, cap. 5.

(3) Things of fancy, pleasure, or convenience are objects of property, and so considered by the common law: even so insignificant a thing as a popinjay, a monkey, a parrot, or the like; in short, any thing merchandizable and valuable. 12 H. s. 3. a. b. &c.; Bro. Abr. Tit. "Property," pl. 44; 1 Comyn's Digest. 602.

(4) 4 Burr. 2340.

it may be classed, it seems founded upon the same principle of general utility to society, which is the basis of all other moral rights and obligations. Thus considered, an author's copyright ought to be esteemed an invaluable right, established in sound reason and abstract morality(1).

The consideration of the *objections* advanced against these definitions of the nature of literary property, we defer to that part of the work in which the *justice* of the laws are discussed. The Legislature has thought proper to deal with literary works as "property," and we have deemed it sufficient for the present purpose to state, from the authorities to which we have referred, the general principles by which the question ought to be regulated. We proceed, in the next place, to consider the subject as it stood at the common law, prior to the existence of any statute, and independent of any recognition of the exclusive rights of literary property, either by the State or the Parliament.

SECTION II.

Of the perpetuity of Copyright by the Common Law.

It is a leading principle in the English Law, and forms a just ground of its praise, that it provides redress for every wrong and grievance which the subject may suffer from the invasion of his rights; and the remedy, says COKE, varies and is adapted according to the variety of the right(2).

From the benefit of this general rule of extensive justice, *literary* men ought not to be excluded. The exertions of the mind deserve as much encouragement as those of the body. Whatever may be suggested by the subtilty of legal reasoning, drawn from the origin of property, it is clearly the interest of society to afford that protection to literary labor, which is readily extended to every other species. The reasoning which demonstrates the expediency of guarding the fruits of manual industry, must equally establish the adoption of the same protection to those of intellectual acquirement. Property will not be acquired if it be not protected. The very existence of society, and its best interests, depend on the encouragement of industry; and as national wealth depends on labor, so does knowledge depend on mental exertion. Yet neither the corporeal nor the intellectual powers will be freely and fully exerted, unless they are permitted to enjoy their productions unshackled by restraint, and unencumbered

(1) 2 Comm. 407, note.

(2) 8 Coke 48, a.

by burthens, from which other classes of the community are exempt.

It being intended in this section to review the subject of literary property as it anciently stood, according to the common law, it will be necessary to notice the comprehensive character of this part of our system of jurisprudence: and without following the exact phraseology of the ordinary definitions, we may describe the COMMON LAW to be

The law of this kingdom, as it was generally holden before any statute was enacted in Parliament to alter it. It includes the laws of God and nature. It is grounded upon the general customs of the kingdom, and comprises the principles and maxims of the laws, which are founded upon reason, observation, and experience, acquired by long study, refined by learned men in all ages, and it is thus said to be the "perfection of reason." Its end and object is *justice*, in the most comprehensive sense. It is the common birth-right of the subjects of the realm, for the safeguard and defence, not only of their goods, lands, and revenues, but of their families, fame, property, and lives(1).

The common law is described by BRACTON(2) as *universally comprehensive.* There seems no reason for excluding from its protection any kind of property, however insignificant in its nature, or trifling in its value. The *rules* in regard to property, like the principles of the underwritten law, are of the highest antiquity, and must ever have been the same; but the *objects* to which they are applicable, were not all at once known, and many things have been disputed which were afterwards established as objects of property(3). The claims of justice do not depend on antiquity.

There are many things, the uses of which were unknown in ignorant times, that have now become valuable; and it seems as unjust to shut out from legal protection the intellectual labors of ingenious men, as it would be to declare that the mariner's compass and gunpowder, which were inventions within the period of legal memory, cannot be included in the laws of property(4).

The absence of judicial authority can form no objection

(1) Co. Lit. 97, 142. Treatise of Laws, p. 2. (2) Lib. 1, c. 3.

(3) There is a case reported in the *Year Book* of a blood-hound, where it was argued, that when out of possession, the property in it ceased---that felony could not be committed of it---that it was not titheable, would not pass by a grant of omnia bona, &c. Yet it was held, "that where any wrong or damage is done to a man, the law gives him a remedy." 12 H. 8, f. 3, a. b. So of a grey-hound. 31 *Eliz. Owen* 93, *Cro. Eliz.* 125.

(4) It was held by Mr. Justice Willes, that the principles of private justice, moral fitness, and public convenience, when applied to a *new subject*, made common law without a precedent---much more when received and approved by usage. 4 Burr. 2312. *For the usage, see the next section.*

to the claim. It was not decided until within a century of the present time that a title to literary property could be maintained, even *prior* to publication; and that according to the principles of the common law, no distance of time, however great, could authorize a publication without the consent of the author: as in the cases of *Lord Clarendon's History* and the *Letters of Pope*. Many other points of law have also been decided in recent times, for which there is no precedent. For instance, it is not many years since, for the first time, it was held actionable at common law to give, knowingly, a false character, on the faith of which credit had been given, and loss sustained---a decision which was evidently founded on the general maxim, that "there is no injury without a remedy."

Having thus shewn the state of the question upon the general and comprehensive principles of the common law, prior to any legislative enactment or recognition, and independently of any judicial authority, we come now to the consideration of the reasonings which have been adduced, and the judgments pronounced by many learned judges on the question of perpetuity, the substance and principal points of which we shall select, and endeavour to present in the most condensed form.

Of all the judges before whom this question has been discussed, the majority have always decided that, by the common law, an author was entitled to the exclusive enjoyment of his copyright in perpetuity.

It is remarkable also, that amidst the many controversies which have taken place on this important subject, it was never in the slightest degree denied that the *manuscript* of an author was protected by the common law, and that it was illegal to take his manuscript, or in any way to use or publish it, without the clear and express consent of the author. On the contrary, in the several cases which have been argued on the extent of the right since the several Acts of Parliament on copyright were passed, it has been all along, even by the advocates whose business and duty it was to contend that under those statutes the term of exclusive copyright was limited to fourteen years, expressly admitted,

That *by the common law*, an author is entitled to the copy of his own work *until* it has been once printed and published by his authority; and it has been also conceded, that the several cases in Chancery in which injunctions were granted to restrain the printing and publishing of the copy, were agreeable to the common law, and that the relief afforded in those cases was properly given in consequence of the *legal right*(1).

(1) 4 Burr. 2396.

Now it seems impossible to shew that there is any sound distinction by the common law, between the exclusive right to the copy *after* publication, and the right *prior* to it. For, as Lord MANSFIELD observed(1), the common law as to the copy before publication, could not be founded in custom.

Prior to 1732, the case of a piracy *before* publication never existed---it was never put or supposed. There is not a syllable about it to be met with any where. The regulations, the ordinances, the Acts of Parliament, the cases in Westminster Hall, all relate to *the copy* of books *after* publication by the authors.

From what source then, demands his Lordship, is the common law drawn, which is admitted to be so clear in respect of the copy before publication?

From this argument,—because it is *just* that an author should reap the pecuniary profits of his own ingenuity and labor, it is just that another should not use his name without his consent. It is *fit* that he should judge when to publish, or whether he ever will publish. It is fit he should not only choose the time, but the manner of publication, how many, what kind of volumes, what print. It is fit he should choose to whose care he will trust the accuracy and correctness of the impressions---in whose honesty he will confide not to foist in additions.

These, and other reasonings of the same effect, are sufficient to shew that it is agreeable to the principles of right, the fitness of things, convenience and policy, and *therefore* to the common law, to protect the copy before publication.

But the same reasons, said the learned judge, hold after the author has published his work. He can reap no pecuniary profit, if the next moment after it comes out it may be pirated upon worse paper, and in a worse print, and in a cheaper volume(2).

The author may not only be deprived of any profit, but lose the expence he has been at. He is no more master of the use of his own name. He has no control over the correctness of his own work. He cannot prevent additions. He cannot retract errors. He cannot amend or cancel a faulty edition. Any one may print, pirate, and perpetuate the imperfections, to the disgrace, and against the will, of the author; may propagate sentiments under his name which he dis-

(1) 4 Burr. 2397.

(2) It is admitted, that if the literary compositions of an author be taken from him *before* publication, he may maintain an action of trover or trespass. But how are the *damages* to be estimated? Should the jury confine their consideration to the value of the ink and paper? Certainly not: it would be most reasonable to consider the known character and ability of the author, and the value which his work would produce by the publication and sale. And yet what could that value be, if it was true that the instant an author published his works, they were to be considered by the law as given to the public, and that his private property in them no longer existed?—Per Mr. Justice *Aston*, 4 Burr. 2341.

approves, repents, and is ashamed of. He can exercise no discretion as to the manner in which, or the persons by whom, his work shall be published!

Such are the monstrous conclusions which would follow the admission of the doctrine, that an author loses by the act of publication his exclusive right to the productions of his literary labor.

The claim of the author to the exclusive right of printing and publishing his own work, is founded, says Mr. Justice ASTON(1), upon the original right to this work, as being the mental labor of the author, and that the effect and produce of the labor is *his*. It is a personal incorporeal property, saleable and profitable; it has *indicia certa*, for though the sentiments and doctrine may be called ideal, yet when the same are communicated to the sight and understanding of every man, by the medium of printing, the work becomes a *distinguishable* subject of property, and not destitute of corporeal qualities(2).

But it is said that the copy is necessarily made common after the book is once published.

Now without publication, it is useless to the owner, because without profit; and property without the power of use and disposal, is an empty sound. In that state, it is lost to society in point of improvement, as well as to the author in point of interest. Publication, therefore, is the necessary act, and the only means to render this confessed property useful to mankind, and profitable to the owner---in this, they are jointly concerned.

Now to construe this only and necessary act to make the work useful and profitable, to be destructive at once of the author's confessed original property, against his express will, seems to be quite harsh and unreasonable; nor is it at all warranted by the arguments derived from those writers who advance, that by the law of nature property ends when corporal possession ceases(3).

(1) 4 Burr. 2341.

(2) All the metaphysical subtilties from the nature of the thing may be equally objected to the property before publication. It is incorporeal---it relates to ideas detached from any physical existence. There are no *indicia*---another may have had the same thoughts, upon the same subject, and expressed them in the same language verbatim. At what time, and by what act, does the property commence? The same string of questions may be asked upon the copy before publication:---Is it real or personal? Does it go to the heir or to the executor? Being a right, which can only be defeated by action, is it as a chose in action assignable or not? Can it be forfeited? Can it be taken in execution? Can it be vested in the assignees under a Commission of Bankruptcy? ——Per Lord *Mansfield*, 4 Burr. 2397.

(3) *Barbeyrac* clearly observes, that the right acquired from taking possession, does not cease where there is no possession; that perpetual possession is impossible; that the above hypothesis would reduce property to nothing; that the consent of the proprietor to the renunciation of the right, ought to appear, for as possession is nothing else but an indisputable mark of the will to retain what a man has seized, so to authorize us to look upon a thing as abandoned by him to whom it belonged, because he is not in possession, we ought to have some other reasons to believe he has renounced his personal right to it.

BARBEYRAC, in his notes on PUFENDORF, says, that though we may presume an abandonment in respect to those things which remain such as nature has produced them, yet as for other things which are the fruits of human industry, and which are done with great labor and contrivance, it cannot be doubted but every one would preserve his right to them till he makes an OPEN RENUNCIATION.

Now there is no *open* renunciation of literary property, but a *constructive* one only, deduced barely from the act of publication. Whether there be a "renunciation" or not, is a *fact* which ought not to be presumed; wherever it exists, it should be distinctly proved. It is always capable of proof, where the abandonment has really taken place, and when it cannot be proved, the legal inference, as in all other kinds of property, ought to be in favor of the original owner.

But then it is contended, "if a man buys a book, it becomes his own."

What! is there no difference (exclaimed Mr. Justice ASTON) betwixt selling the property in the work, and only one of the copies? To say, "selling the book conveys all the right," begs the question. For if the law protects the book, the sale does not convey away the right from the nature of the thing, any more than the sale conveys it where the statute protects the book.

The proprietor's consent is not to be carried beyond his manifest intent. Would not such a construction extend the partial disposition of the true owner beyond his plain intent and meaning? Can it be conceived that in purchasing a literary composition at a shop, the purchaser ever thought he bought the right to be the printer and seller of that specific work? The improvement, knowledge, or amusement which he can derive from the performance, is all his own; but the right to the work, the copyright, remains in him whose industry composed it. The buyer might as truly claim the merit of the composition by his purchase, as to the right of multiplying the copies and reaping the profits.

The invasion of this sort of property is as much against every man's sense of it, as it is against natural reason and moral rectitude. It is against the conviction of every man's own breast who attempts it. He knows it not to be his own —he knows he injures another, and he does not do it for the sake of the public, but *mala fide et animo lucrandi*.(1)

(1) 4 Burr. 2343.

SECTION III.

Of the recognition by the State and Parliament of Copyright in perpetuity, and the evidence of Ancient Customs.

It is only *since* the *invention of printing*, that any question of the extent or duration of copyright could be expected to occur in the courts of justice. To take an author's manuscript without his consent, was, of course, either actionable for the trespass or trover, or indictable in proportion to the amount of the offence, according as the circumstances might constitute a fraud or theft. A single copy was then of much more value than after printing had multiplied the number of copies. The great manual labor necessarily bestowed on each copy, and the few readers at that time, rendered the *publication* of insignificant importance, compared with what it has since become.

From the time of this splendid discovery, down to the year 1556, a period exceeding a century, 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. This silence, however, may be very rationally explained. The exact period of its introduction to England has been the subject of much discussion. According to some authorities, it was introduced at Oxford in the year 1468; the sounder opinion assigns the period of 1471 or 1472. But whatever was the precise time, it is obvious that several years would naturally elapse, after its first establishment, before the invention could become generally adopted(1).

Its process was impeded by many difficulties and restraints. It was imported during one of the most stormy periods of our history, amidst contests for the crown and domestic war. The revival of letters was then in its commencement. Books were comparatively few in number, and but little sought for. The establishment of printing presses therefore took place by slow degrees; and it was not until the signal advantages of the art became known, and literature extended itself, that the property, or copyright, in books became an object of importance.

No sooner, however, did the press display the great purposes to which it might be applied, than the works which issued from it naturally became the immediate subject of state regulation.

(1) The art of printing was first discovered at Mentz in 1438. It was introduced into England in 1471; into Scotland in 1508; into Ireland in 1551.

The earliest evidence which occurs on the subject is to be found in the charter of the Stationers' Company, and the decrees of the Star Chamber.

The evidence thus to be adduced, appears the more satisfactory, and the less liable to suspicion, inasmuch as it was indifferent to the views of the Government whether the copy of an innocent book, when licenced, was open or private property. It was certainly against the power of the crown to allow it as a private right, without being protected by any royal privilege. It could be done only on principles of private justice, moral fitness, and public convenience; which, when applied to a new subject, make *common law* without a precedent; much more when received and approved of by usage(1).

Recognition of the Right by Acts of the State.

1556.---The original charter of the Stationers' Company was granted by Philip and Mary, in the year 1556.

It was the declared object of the Sovereign at that time to prevent the propagation of the Protestant Reformation; and it seems to have been thought, that the most effectual means to do so, was to impose the severest restrictions on the press.

The charter recites, that several seditious and heretical books, both in rhymes and tracts, were daily printed, renewing and spreading great and detestable heresies against the catholic doctrine of the Holy Mother Church.

For the suppression of this evil, it constitutes ninety-seven persons (whom it names) an incorporated society of the art of a stationer; and it orders that no person in England shall practise the art of printing unless he be one of this society.

And the master and wardens of this society were authorized to search, seize, and burn all prohibited books, and to imprison any one that should exercise the art of printing contrary to this direction(2).

From this charter we proceed to the decrees of the Star Chamber, the authority of which we are quite willing should be estimated as low as possible; but in adducing the authorities which support the right in question, we are justified in pointing out, that even that arbitrary tribunal respected the rights of authors, and prohibited the printing of works without the consent of their owners.

In 1556, by a decree of the Star Chamber, it was forbidden to print against the force and meaning of any ordinance, &c. in any of the statutes or *laws* of the realm.

By another decree in 1585, every book, &c. is to be *licenced*:

(1) 4 Burr. 2312.

(2) This charter was confirmed by Elizabeth.

" nor shall any one print any book, &c. against the form or meaning of any restraint contained in any statute or *laws* of the realm * * *, or contrary to any *allowed* ordinance set down for the good government of the Stationers' Company."

In 1623, by a proclamation reciting the above decree, and that the same had been evaded " by *printing beyond sea* such *allowed* books, &c. 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:" and then the proclamation enforces the decree.

Again in 1637, by another decree, no person is to *print* or *import* 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*.

This decree evidently supposes a copyright to exist, " otherwise" than by patent, &c. which could be clearly by no other authority than the common law.

These appear to be all the acts of state relative to the matter. Most of the judicial proceedings of the Star Chamber being lost or destroyed, no case of prosecution for printing without licence, or pirating another man's copy, has been found. But it is certain that down to the year 1640, copies were protected and secured from piracy by a much speedier, and more effectual, remedy than actions at law, or bills in equity. No licence could be obtained " to print another man's copy." Not from any prohibition, but because the thing was immoral, dishonest, and unjust; and he who printed without a licence, was liable to great penalties(1).

Recognition of the Right in Acts of Parliament.

1641.---After the abolition of the Star Chamber, all regulations of the press, by proclamation or decrees, were deemed illegal. The alleged licentiousness of the press, however, induced the two Houses to make an ordinance(2), which prohibited printing, unless the book was first licenced, and entered in the register of the Stationers' Company. Copyrights, in their opinion, then, could only stand upon the common law — both Houses took it for granted. The ordinance, therefore, prohibits printing *without 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 supposes the property to exist---it is nugatory if there was no owner, and an owner could not at that time exist, but by the common law.

(1) 4 Burr. 2313.

(2) 29th of June, 1641.

According to the authority of Carte, the historian(1), if ever there was a danger of the invasion of copyright, it was in 1641, when the licentiousness of the press was carried to the greatest height.

It appears, however, that several divines who were the favorites of the prevailing party, signed a declaration strongly in favor of authors, and on the justice of allowing them solely to print their copies; alleging that otherwise, scholars would be utterly deprived of any recompence for their studies or labor, and urging that if books were imported to the prejudice of those who bore the charge of impressions, the authors and buyers would be abused by vicious impressions, to the great discouragement of learned men, and extreme damage of all kinds of good learning.

1643.---These and other reasons had so much weight, that it appears both Houses of Parliament, on June 14, 1643, joined in an ORDINANCE, declaring,

"That no book, pamphlet, nor paper, nor part of such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched, or put to sale by any person or persons whatsoever, unless the same be entered in the Register Book of the Company of Stationers, *according to ancient custom*; and that no person or persons shall hereafter print, or cause to be reprinted, any book or books, or part of book or books, entered in the register of the said Company for any particular member thereof, *without the licence and consent of the owner and owners thereof*; nor yet import any such book or books, or part of book or books, formerly printed here, from beyond the seas, upon pain of forfeiting the same to the respective *owner or owners* of the said copies, and such further punishment as shall be thought fit(2)."

1647.—There was also an ordinance of Parliament made the 28th of September, 1647(3), relating to unlicenced printing.

1649.---And by another ordinance in September, 1649, cap. 60, it was enacted, that

No person whatever should *compose, write*, print, publish, sell, or utter, or cause to be made, written, printed, or uttered, any book or pamphlet, treatise, sheet or sheets of news, whatsoever, *unless licenced*, as thereafter mentioned.

And the same ordinance prohibited the use of any printing or rolling press, except in London and the two Universities, and also York and Finsbury.

It then enacts, that no person or persons whatsoever in this

(1) Carte's Letters, published 1735. Sir E. Brydges' "Reasons for further Amendment."

(2) In 1644, *Milton* published his famous speech for the liberty of unlicenced printing, against this ordinance; and among the glosses which he says were used to color this ordinance, and make it pass, he mentions "the just retaining of each man his several copy; *which*," said he, "*God forbid should be gain-said*."

(3) Scobel's Collection of Acts and Ordinances, p. 134.

Commonwealth shall hereafter print or reprint any book or books, or part of any book or books, legally granted to the said Company of Stationers for their maintenance of their poor, without the licence and consent of the Master, Wardens, and Assistants of the said Company; nor any book or books, or part of book or books, now entered in the register book for any *particular member* of the said Company, without the like consent of the *owner or owners* thereof; nor counterfeit the name, mark, or title of any book or books belonging to the said Company or particular persons; nor shall any person bind, stitch, or put to sale any such book or books, upon pain of forfeiting six shillings and eight pence for every book.

1662.---The Licencing Act of 13 and 14 Charles II. cap. 33, was framed chiefly to control the liberty of the press. But its object was disguised by blending it with a renewal of the general ordinances for the regulation of printing.

It enacts, that no person shall, within this kingdom or elsewhere, imprint, nor shall import from or out of any other of His Majesty's dominions, nor from any other parts beyond the seas, any copies or books printed beyond the seas, or elsewhere, which *any person* by force or virtue of any entry thereof duly made, or to be made in the Register Book of the Company of Stationers, have or shall have the *right*, privilege, authority, or allowance, solely to print, *without the consent of the owner or owners of such book or books, copy or copies*—nor shall bind, stitch, or put to sale, any such book or books, or part of any book or books, without the like consent, upon pain of loss or forfeiture of the same, and of being proceeded against as an offender against this present act,"---(the penalty whereof was, for the first offence, a disability for three years, and for the second offence a disability for ever, to exercise the art of printing, besides bodily punishment at the Judges' pleasure,) "and upon the further penalty and forfeiture of six shillings and eight pence for every such book or books, or part of such book or books, copy or copies, so imprinted, imported, bound, stitched, or put to sale," &c.

The act, therefore, supposes an ownership at common law; and the *right* itself is particularly recognized in the latter part of the third section of the act, where the Universities are forbid to meddle with "any book or books, the *right* appointing whereof doth *solely and properly belong to any particular person or persons.*"

The sole property of the owner is here acknowledged in express words, as a common law right; and the legislature who 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 must be proved, or the plaintiff could not recover, because the action is to be brought by the "owner," who is to have a moiety of the penalty.

The various provisions of this act effectually prevented piracies, without the necessity of actions at law, or bills in equity, by owners.

The Licencing Act of Charles II. was continued by several Acts of Parliament, but expired in 1679. It was revived by 1 James II. c. 7; and continued by 4 William and Mary, c. 24; and finally expired in 1694.

Such is the state of the evidence as deduced from the Acts of Government and the Legislature in the most despotic and unsettled times; and the inference is obviously strong, that if at those periods the rights of literature were respected when (if ever) they were liable to abuse, how much more ought those rights to be regarded and protected in an age like the present, which owes its improvement to the diffusion of knowledge.

We have next to turn to the only other source from which any public testimonials can be derived of the ancient usages and regulations which bear on the question, viz. the charters and registry books of the Stationers' Company.

Evidence of Ancient Customs.

It appears that it was usual from the earliest times for authors to sell their copyright in perpetuity, and that the copies were made the subject of family settlements for the provision of wives and children. In the case of Millar v. Taylor, tried in 1769, this ancient custom was proved to the satisfaction of the jury, and by their special verdict they found as follows:

"That before the reign of her late Majesty, Queen Anne, it was usual to purchase from authors the perpetual copyright of their books, and to assign them from hand to hand for valuable considerations, and to make the same the subject of family settlements for the provision of wives and children."

The historian CARTE, after speaking of the exclusive property which ever existed in all books printed in England, observes,

"That for the *making of it known*, the better to prevent all invasion thereof, when the Stationers were incorporated(1), all authors, and the proprietors to whom they sold their copies, constantly entered them in the register of that Company, as their property. The like method was taken with regard to foreign books, to which no subject of England could pretend an original right. To prevent the inconveniences of different persons engaging (perhaps unknown to one another) in printing of the same work (which might prove the ruin of both), the person who first resolved on it, and entered his

(1) In 1556.

design in that register, became thereby the legal proprietor of such work, and had the sole right of printing it: so that there has scarce ever been a book published in England, but it belonged to some author or proprietor, exclusive of all other persons. This is evident to every one that hath ever viewed the Stationers' Register, from the erection of that company, down to the year 1710, when the Act 8 *Annæ* was passed, which refers to this as an usual practice. It was indeed so customary, that I hardly think there ever was a book (unless of a seditious nature) printed till within *forty years* last past(1), but, however inconsiderable it was for size or value, the property thereof was ascertained, and the sole right of printing it secured to the proprietor by such an entry. I was surprised on carefully examining one of the registers in Queen Elizabeth's time, from 1576 to 1595, to find, even in the infancy of English printing, above *two thousand copies of books* entered as the property of particular persons, either in the whole, or in shares; and mentioned from time to time to descend, be sold, and be conveyed to others; and the whole tenor of these registers is a clear proof of authors and proprietors having always enjoyed a sole and exclusive right of printing copies, and that no other person whatever was allowed to invade their right."

The following is a brief account of some of the early entries contained in these registry books.

In 1558, and down from that time, there are entries of copies for particular persons.

In 1559, and subsequently, there are persons *fined* for *printing other men's copies.*

In 1573, there are entries which take notice of the *sale of the copy*, and the *price.*

In 1592, there are entries with an express proviso, "that if it be found *any other* has right to any of the copies, then the licence, touching such of the copies *so belonging to another*, shall be void."

1684.---Charles II. in the year 1684 confirmed the former charters, and extended them by new provisions. The new charter recited—

That divers brethren and members of the Company have great part of their estates in books and copies, and that for upwards of a century before, they had a public register kept in their common hall for the entry and description of books and copies.

It proceeds as follows:

"We, willing and desiring to confirm and establish every member in their just rights and properties, do well approve of the aforesaid register;" and declare, "that every member of the Company who should be the proprietor of any book, should have and enjoy the *sole right*, power, privilege, and authority of printing such book or copy, as in that case has been *usual* heretofore.

There is then added a prohibition against piracies.

(1) That is, from the year 1695.

A few years anterior to this second charter, the Stationers' Company made a by-law, in which it is stated, that divers members of the Company had great part of their estates in copies; and that by the ancient usage of that Company, when any books or copies were entered in their register to any of the members of that Company, such persons were always reputed the proprietors of them, and ought to have the sole printing of them.

In another by-law in 1694, it is stated, that copies were constantly bargained and sold amongst the members of the Company as their property, and devised to their children and others for legacies, and to their widows for maintenance; and it was ordained, that if any member should, without consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve pence(1).

(1) The following comprises a complete statement of these by-laws, which were proved in evidence on the trial of the cause "Millar v. Taylor."

And the said jurors upon their oath further say, that the Stationers' Company, to secure the enjoyment of the said copyright as far as in them lay, made several by-laws, particularly the two following.

> "At an assembly of the Masters and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London, held at their Common Hall, the 17th day of August, anno domini, 1681, for the well governing the members of this Company, the several laws and ordinances hereafter mentioned were then made, enacted, and ordained, &c.

And whereas several members of this Company have great part of their estates in copies, and by ancient usage of this Company, when any copy or book is registered to any member or members of this Company, such person to whom such entry is made, is, and always hath been, reputed and taken to be *proprietor* of such book or copy, and ought to have the sole printing thereof; which privilege and *interest is now of late often violated and abused*(a); it is, therefore, ordained, that where any entry or entries is or are, or hereafter shall be, duly made of any book or copy in the said register book of this Company, that in such case if any member or members of this Company shall then after, without the licence or consent of such member or members of this Company for whom such entry is duly made in the register book of this Company, or his or their assignee or assigns, print, or cause to be printed, import, or cause to be imported, from beyond the seas or elsewhere, any such copy or copies, book or books, or any part of any such copy or copies, book or books, or shall sell, bind, stitch, or expose the same, or any part or parts thereof, to sale, that then such member or members so offending shall forfeit to the Master and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London, the sum of *twelve pence*(b) for every such copy or copies, book or books, or any part of such copy or copies, book or books, so imprinted, imported, sold, bound, stitched, and exposed to sale, contrary hereunto."

> "At an assembly of the Masters, Keepers or Wardens, and Commonalty of the mystery or art of Stationers of the City of London, held the 14th day of May, 1694, the several laws, ordinances, and oath hereafter following, were then made, enacted, and ordained.

Whereas divers members of this Company have great part of their estates in copies duly entered in the register book of this Company, which, by the ancient usage of this

(a) In substance, this is the same language as that which is used in the 8 Anne.

(b) It is evident that the intention of the Act of Anne was to make the penalty *general*, which is here necessarily limited to the members of the Stationers' Company.

There are several cases reported in the time of Charles II. which arose out of disputed property in printed books. Some of them were between different *patentees* of the crown; some whether the right belonged to the *author* from his invention and labor, or to the *king* from the subject matter.

The first case (in the 18th Charles II.) was between the law patentee and some members of the Stationers' Company. It was argued on the footing of a prerogative copyright in the crown. It was urged that the king pays the judges who pronounced the law. The House of Lords determined "that the king had the right, and had granted it to the patentees(1)."

The next case (in 24 Charles II.) was also that of a law patentee, in which it was decided, "that the plaintiff, by purchase from the executors of the author, was *owner of the property at common law*(2).

There is another case (in 29 Charles II.) in which the grantees of the crown of an almanac were the parties, and in which the court thought that almanacs might be prerogative copies; and it was held that the additions of prognostications did not alter the case, "no more than if a man should claim a property in *another man's copy* by reason of some inconsiderable additions of his own(3).

In the 31 Charles II. an action on the case was brought(4) for printing the Pilgrim's Progress, of which it was averred, the plaintiff was "the true proprietor, whereby he lost the profit and benefit of his copy;" but it does not appear that the action was proceeded in.

Company, is, are, or always hath and have been used, reputed, and taken to be the right and property of such person and persons (members of this Company) for whom or whose benefit such copy and copies are so duly entered in the register book of this Company, and constantly bargained and sold amongst the members of this Company as their property, and devised to children and others for legacies, and to their widows for their maintenance; and that he and they to whom such copy and copies are so duly entered, purchased, or devised ought to have the sole printing thereof;

Wherefore, for the better preservation of the said ancient usage from being *invaded by evil-minded men, and to prevent the abuse of trade by violating the same*(a), it is ordained, that after any entry or entries is or are, or shall be, duly made of any copy or copies, book or books, in the register book of this Company, by or from any member or members of this Company, if any other member or members of this Company shall, without the licence or consent of such member or members of this Company for or by whom such entry is duly made, or of his assignee or assigns, print or cause to be printed, import or cause to be imported, from beyond the seas or elsewhere, any such copy or copies, book or books, or part of any such copy or copies, book or books, whereof such due entry hath been made in the register book of this Company to or for such other member of this Company, or shall sell, bind, stitch, or expose the same, or any part or parts thereof, to sale, without such licence,—that then such member and members so offending shall forfeit and pay to the Master and Keepers or Wardens and Commonalty of the mystery or art of Stationers of the City of London the sum of *twelve pence* for every such several copy or copies, book or books, part or parts of every such copy or copies, book or books, imprinted, imported, sold, bound, stitched, or exposed to sale, without such licence or consent as aforesaid."

(1) Carter, 89. 4 Burr. 2315.
(2) Skinner, 234. 1 Mod. 257. 4 Burr. 2316.
(3) 1 Mod. 256. 4 Burr. 2317.
(4) Lilly's Entries, Hil. Term. Ponder v. Bradyl, 4 Burr. 2317.

(a) This is expressed in very nearly the exact terms of the preamble of 8 Anne.

In these times the King's prerogative ran high; but still these cases prove that the *copyright* was at that time *a well-known claim*, though the overgrown rights of the crown were in some instances allowed and adjudged to over-rule them.

CHAP. II.

FROM THE STATUTE OF ANNE IN 1710, TO THE YEAR 1814.

SECT. 1.——*Of the origin and purport of the Act of Anne, and the intention of the Legislature.*

It appears that after the art of printing had been generally adopted, the taste for literary works very rapidly increased, and the demand for them naturally stimulated the exertions of the booksellers and publishers.

Some of the fraternity, however, did not confine themselves to their own productions; but, to supply the wants of the public, committed depredations on the literary property of their contemporaries. The greater part, if not all, of these dishonorable transactions, were committed by the lowest class of publishers, who were incompetent to pay the damages that might be recovered against them in an ordinary action. The proof of the extent of the damage was also difficult; and it was therefore desirable that penalties and forfeitures should be inflicted to protect the growing importance of literary property.

Hence it appears that the proprietors of copies frequently applied to Parliament to assist them in maintaining their rights. In the years 1703, 1706, and 1709, they petitioned for a bill to protect their copyrights, which had thus been invaded, and "to secure their properties." They had so long been secured by penalties under the acts for licencing books, that they thought an action at law an inadequate remedy, and had no idea that a bill in equity could be entertained except on letters patent.

In one of the cases given to the members in 1709 in support of their application for a bill, the last reason or paragraph is 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 different hands all over the kingdom, and he not able to prove the sale of ten. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. 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 inflicted on offenders(1)."

On the 11th of January, 1709, pursuant to an order made on the booksellers' petition, a bill was brought in for securing the property of copies of books to the *rightful owners, &c.*

On the 16th of February, 1709, the bill was referred to a committee of the whole House, and reported, with amendments, on the 21st of February, 1709.

It is evident from the preamble of the act, which was passed in 1710(2), that it was not introduced on the part of

(1) 4 Burr. 2318.

(2) 8 Anne, cap. 19, *An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.*

"Whereas printers, booksellers, and other persons have *of late frequently taken the liberty of printing*, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, *without the consent of the authors or proprietors of such books* and writings, 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*, may it please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer;

And that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer;

And that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times granted and limited by this act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste-paper of them: and farther, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety

the public to restrain the duration of copyright. The imaginary evil of its perpetuity (which will be afterwards investigated) was not then suggested. It is, indeed, quite manifest on the face of the act, that it originated with the aggrieved authors and publishers, and the Journals of the House of Commons (vol. xvi. p. 240) place this point beyond all doubt.

thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same; to be recovered in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

II.---" And whereas many persons may through ignorance offend against this act, unless some provision be made, whereby the property in every such book as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;" be it therefore further enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published, *shall, before such publication, be entered in the register book of the Company of Stationers, in such manner as hath been usual(a)*; which register book shall at all times be kept at the hall of the said Company; and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid; for every of which several entries sixpence shall be paid, and no more; which said register book may at all seasonable and convenient times be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee, not exceeding sixpence.

III.---Provided nevertheless, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the Gazette, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

IV.---Provided nevertheless, and it is hereby further enacted by the authority aforesaid, that if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of March, one thousand seven hundred and ten, set a price upon, or sell or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too *high and unreasonable;* it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of Canterbury for the time being; the Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain, for the time being; the Lord Bishop of London for the time being; the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, for the time being; the Vice-Chancellors of the two Universities for the time being, in that part of Great Britain called England; the Lord President of the Sessions for the time being; the Lord Justice General for the time being; the Rector of the College of Edinburgh for the time being, in that part of Great Britain called Scotland; who, or any one of them,

(a) An action may be maintained for damages by piracy without any entry at Stationers' Hall. 7 Term Rep. 620.

The act recites, that printers, booksellers, and other persons had of late frequently *taken the liberty* of printing, *re-printing*, 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

shall and have hereby full power and authority from time to time to send for, summon, or call before him or them, such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if, upon such enquiry and examination, it shall be found that the price of such book or books is enhanced or anywise too high or unreasonable, then, and in such case, the said Archbishop of Canterbury, Lord Chancellor or Lord Keeper, Bishop of London, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities in that part of Great Britain called England; and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint, and of the causing such rate or price to be so limited or settled; all which shall be done by the said Archbishop of Canterbury, Lord Chancellor or Lord Keeper, Bishop of London, two Chief Justices, Chief Baron, Vice-Chancellors of the two Universities in that part of Great Britain called England, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of Edinburgh, in that part of Great Britain called Scotland, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the Gazette; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell or expose to sale any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid, then, and in every such case, such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered, with costs of suit, in any of Her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

V.---The fifth section, which relates to the delivery of nine copies of each book to the public libraries, will be inserted in the second part of the Historical View.

VI.---Provided always, and be it further enacted, that if any person or persons incur the penalties contained in this act, in that part of Great Britain called Scotland, they shall be recoverable by any action before the Court of Session there.

VII.---Provided, that nothing in this act contained do extend, or shall be construed to extend, or to prohibit, the importation, vending, or selling of any books in Greek, Latin, or any other foreign language, printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

VIII.---And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

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 book, 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 the authors of books already composed, but not printed, or that should thereafter be composed, and their assigns, should have the sole liberty of printing and reprinting such books for *fourteen years*, to commence from the first publishing the same, *and no longer*.

It then enacted the forfeiture of all books printed, reprinted, imported, or sold, without consent in writing of the proprietor, signed in the presence of two witnesses, and inflicted the penalties of confiscation of the pirated books, and one penny for every sheet; half the penalty to the owner, and the other to the informer.

And that persons might not through ignorance offend against the act, the forfeitures and penalties do not attach unless the title to the copy of the book be entered in the register book of the Stationers' Company, in such manner as had been usual.

The act authorizes the Archbishop of Canterbury and other dignitaries to settle the prices of books, upon complaint made that they were unreasonable.

It was also provided, that the act should not extend either to *prejudice or confirm* any right that the Universities, *or any person*, had, or claimed to have, to the printing or reprinting any book or copy already printed, or thereafter to be printed.

And the last clause directed that the sole right of printing or disposing of copies after the expiration of the first term of fourteen years, should *return* to the authors thereof, if they were then living, for another term of fourteen years.

IX.---Provided, that nothing in this act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the said Universities, or any of them, or any person or persons have, or claim to have, to the printing or reprinting any book or copy already printed, or hereafter to be printed.

X.---Provided nevertheless, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced within three months next after such offence committed, or else the same shall be void and of none effect.

XI.---Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

In addition to this brief summary of the purport of the act, it has been deemed necessary to quote it fully in the notes; and we now proceed to the *intention of the Legislature*, deduced from the preamble of the act, and the language of its several clauses.

It is observable that the preamble of the act adopts a language which condemns the *liberty* then of late frequently taken, of printing books and writings without the consent of the author or proprietor, and treats it as an *abuse of a right*, not as an act done in assertion of any common law right, to which the statute intended to put only a temporary restraint, for the act declares it to be done "to the detriment of the *proprietors*, and the ruin of their families."

When the Legislature speak of a "liberty taken," it is obvious they could not mean a claim founded on any right. If such had been the intention, they would have so expressed themselves; and probably the preamble would have run thus: "Whereas booksellers and divers other persons have of late *claimed the right* of printing and reprinting," &c.

The word "reprinting," is also observable. For if the first printing a publication was a gift of the work to the public, it could be no injury to *re*print a second edition without consent. But without consent of *whom?* The author *or* proprietor (in the *dis*junctive); thereby clearly pointing out the persons entitled to this property, namely, the original author or his assignee. And by the words, "to the ruin of them and their *families*," the Parliament probably alluded to the dispositions of their works made by authors at their decease for the benefit of their families.

Again, in the enacting clause, "for preventing, therefore, the like practices in future," the Legislature, by the word *practices*, did not mean to describe the exercise of a legal right; but to point out acts committed in *fraud* and violation of private rights, which this act was made to prevent. The word "practices" is properly applied to the doing of *illegal* acts; but is improperly and incongruously made use of to describe the exercise of right, either strictly legal, or even doubtful.

It is also worthy of notice, that the enacting clause adopts precisely the identical expressions anciently used in the decrees, ordinances, and statutes, alike speaking of the rights of authors as a known, subsisting, and transferable property. "The copy of the book," "the title to the copy," in the words of the act, form a technical recognition of the right.

The bill on which the act was founded, went to the committee as a bill to *secure* the undoubted property of copies *for ever*. It seems that objections arose in the committee to the *generality* of the proposition; and that the debate ended in securing the property in copies for a term---without prejudice to either side of the question upon the general claim as to the *right*. By the law and usage of Parliament, a *new* bill cannot be made in a committee; a bill to *secure* the property of authors, could not be turned into a bill to *take it away*. What the act gives with a sanction of penalties, is for a *term*: the words, "and no longer," add nothing to the sense, any more than they would in a will, if a testator gave an estate for years(1).

The preamble of the statute, as it was originally brought in and went to the committee, was the fullest assertion of the legal property and undoubted right of authors at common law, that could be, and there was no saving clause at all in the act. When that florid introduction was abridged, it is most probable, as the fact appears, that a saving clause was guardedly inserted.

The Universities had considerable copyrights. Lord Clarendon's History was but lately published by the University of Oxford. The third volume did not come out until 1707. They came out at different times. The proviso, however, is general:---"That nothing in this act contained shall extend either to prejudice or confirm any right that the said Universities, or any of them, *or any person or persons*, have, or claim to have, to the printing or reprinting *any* book or copy already printed, or hereafter to be printed.

If there were not a common law right previous to this statute, what is this clause to save? Not a right of publishing, to throw it into universal communion as soon as it comes out. That was no more worth while than the purchasing of a copy seems to be, if it be left unprotected by the law, and open to every piratical practice.

This proviso seems to be the effect of extraordinary caution that the rights of authors at common law might not be affected; for if it had not been inserted, they would not have been taken away by construction, but the right and the remedy would still remain unaffected by the statute(2).

The common law right, indeed, is admitted and recognized by providing a *remedy* for the injury; although at common law it has been said, that there is *no injury* whatever. The statute professed to "encourage learning," and to prevent "the printing of books without the consent of the authors or proprietors, to their detriment," &c. Its object was avowedly not to limit the right, but to facilitate the remedy. In giving an additional protection to literary property by inflicting a

(1) 4 Burr. 2333.

(2) Ibid. 2352.

penalty, there might be some reason for limiting that species of punishment to a definite period. The penalty is not reserved to the author, but given to any one who may sue for it; and it is obvious, therefore, that it was designed as an act of *public justice*, independently of the *private* right to compensation at common law.

It should be recollected also, that it was a remedial statute, and ought to have been construed liberally: the contrary principle would assume, that the object of the act, as well as justice and policy, required the *suppression* of literature, rather than its "encouragement."

SECTION II.

Of the construction of the Statute before the year 1775.

The great question which has been discussed in the courts of justice regarding the limits of literary property, depended on the construction of the 8 Anne. Before adverting to the interpretation which was subsequently put upon it, we deem it appropriate, in the order of time, to notice the decisions in the courts of law and equity which took place from the passing of the act in question, down to the year 1774, when, contrary to all the previous decisions, it was determined by the House of Lords that the common law right was merged in the statute.

1. *Of the decisions in Equity.*

The earliest decisions on the general question of literary property occurred in the *courts of equity*, which were resorted to as affording a more speedy remedy against invasions of copyright by an immediate injunction, than could be obtained by an action at law for damages. Numerous decisions took place, founded upon the principles of the common law, and on the supposition that a *perpetual* copyright belonged to authors and their assignees. It is remarkable, that if the statute of Anne was intended to abridge the common law right, none of the lawyers who were engaged in the various cases which occurred after that act, should have advanced the argument. From the passing of the act in the year 1710, until 1775, when the question came before the House of Lords, there were numerous cases argued, yet in none of them was the point even in the slightest degree adverted to.

The question upon the common law right to old copies of works, could not arise until twenty-one years from the

10th of April, 1710; consequently, the soonest it could arise was in 1731.

In 1735, an injunction was granted by Sir Joseph Jekyll to restrain the printing of the *Whole Duty of Man*, the first assignment of which had been made seventy-eight years before that time.

In the same year, Lord Talbot restrained the printing of *Pope's* and *Swift's* Miscellanies, though many of the pieces were originally published prior to the act, namely, in 1701-2-8.

In 1736, Sir J. Jekyll granted another injunction for printing *Nelson's Festivals and Fasts*, though printed in 1703, in the life time of the author, and he died in 1714.

In 1739, an injunction was ordered by Lord Hardwicke against printing *Milton's Paradise Lost*, the title to which was derived by an assignment from the author seventy-two years antecedently.

And in 1752, another injunction issued in favor of Milton's Paradise Lost, with his Life by Fenton, and the Notes of all the former editions. It was an injunction to the *whole*, so that printing the Poem, *or* the Life, *or* the Notes, would have been a breach of the order.

The Court of Chancery, from the passing of the act of Anne, have been in error in all these decisions, if the whole right of an author in his copy depends upon this positive act, as introductive of a new law. For it is clear, the property of no book was intended to be secured by this act, unless it should be entered. No one offended against the act, unless the book was entered. Consequently, the sole copyright was not given by the act, unless the book was entered. Yet it was held unnecessary to the relief in Chancery that the book should be entered.

There is also an express proviso in the act, that all actions and suits for any offence against the act, should be brought within three months, or be of no effect. Now if all copies were open and free before, pirating is merely an offence against the statute, and can only be questioned in any court of justice as an offence against it. Yet it is not necessary that the bill in Chancery should be filed within three months.

Again, if the right vested, and the offence prohibited, by the act, be new, no remedy or mode of prosecution could be pursued, besides those prescribed by the act. But a bill in Chancery was not given, and consequently could not be brought upon the act. There is no ground upon which this jurisdiction has been exercised, or can be supported, except the antecedent property, confirmed and secured for a limited term by this act. In this light the entry of the book is a condition in respect of the statutory penalty only; so like-

wise the three months is a limitation in respect of the statutory penalty only. But the remedy by an action upon the case, or a bill in Chancery, is a consequence of the common law right; and is not affected by the statutory condition or limitation(1).

It has been urged in objection, that these injunction cases were only *preliminary* decisions, and that none of the suits were brought to a final hearing.

Great caution, however, has been always exercised in granting injunctions at the commencement of a suit, because if on further investigation it should be found erroneous, the loss of a defendant does not admit of reparation. The judgment, therefore, has been invariably given with great deliberation.

Lord MANSFIELD said he looked at the injunction which had been granted, or continued, before hearing, as equal to any final decree, for such injunction never is granted upon motion, unless the legal property is made out; nor continued after answer, unless it remains clear. The Court of Chancery never grants injunctions in cases of this kind where there is any doubt(2).

Lord ELDON, referring to the view taken by Lord Mansfield, also said, that in these cases a court of equity takes upon itself to determine, as well as it can, the rights in this period, and with a conviction that if then the cause was hearing, they would act upon the same rule. The court takes upon itself that which may involve it in mistake to determine the legal question. It is the decision of a judge sitting in equity upon a legal question, and therefore not having all the authority of a decision of a court of law, but giving an opinion, and pledged to maintain it, unless there should be occasion to alter it(3).

So in the case respecting the publication of Lord Melville's Trial, Lord ERSKINE observed, that he was so much convinced by the arguments for the defendant as to the effect of an injunction, that unless he had a strong impression that at the hearing he should continue of the same opinion, and should grant a perpetual injunction, he would

(1) The statute of Anne is a *penal* statute, which prescribes the remedy for the party aggrieved, and the mode of prosecution to be commenced within three months. Upon such an act, if the offence, and consequently the right which arises from the prohibition, be *new*, no remedy or mode of prosecution can be pursued, except what is directed by the act.

If a conditional right is created by an Act of Parliament, the condition cannot be dispensed with. If the same act which creates the right, limits the time within which prosecutions for violation of it shall be commenced, that limitation cannot be dispensed with.

Therefore the whole jurisdiction by the Court of Chancery since 1710 against pirates of copies, is an authority that authors had a *property antecedent*, to which the act gives a *temporary additional security*; it can stand upon no other foundation(*a*).

(2) 4 Burr. 2303.

(3) 8 Vesey, 224.

(*a*) 4 Burr. 2323.

not grant the injunction then, which he only did as there was no probability that new facts would appear by the answer(1).

Injunctions to stay printing, or the sale of books printed, it may be further observed, are in the nature of injunctions to stay *waste*---they never are granted but upon a *clear right*. If moved for upon filing the bill, the right must appear clearly by affidavit; if continued after the answer has been put in, the right must be clearly admitted by the answer, or at all events not denied.

Where the plaintiff's right is questioned and *doubtful*, an injunction is improper, because no reparation can be made to the defendant for the damage he sustains from the injunction.

There are several cases reported upon questions regarding infringements of copyright *within* the period protected by statutes: to these, of course, it is unnecessary in this place to advert, as the general principle was not in any way included in the determination; and we refer them to the chapter on *pirating copyright*.

2. *Of the Decisions at Law.*

The general question was first argued in a *court of law* in the case of Tonson v. Collins, in the year 1760, relative to the copyright in the *Spectator*. It appears from the best authority, that so far as the Court had formed an opinion, they all inclined to the plaintiff, and they were prepared to give judgment accordingly. But having received information that although the argument was conducted *bona fide* by the counsel, it was a collusive proceeding between the parties for the purpose of obtaining a judgment which might be set up as a precedent, they refused to pronounce any decision(2).

In the year 1769, the subject was discussed at great length with respect to *Thomson's Seasons*, in the celebrated case of Millar v. Taylor(3).

The counsel for the plaintiff insisted "that there was a real *property* remaining in authors *after publication* of their works; and that *they only*, or those who claim under them, have a right to *multiply* the copies of such, their literary property, at their pleasure for sale." And they likewise insisted, "that this right is a *common law right*, which *always* has existed, and does still exist, independent of, and not taken away by, the statute of Anne."

On the other side, the counsel for the defendant denied that any such property remained in the author after the publication of his

(1) 13 Vesey, 505.

(2) 1 Blac Rep. 301, 321; 4 Burr. 2327.

(3) 4 Burr. 2303.

work, and they treated the pretensions of a common law right to it as mere fancy and imagination, void of any ground or foundation.

They insisted that if an original author publishes his work, he sells it to the public; and the purchaser of every book or copy has a right to make what use of it he pleases, and may multiply each book or copy to what quantity he pleases.

They also contended that the act of Anne vests the copies of printed books in the authors or purchasers of such copies during the times therein limited, but only during that *limited time*, and under the *terms* prescribed by the act.

There was a difference of opinion in the Court. Lord MANSFIELD and Judges ASTON and WILLES were in favor of the plaintiff's copyright, and Judge YATES was alone against it. Judgment was of course given according to the opinion of the majority.

Some years after this decision the question came before the HOUSE OF LORDS, upon an appeal from a decree of the Court of Chancery, founded on the judgment given in the Court of King's Bench in Millar v. Taylor, and it was ordered by the House, on the 9th of February, 1774, that the judges be directed to deliver their opinions upon the following questions:

1. 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?

Of eleven judges, there were eight to three in favor of the right at common law.

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

There were seven to four of the judges who held that the printing and publishing did not deprive the author of the right.

3. 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?

On this question there were only five judges who were of opinion that the action at common law was not taken away by the statute, and there were six of the opposite opinion.

It was well known that Lord MANSFIELD adhered to his opinion, and therefore concurred with the eight upon the

first question; with the seven upon the second, and with the five upon the third (which in the latter case would have made the votes equal). 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.

It was finally decided, that an action could not be maintained for pirating a copyright after the expiration of the time mentioned in the statute(1).

SECTION III.

Of the Statutes 12 *Geo. II. and* 15 *and* 41 *Geo. III.*

The first of these statutes(2) was, "an act for prohibiting the importation of books reprinted abroad, and first composed

(1) Donaldson v. Becket, 4 Burr. 2408.

(2) By the 12 Geo. II. cap. 36, it was enacted, That from and after the 29th of September, 1739, it shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale any book or books first composed or written and printed and published in this kingdom, and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale any printed book or books so first composed or written and printed in this kingdom, and reprinted in any other place or country as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books; then every such person or persons so doing or so offending shall forfeit the said book or books, and all and every sheet or sheets thereof, and the same shall be forthwith damasked and made waste paper: and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered, with costs of suit, in any of His Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoine, or protection, or more than one imparlance, shall be allowed: and if the offence be committed in Scotland, to be recovered before the Court of Session there by summary action:

Provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty-one years before the same shall be imported.

II.---Provided always, that nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, to be sold therewith in any collection, where the greater part of such collection shall have been first composed or written and printed abroad; any thing in this act contained to the contrary notwithstanding.

III.---The third section recites the 4th clause in 8 Anne, c. 19, by which the price of books is subject to regulation, and repeals every part of that clause. And then proceeds:

IV.---And be it further enacted, That this act (except so much thereof as repeals the before-mentioned clause in the said act of the eighth year of the reign of the late Queen Anne relating to the price of books) shall continue and be in force from the said 29th day of September, 1739, and from thence to the end of the then next Session of Parliament, and no longer.

This act was further continued by 27 Geo. II. cap. 18, and 33 Geo. II. cap. 16.

or written and printed in *Great Britain*; and for repealing so much of an act made in the 8th year of the reign of her late Majesty, Queen Anne, as empowers the limiting the prices of books.

It recites in the preamble, that the duties on paper imported into this kingdom to be made use of in printing, greatly exceed those payable on the importation of printed books, whereby foreigners and others are encouraged to bring in great numbers of books originally printed and published in this kingdom, and reprinted abroad, to the diminution of His Majesty's revenue, and the discouragement of the trade and manufactures of the kingdom; and, therefore, it prohibits the importation of books written and printed in *this*, and reprinted in another country, on pain of forfeiture of the books, and double their value, and five pounds for every offence.

But the act does not extend to books that have not been printed in this kingdom within twenty years, nor to their insertion among other books or tracts, where the greatest part have been composed and printed abroad.

The act then repeals the 4th section of the statute of Anne, relating to the limitation of the price of books.

15 *Geo. III. cap.* 53.

It is evident that the several Universities were as little prepared as any individual author or publisher, for the decision of the House of Lords, which overthrew the exercise of unlimited copyright, although it had prevailed, not only in all the time antecedent to the 8th Anne, but for sixty-five years subsequently. The Universities hastened immediately to Parliament, and in the same year, 1775, obtained an act "for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in *perpetuity* their copyright in books given or bequeathed to the said Universities and Colleges, for the advancement of useful learning, and other purposes of education(1)."

(1) 15 Geo. III. c. 53. Whereas authors have heretofore bequeathed or given, and may hereafter bequeath or give, the copies of books composed by them, to or in trust for one of the two Universities in that part of Great Britain called England, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four Universities in Scotland, or to or in trust for the several colleges of Eton, Westminster, and Winchester, and in and by their several wills or other instruments of donation, have directed, or may direct, that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education within the said Universities and colleges aforesaid: And whereas such *useful purposes will frequently be frustrated*, unless the *sole printing* and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said Universities, colleges, and house

It was enacted, that these Universities and Colleges should have *for ever* the sole liberty of printing and reprinting such books as had been, or should be, bequeathed to them, or in trust for them, unless the same had been, or should be, given for a limited time.

But it was provided, that the act should not extend to of learning respectively *in perpetuity;* may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said Universities and colleges respectively shall, at their respective presses, have, *for ever*, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be, bequeathed or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said Universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four Universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in anywise notwithstanding.

II.---And it is hereby further enacted, that if any bookseller, printer, or other person whatsoever, from and after the 24th day of June, one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the University, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, or more than one imparlance, shall be allowed.

III.---Provided nevertheless, that nothing in this act shall extend to grant any exclusive right otherwise than so long as the books or copies belong to the said Universities or colleges are printed only at their own printing presses within the said Universities or colleges respectively, and for their sole benefit and advantage; and that if any University or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void, and of no effect, in the same manner as if this act had not been made; but the said Universities and colleges, as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of Her Majesty Queen Anne.

IV.---And whereas many persons may through ignorance offend against this act, unless some provision be made whereby the property of every such book as is intended by this act to be secured to the said Universities, colleges, and houses of learning within the same, and to the said Universities in Scotland, and to the respective colleges of Eton, Westminster, and Winchester, may be ascertained and known, be it therefore enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books

grant any exclusive right in such books longer than they were printed at the presses of the Universities or Colleges respectively. Yet they might sell their copyrights in the same manner as any individual author.

The provisions of the act are enforced by penalties and forfeitures; but no person is subject to them on account of books *then already bequeathed,* unless they be entered in the register book of the Stationers' Company before the 24th of June, 1775; and all books which should be *thereafter* bequeathed, must be entered within two months after such bequest shall be known.

After making provision for enforcing the due entry in the register book, the act recites the statute of Anne, relating to the delivery of the copies to the public libraries, and enacts, that no person shall be subject to the penalties in

which has or have been already bequeathed or given to any of the said Universities or colleges aforesaid, be entered in the register book of the Company of Stationers kept for that purpose, in such manner as hath been usual, on or before the 24th day of June, one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the Vice-Chancellors of the said Universities, or heads of houses and colleges of learning, or of the principal of any of the said four Universities respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid, and no more; which said register book shall and may, at all seasonable and convenient times, be referred to and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

V.---And be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said Universities or colleges aforesaid, lawfully authorized for that purpose, then either of the said Universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by an advertisement in the Gazette), shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copyright, to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, protection, or more than one imparlance, shall be allowed.

VI.---The next section, which relates to the delivery of the copies of books to the public libraries, will be found in the *second part.*

VII.---And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in Scotland, a judgment be given for the defendant, or the plaintiff become nonsuited, and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

VIII.---And be it further enacted by the authority aforesaid, that this act shall be adjudged, deemed, and taken to be a public act; and shall be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same.

that act for printing any book, unless the title to the copy of *the whole* of such book be entered, and the copies of the whole delivered for the use of the several libraries.

41 *Geo. III. cap.* 107.

Immediately after the *Union* with *Ireland,* an act was introduced(1) " for the further encouragement of learning in

(1) After the recital which is stated in the text, the statute 41 Geo. III. cap. 107, proceeds as follows:

That it be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the author of any book or books already composed, and not printed or published, and the author of any book or books which shall hereafter be composed, and the assignee or assigns of such authors respectively, shall have the sole liberty of printing and reprinting such book and books, for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and that if any other bookseller, printer, or other person whosoever, in any part of the said United Kingdom, or in any part of the British dominions in Europe, shall, from and after the passing of this act, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or knowing the same to be so printed, reprinted, or imported, without such consent of such proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act; and every such proprietor and proprietors shall and may, by and in such special action upon the case to be so brought against such offender or offenders in any Court of Record in that part of the said United Kingdom, or of the British dominions in Europe, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a Writ of Enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoine, privilege or protection, nor more than one imparlance, shall be allowed; and all and every such offender or offenders shall also forfeit such book or books, and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record in which any action or suit in law or equity shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books, and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of *three pence* for every sheet which shall be found in his or their custody, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed: provided always, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

II.---Provided also, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to any book or books heretofore composed, and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever, from or against any penalties or actions, to which he, she,

the United Kingdom of Great Britain and *Ireland*, by securing the copies and copyright of printed books to the authors of such books, or their assigns, for the time therein mentioned."

It was passed on t e 2nd of July, 1801, and recites in the preamble, that it is expedient that further protection should be afforded to the authors of books, and the purchasers or they shall or may have become, or shall or may hereafter be liable, for or on account of the unlawfully printing, reprinting, or importing such book or books, or the selling, publishing, or exposing the same to sale, or the having the same in his or their possession for sale, contrary to the laws and statutes in force respecting the same, at the time of the passing an act in the Session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intitled, *An act for the union of Great Britain and Ireland.*

III.---And whereas authors have heretofore bequeathed, given, or assigned, and may hereafter bequeath, give, or assign, the copies or copyrights of and in books composed by them, to or in trust for the college of the Holy Trinity of Dublin; and in and by their several wills or other instruments have directed or may direct, that the profits arising from the printing and reprinting such books, shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books, the copies of which shall have been or shall be so bequeathed, given, or assigned as aforesaid, be preserved and secured to the said college in perpetuity; be it therefore further enacted, that the said college shall, at their own printing press, within the said college, have for ever the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given or assigned by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed, given, or assigned, or shall hereafter be bequeathed, given or assigned, for any term of years, or any other limited term; any law or usage to the contrary thereof in anywise notwithstanding; and that if any printer, bookseller, or other person whosoever, shall from and after the passing of this act unlawfully print, reprint, or import, or cause to be printed, reprinted, or imported, or knowing the same to be so unlawfully printed, reprinted, or imported, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his or their possession for sale, any such last mentioned book or books, such offender and offenders shall be subject and liable to the like actions, penalties, and forfeitures as are herein before mentioned and contained with respect to offenders against the copyrights of authors and their assigns: provided, nevertheless, that nothing in this act shall extend to grant any exclusive right to the said college of the Holy Trinity of Dublin, otherwise than so long as the books or copies belonging to the said college are and shall be printed only at the printing press of the said college, within the said college, and for the sole benefit and advantage of the said college; and that if the said college shall delegate, grant, lease, or sell the copyrights or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, then the privilege hereby granted shall become void and of no effect, in the same manner as if this act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors can or may lawfully do under the provisions of this act, or any other act now in force.

IV.---Provided also, and be it further enacted, that no bookseller, printer, or other person whosoever, shall be liable to the said penalty of three pence per sheet, for or by reason of the printing, reprinting, importing, or selling of any such book or books, or the having the same in his or their custody for sale, without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication

of the copies and copyright of the same, in the United Kingdom of Great Britain and Ireland.

It enacts, that authors of books then already composed, and not printed or published, and of books to be thereafter composed, and the assigns of such authors, shall have the sole right of printing such books for fourteen years, from the day of first publishing the same, and no longer.

of such book or books by the proprietor or proprietors thereof (other than the said college), the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in London, in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in Great Britain; nor if the consent of such proprietor or proprietors for the printing, reprinting, importing, or selling such book or books, shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed, given, or assigned to the said college, be entered in the said register book before the 29th day of September, one thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed, given, or assigned as aforesaid, be entered in the said register book within the space of two months after any such bequest, gift, or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries sixpence shall be paid, and no more; which said register book shall at all times be kept at the hall of the said Company, and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also, without fee or reward, within fifteen days next after the 31st day of December, and the 30th day of June, in each and every year, make or cause to be made, for the use of the said college, a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said 31st day of December, and the 30th day of June respectively, and shall upon demand deliver the said lists, or cause the same to be delivered, to any person or persons duly authorized to receive the same for and on behalf of the said college.

V.---Provided also, and be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate or certificates, being thereunto respectively required by the author or authors, proprietor or proprietors, of such copies or copyrights, or by the person or persons to whom such consent shall be given, or by some person on his or their behalf, in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the London Gazette, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for any such offence, forfeit to the author or proprietor of such copy or copies, or to the person or persons to whom such consent shall be given, the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid, or to deliver the same to any person duly authorized to demand the same on behalf of the said college, the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of His Majesty's Courts of Record in the said United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed.

VI.---The sixth section relates to the additional copies for the Irish libraries, and will be stated in the next part.

VII.---And be it further enacted, that from and after the passing of this act, it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of Great Britain and Ireland for sale, any printed book or books, first composed, written, or printed, and published in any part of the said United Kingdom, and reprinted in any other country or place whatsoever; and if any person or

And that any bookseller or other person, in any part of the United Kingdom, or British Dominions in Europe, who shall print, reprint, or import any such book, without the consent of the proprietor of the copyright, shall be liable to an action for damages, and double costs, and shall also forfeit the books to the proprietor, and *three pence* per sheet, one moiety to the king, and the other to the informer.

The act also pro ides, that after the expiration of the fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

It also enacts, that Trinity College, Dublin, shall *for ever* have the sole right of printing books given or bequeathed to them, unless they were given for a limited time only. And that if any printer, bookseller, or other person should unlawfully print such books, such offender should be subject to the like penalties as before mentioned.

The act, however, extends only to books printed at the persons shall import or bring, or cause to be imported or brought for sale, any such printed book or books into any part of the said United Kingdom, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale, or have in his or their possession for sale, any such book or books, then every such book or books shall be forfeited, and shall and may be seized by any officer or officers of Customs or Excise, and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also, for every such offence, forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she, or they shall so import or bring, or cause to be so imported or brought, into any part of the said United Kingdom, or shall knowingly sell, publish, or expose to sale, or shall cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, contrary to the true intent and meaning of this act; and the commissioners of Customs in England, Scotland, and Ireland respectively (in case the same shall be seized by any officer or officers of Customs), and the commissioners of Excise in England, Scotland, and Ireland respectively (in case the same shall be seized by any officer or officers of Excise), shall also reward the officer or officers who shall seize any books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of customs and excise: provided that no person or persons shall be liable to any of the last mentioned penalties or forfeitures, for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom, within twenty years next before the same shall be imported, or of any book or books reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection, where the greatest part of such collection shall have been first composed or written abroad.

VIII.---And be it further enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this act, shall be brought, sued, and commenced within six months next after such offence committed, or else the same shall be void and of none effect.

college-press; but allows the college to sell their copy-rights.

Provision is then made for the entry at Stationers' Hall of the title to the copyright, without which the penalties are not incurred.

It is also enacted, that no person shall import into any part of the United Kingdom for sale, any book first composed within the United Kingdom, and reprinted elsewhere; and the penalty for each offence is ten pounds, and double the value of each book.

But the act does not extend to books which have not been printed in the United Kingdom for twenty years.

We confine the statement of the statutory provisions in this place to those which relate to the *duration* of the copy-right, and refer to the next part the enactments relating to the delivery of copies to the libraries.

SECOND PART.

OF THE LIBRARY TAX.

CHAP. I.—FROM THE INVENTION OF PRINTING, TO THE STATUTE OF ANNE.

SECTION I.—*Of the origin of the Tax.*

Having thus reviewed the laws, in relation to the limited period during which they protected the copyright of authors, we proceed to the history of the practice of delivering copies of books to the public libraries, which it has been assumed is calculated to encourage literature.

We purpose in the present chapter to consider the *origin* of the tax,

1st. On public grounds,

Namely, for the purposes of state regulation. This division will include the *British Museum* and *Sion College.*

2nd. On private grounds,

Or those which apply to the respective libraries in favor of which the tax was imposed.

The latter division will comprise the several claims made by the *Universities of Cambridge and Oxford,* and those of *Scotland and Ireland.*

Looking at the law in other countries of the civilized world, the evident interests of society, and considering the general principles of justice, it would not be easy to discover the origin of this extraordinary tax, or the pretensions on which it was instituted. We should be driven to ascribe it solely to the exercise of that arbitrary power which formerly prevailed in England, and for which it were vain to conjecture any just foundation.

We are not, however, left to surmise the circumstances under which the law originated. We have no trace of its existence from the commencement of printing in this country in the year 1471 (or 1468 as some insist), until the reign of Charles II., during which this notable plan was commenced for the encouragement of literature, and to induce learned men to write and compose useful books. During the lapse of nearly two hundred years, amidst the most unsettled state

of public affairs, and although there had been many severe restraints upon printing, it had not occurred to the wisdom or justice of Parliament to require the delivery of any number of copies of books to the public libraries previous to publication.

Soon after the "Restoration," the press was put under increased and most severe restraints, and the immediate control of Government. No printing press could exist unless by the *licence* of the constituted authorities. Hence the act was called the "Licencing Act."

By this act (13th and 14th Car. II. c. 33), after prohibiting heretical or seditious publications, it was ordered that no person should print any book unless it was first licenced and authorized—law books by the Lord Chancellor, or Chief Justices, or Chief Baron; books on history or state affairs by the Secretary of State; books on heraldry by the Earl Marshal; books on divinity, physic, philosophy, science, or art, by the Archbishop of Canterbury or the Bishop of London.

It then declares, that in future no man should be a master printer until the then master printers were reduced to twenty, and the master letter founders were to be four. The master printers and letter founders were to be nominated and allowed by the Archbishop of Canterbury and Bishop of London; and no man, unless he had been master of the Stationers' Company, was to keep more than two presses.

For the purpose of enforcing the act, very extensive powers were given to messengers, authorized, by warrants from the King, Secretary of State, or Master and Wardens of the Stationers' Company, to enter at what time they should think fit, and to search all houses where they should know, or upon some probable cause suspect, any books to be printed, bound, or stitched, and to examine whether the same be licenced or not.

The statute, after imposing penalties sufficiently severe, enacts, that every printer should send *three copies of every book* new printed, or reprinted with additions, to the Stationers' Company, to be sent to the *King's Library*, and the *Vice-Chancellors* of the two Universities of *Oxford and Cambridge*, for the use of their public libraries.

The object of the act in requiring the delivery of the three copies, was evidently to furnish the Ministers of State and the Vice-Chancellors of the Universities with the ready means of enforcing the intentions of the Legislature. Thus the first copy was to be transmitted to the King's Library, where it would undergo the inspection of those whose busi-

ness it was to ascertain that nothing should be published which contained matter offensive to the *state*. And it is remarkable that the copies for the Universities were not ordered for the libraries of any of the colleges, but for the Vice-Chancellors in their official character:—thus evidently having relation to the interests of the *church*.

Severe as the statute was, its duration was at first limited to two years. It was afterwards continued from session to session for four years, and then was permitted to expire.

During a period of not less than twenty years, down to the reign of James II., no attempt was made to renew this odious restriction on the press, and the delivery of the three copies ceased to be required.

By the 1st of James II. it was revived for the term of seven years; the three copies to the same libraries were re-imposed, and continued to be exacted until a few years subsequently to the Revolution, when the licencing of printing presses finally ceased, and the copies of publications were no longer required.

It is observable that the *entries* of copies at Stationers' Hall prior to the Licencing Act, were unaccompanied by the delivery of any books; and, as we have already seen, were designed by the booksellers of the Company to ascertain to each other their respective copyrights, and in some degree to advertise the works, as there were no newspapers.

It is also important to notice, that the first books recorded to have been *delivered* to the Company were in October, 1663, which was after the passing of the act of 13th and 14th Car. II., and the entries were only made during the several periods when the Licencing Acts were in force(1).

To show more clearly the object of the act, we may present the following extract from Mr. BROUGHAM's argument (in the accuracy of which the court appears to have concurred) in the case of the University of Cambridge v. Bryer(2).

He says, on this expired statute of Charles II. "I should take the liberty of concluding, first, from its being originally meant to be temporary, and next from its having been allowed to expire, and not being renewed, that those objects which the Legislature originally had in view, must be held to have been no longer in the view of the Legislature.

Mr. Justice BAYLEY---What do you say was the object of them?

Mr. BROUGHAM---That the object of them was to prevent unlicenced publications; and that in furtherance of that object, there is

(1) Reasons for a Modification of the Act of Anne, by *Sharon Turner*, Esq 1813.
(2) Ib.

an order that copies of all books published shall be sent to the Universities, in order that it might appear, first, when a book had been published anonymously, if such a thing was attempted; and next, if published with the name of the author, that it might be immediately known whether any person had contravened the general prohibitions of the act by publishing an unlicenced book.

Mr. Justice Bayley---For that reason you contend that one was also to be sent to the King's Library.

Mr. Brougham---Certainly, my lord, for the purpose of giving greater publicity to them, under the cognizance of the persons appointed to watch over the execution of the other sections of the act, and see that the provisions of the act were carried into force---the persons most sure to prevent all evasion of the act. It was taking the most public and the surest possible means of effecting the object of the act."

Such was the origin of this impost, which, it has been contended, is designed for the "encouragement of literature." It was by this act (says Sir Edgerton Brydges) that a delivery of copies was first enacted—not for the encouragement of learning; not as a consideration for the privileges given by that act, which, though it recognized the titles to copies against intruders (a property which the law of Parliament had previously enforced with equal strength, unalloyed by any such condition), was so far from an act of bounty, that it has ever since been branded with infamy for its usurpation of the free rights of the press---but unquestionably for the purpose of furnishing the Ministers of State, and the Vice-Chancellors of the Universities, with better means to put in force the despotic provisions of that act(1).

SECTION II.

Of the grounds of the Library Claim by the Universities of Cambridge and Oxford.

1st. *By the University of Cambridge.*

It is urged on behalf of the Universities, that Henry VI. introduced printing into England at his own expence, that the crown had in consequence the sole privilege of printing; that Henry VIII. granted to *Cambridge*, and Charles II. to *Oxford*, the privilege of printing all books; and that the compulsory delivery of the copies is a proper commutation to the Universities for the loss of their exclusive privilege of printing.

(1) Reasons for a farther Amendment. 1817.

The pretensions of Oxford are also attempted to be maintained by the decrees of the Star Chamber, and an agreement between the Stationers' Company and Sir Thomas Bodley, the founder of the library at Oxford which bears his name. We will, in the first place, consider the historical evidence on the claim of the crown to the first importation of printing, under which the Cambridge University can alone establish its pretensions to a share of the Library Tax.

The claim of Henry VI. rests entirely upon a strange story told by one Atkyns, in a pamphlet published in the year 1664. He relates. that as soon as the art of printing made some noise in Europe, the Archbishop of Canterbury moved the King to procure a printing mould to be brought into England; and that Mr. Robert Turnour, the Master of the Robes, disguised himself by shaving his beard and hair, and taking to his assistance Mr. CAXTON, a citizen of good abilities, who traded to Holland,---that they went to Leyden, not daring to enter Haarlem, and succeeded in bringing away in the night one Corsells, or Corsellis. That Corsellis was carried, under guard, to Oxford, where the first printing press was thus set up at the King's expence. That afterwards the King set up a press at St. Albans, and another in Westminster. That the King permitted no law books to be printed, nor did any printer exercise the art but only such as were the King's sworn servants, the King himself having the price and emolument for printing.

Now, upon this singular narrative, and the inference attempted to be deduced from it, it may be observed, that the claim of Caxton to the honor of the first introduction of printing presses in England was never contested, until it became the *interest* of one of the parties, in a dispute with the Stationer's Company regarding a patent for printing, to set up the right of the Crown. We cannot, therefore, place much dependence upon a controversy introduced under such suspicious and interested motives, especially after nearly two centuries had elapsed, during which all the authorities had conceded the merit of Caxton; and it is reasonable to suppose, that the claim to the first acquisition of such an important art would not be allowed, during so long a period of time, to remain undisturbed without just cause.

"All our writers (says Dr. Middleton) before the Restoration [in 1660], who mention the introduction of the art amongst us, give Caxton the credit of it, without any contradiction or variation." Amongst these are *Stowe*, *Trussel*, *Sir Richard Baker*, *Leland*, and *Howell*, and the more modern

authorities of *Henry*, *Wharton* and *Du Pin*---all of whom are strongly in favor of Caxton's claim(1).

Mr. Bowyer, however, contends, that the *Oxford* press was prior to Caxton's, and thinks that those who have called Mr. Caxton "the first printer in England," (and Leland in particular) meant that he was the first who "practised the art in *fusile* types, and consequently first brought it to *perfection*;" which is not inconsistent with Corsellis's having printed earlier at Oxford with *separate cut types in wood*, which was the only method he had learnt at Haarlem(2).

Even upon this shewing it does not appear that the King's claim is established beyond the mere use of wooden types, and that the introduction of the metal types undoubtedly belongs to Caxton. The King's claim to the exclusive monopoly of the art, must therefore be confined at most to the use of wooden types.

But according to the authority of Lord Mansfield(3), the King has no property in printing. The ridiculous conceit of Atkyns was exploded at the time.

Besides, it has been long decided at law, that if such patents were legal, they are merely permissions to the Universities to print books for their *own use*, and not to sell them exclusively to the public at large(4).

In addition to the pamphlet of Atkyns, the claim set up

(1) 4 Burr. 2414. The Rev. Mr. Dibdin, in the first volume of his edition of "Ames's Typographical Antiquities," thus expresses himself on this very pretence: "The whole narrative is an absurd fabrication, and has been treated with proper ridicule and severity by Dr. Middleton, Oxonides, and subsequent bibliographical writers." Dibdin's Life of Caxton, 1 Ames, p. xcvii.

Mr. Nichols also, in his Essay on the Origin of Printing, says, "It is strange that a piece so fabulous, and carrying such evident marks of forgery, could impose upon men so knowing and inquisitive." See p. 7—18.

(2) 4 Burr. 2417. (3) Ib. 2401.

(4) We subjoin the following extract on the question of the first inventor of printing from the Life of Caxton, published August, 1828, in the Library of Useful Knowledge: "It has been contended strenuously by several antiquarians, that Lewis Coster, of Haarlem, invented and used *wooden* types; that he, therefore, was the original inventor of the art of printing, and that Haarlem was the place where the invention was first put into practice. But it is now proved, that this opinion is without foundation; that wooden types were never used; that the claims of Coster of Haarlem cannot stand the test of accurate investigation; and that the art of printing, as at present practised with moveable *metal* types, was discovered by John Guthenberg, of Mayence, about the year 1438."

In a note in the Harleian Miscellany, single types of wood are said to have been used before the year 1440, by *Coster* at Haarlem, whence these characters were transferred to Mentz, either directly or by degrees; probably by the elder *Genfleisch*; who, with his brother, John *Guttemberg*, cut metallic types under the patronage of *Faust*, whose son in law, Schoeffer, cast his own types(*a*).

(*a*) Vol. I. p. 523, note on Essay from the Anthology, 1696.

by the University to a priority in the use of printing is founded on the date of a book in the Cambridge Library bearing the date 1468, but it is liable to the following objections:

1. The date MCCCCLXVIII. is probably a mistake, owing to the omission of a second numerical letter X.

2. It is printed with separate fusile metal types, which, it appears, were not in use so early as 1468.

3. No other book than the one in dispute was issued from the Oxford press until 1479; and it is highly improbable that during eleven years this press, the first, as it was alleged, would remain so long unused, whilst Caxton's press at Westminster, and subsequently others, were in full operation.

2nd. As to the Oxford University.

It appears by the records at Stationers' Hall, that on November 15, 1609, an agreement was entered into with the University of Oxford for delivering "one book of every new copy" to the Public Library; and on November 14, 1610, Sir Thomas Bodley, who had then recently founded the Library, was appointed by the University the receiver of these books(1).

This agreement, although made between two public institutions, was evidently of a private character, and could be binding only on the contracting parties. It continued for several years unsupported by any authority of the state. In 1637, however, it became the policy of the Government to extend and enforce this agreement; and accordingly, on the 11th of July in that year, a decree was made by the Star Chamber, which contained nearly all the provisions which the Licencing Act of Charles II. afterwards established, but it did not comprise the proviso for delivering three copies to the King's Library and the Universities of Oxford and Cambridge. Instead, however, of that clause, it recited the agreement between Sir Thomas Bodley and the Company of Stationers, and ordered the copy to be delivered which had been bargained for between them.

The following are the words of the clause. "XXXIII. Item. That whereas there is an agreement betwixt Sir Thomas Bodley,

(1) The Public Library at Oxford was first founded by Humphrey Duke of Gloucester in 1439. Anthony Wood says it remained desolate from Edward VI. to the end of the reign of Queen Elizabeth, when Sir Thomas Bodley applied his fortune to restore it. Wood's account of the above contract is—"So great was his zeal for obtaining new books, that he did not only search all places in the nation for antiquated copies, and persuade the Society of Stationers in London to give a copy of every book that was printed, but also searched for authors in the remotest places beyond the sea."

Knight, founder of the University Library at Oxford, and the Master, Wardens, and Assistants of the Company of Stationers, viz. that one book of every sort that is new printed, or reprinted with additions, be sent to the University of Oxford, for the use of the Public Library there, the Court do hereby order and declare, that *every printer* shall reserve one book new printed, or reprinted by him with additions, and shall, before any public venting of the said book, bring it to the common hall of the Company of Stationers, and deliver it to the officer thereof, *to be sent to the library at Oxford* accordingly, upon pain of imprisonment, and such further order and direction therein as to this Court, or the High Commission Court, respectively, as the several causes shall require, shall be thought fit."

This decree, it will be observed, is confined to Oxford, and neither the King's Library nor that of Cambridge is mentioned.

This delivery of copies of books to Oxford is not expressed to be founded on any public right, but on a specific agreement between Sir Thomas Bodley on behalf of the University, and the Stationers' Company. It appears from the recital, that it was merely a private agreement between the two bodies. It would bind the Stationers' Company in its capacity as far as the usual operation of law on such instruments allows; but it could impose no obligation on authors then unborn, nor on publishers not members of that Company, nor could it be extended to any object to which its actual tenor did not apply(1).

That the arbitrary Court of Star Chamber enacting expressly, as it declares, " to prevent libellous, seditious, and mutinous books," should condescend to notice a specific contract between two public bodies, can only be accounted for (says Mr. Sharon Turner) on the supposition that the thing enacted had some particular reference to the main object of the act. Both Oxford and the Stationers' Company had each, no doubt, a great number of contracts with various persons which the Court of Star Chamber never troubled itself to enforce. To have stooped to order the performance of this particular agreement, must be referred to its connection with the avowed purpose of this decree; and what connection could this be but that it was perceived that the delivery of a copy of every book to a public body, very friendly to the royal cause, would be an useful auxiliary in enforcing the vindictive and inquisitorial government and superintendence of the press, which the Star Chamber had resolved to exercise?

(1) Mr. Sharon Turner's "Reasons for a Modification," 1813. The books printed by the Stationers' Company in their corporate capacity, are chiefly school books, psalms, and almanacs.

But in 1640 the Star Chamber was abolished; and, to use the words of Judge Willes, "all regulations of the press, and restraints of unlicenced printing by proclamation, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed to be, and certainly were, illegal(1).

Therefore, *after* 1640, Oxford had no other claim to any copy of any book than what could be made from this specific agreement with Sir Thomas Bodley in 1609, which, of course, could have no public operation.

3rd. *As to the Universities of Scotland and Ireland.*

The English libraries having no legal right to the delivery of the copies, except under the recent statutes, it remains only to consider the situation of Scotland and Ireland.

Is it supposed that the delivery of five copies to the Scottish libraries, can be a compensation to the printers and publishers of Scotland for being deprived of the right of pirating English books? There can be no compensation for the forbearance to do an illegal thing. Scotland at the Union incurred the full legal obligation to respect the rights of property in England. Who would insult (says Mr. Sharon Turner) this high-spirited and noble nation by offering it a compensation *not to steal?* If English authors and booksellers had a property in copyright, Scotland was as much bound to respect that right, as every honest Englishman was bound to respect the Scottish copyrights. The just compensation to Scotland for any such right of publication, if she had possessed it, was, that by the act her copyrights became also protected and secured to her authors. This was fair reciprocity, and this is the true view of the question. The act with equal impartiality prohibited Englishmen from pirating her books, as it prohibited her publishers from pirating the books of Englishmen. The delivery of the copies is an extraneous circumstance.

The same remarks apply to *Ireland*, on the subsequent statute as to her copies(2).

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(1) 4 Burrow's Rep. 2313.

(2) Sharon Turner's Reasons for a Modification.

CHAP. II.

FROM THE ACT OF ANNE, TO THE YEAR 1814.

SECT. 1.——*Of the Statutes.*

The 5th section of the 8th Anne, chap. 9, enacted, that *nine* copies of each book, upon the best paper, that after the 10th of April, 1710, should be printed and published "as aforesaid," or reprinted and published with additions, should be delivered to the warehouse-keeper of the Stationers' Company, before publication, for the use of the Royal Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities in Scotland, the library of Sion College in London, and the library of the Faculty of Advocates in Edinburgh. The warehouse-keeper to deliver the same to the libraries in ten days.

And in case of default, a forfeiture of the books was inflicted, and of five pounds for every copy not delivered(1).

The 15th Geo. III. chap. 53, besides securing the copyright of the several Universities therein named(2) *in perpetuity*, "for the advancement of useful learning, and other purposes of education," had also for one of its objects the "amending so much of an act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse-keeper of the Stationers' Company, for the use of the several libraries therein mentioned."

(1) V.---Provided always, and it is hereby enacted, that nine copies of each book or books, upon the best paper, that from and after the said tenth day of April, one thousand seven hundred and ten, shall be printed and published, as aforesaid, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers for the time being, at the hall of the said Company, before such publication made, for the use of the Royal Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities in Scotland, the library of Sion College in London, and the library commonly called the library belonging to the Faculty of Advocates at Edinburgh, respectively; which said warehouse-keeper is hereby required, within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy, to deliver the same, for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the said warehouse-keeper of the said Company of Stationers, shall not observe the direction of this act therein, that then he and they so making default in not delivering the said printed copies, as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered, as also the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty, her heirs and successors, and by the Chancellor, Masters, and Scholars of any of the said Universities, and by the President and Fellows of Sion College, and the said Faculty of Advocates at Edinburgh, with their full costs respectively.

(2) Page 33 *Ante*.

In the 6th section of this statute is recited the enactment of the statute of Anne, regarding the library copies; and it is then alleged, that the provision in that act had not proved effectual, but had been eluded by the entry only of the title to a single volume, or of some part of the book.

It was therefore enacted, that no person should be subject to the penalties in the act, unless the title to the copies of the whole of such book, and every volume, be entered in the register book of the Stationers' Company, and nine such copies of the whole book, and every volume, should be actually delivered to the warehouse-keeper of the company, for the several uses of the libraries in the act mentioned(1).

The 41st Geo. III. chap. 107, section 6, enacted, that in addition to the nine copies then required by law, one other copy should be delivered in like manner as the former, for the use of the library of Trinity College, Dublin, and also one for the library of the society of the King's Inns, Dublin, by the printer or printers of *all such books* as should thereafter be printed and published, and *the title to the copyright whereof should be entered* in the register book of the Stationers' Company.

(1) VI.---And whereas in and by an Act of Parliament, made in the eighth year of the reign of her late Majesty Queen Anne, intituled, *An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned*, it is enacted, that nine copies of each book or books, upon the best paper, that, from and after the tenth day of April, one thousand seven hundred and ten, should be printed and published, as therein mentioned, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers for the time being, at the hall of the said Company, before such publication made, for the use of the Royal Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities in Scotland, the library of Sion College in London, and the library commonly called the library belonging to the Faculty of Advocates in Edinburgh, respectively; which such warehouse-keeper was thereby required, within ten days after demand by the keepers of the respective libraries, or any person or persons by them, or any of them, authorized to demand the said copy, to deliver the same for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the said warehouse-keeper of the said Company of Stationers, should not observe the direction of the said act therein, that then he and they so making default in not delivering the said printed copies as aforesaid, should forfeit as therein mentioned: and whereas the said provision has not proved effectual, but the same hath been eluded by the entry only of the title to a single volume, or of some part of such book or books so printed and published, or reprinted and republished, as aforesaid, be it enacted by the authority aforesaid, that no person or persons whatsoever shall be subject to the penalties in the said act mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the said act, unless the title to the copy of the whole of such book, and every volume thereof, be entered in manner directed by the said act, in the register book of the Company of Stationers, and unless nine such copies of the whole of such book or books, and every volume thereof printed and published, or reprinted or republished, as therein mentioned, shall be actually delivered to the warehouse-keeper of the said Company, as therein directed, for the several uses of the several libraries in the said act mentioned.

And penalties were inflicted for default, similar to those which were enacted regarding the previous nine copies(1).

SECTION II.

Of the interpretation of the Statutes regarding Books not registered at Stationers' Hall.

It was for a long series of years considered as the sound and unquestionable interpretation of the statute of 8th Anne, that the Universities were entitled to copies of *such books as were registered at Stationers' Hall, and no others.*

It is by the 2nd section of the 8th Anne that the entry at Stationers' Hall is directed to be made. The *object* of the provision is recited to be, *that persons may not through ignorance offend against the act;* but, that the property in the book may be ascertained. And the penalties do not attach for printing without the consent of the proprietor, *unless* the title to the book shall be entered before publication in the registry of the company.

It has been contended, that this provision as to the registry is confined to the penalties mentioned in the first section of the act; and that in the 5th section, by which the nine copies are given, there is no reference to the prevention of persons being unwarily led into the penalties given by the first section. For the intention of the legislature, we ought, however, to look at the *preamble* of the act, which, after reciting the invasions upon the rights of authors and proprietors, " to their very great detriment and ruin," proceeds to enact the remedies contained in the statute: and the whole of the act is, to prevent the injuries in future, and to encourage learned men to compose and write useful books.

(1) The following is a copy of the clause:—

VI.---Provided also, and be it further enacted, that from and after the passing of this act, in addition to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each and every book and books which shall be entered into the register book of the said company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of Dublin, and also one other copy for the use of the library of the society of the King's Inns, Dublin, by the printer or printers of all and every such book and books as shall hereafter be printed and published, and the title to the copyright whereof shall be entered in the said register book of the said company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies, and that all proprietors, booksellers, and printers, and the warehouse-keeper of the said company, shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society, as are now in force with respect to the delivering, or making default in delivering, the nine copies now required by law to be delivered in manner aforesaid.

The tax of the copies surely could not be construed as a protection to literary property, or to prevent the ruin of authors. It was evidently a payment, exacted for the supposed benefits conferred by the statute, and a condition precedent to any claim on the remedies it provides.

The first section (after stating the general object of the act) secures the copyright for a term of years, by certain penalties.—The 2nd provides that the works shall be registered.—The 3rd imposes a penalty on the Stationers' clerk for breach of his duty.—The 4th regulates the price of books (afterwards repealed).—The 5th contains the proviso, that nine copies shall be delivered to the warehouse-keeper for the use of the University Libraries, &c.

Now it is true, that the words "provided always," which commence the sections of many of the Acts of Parliament, are not invariably to be taken as referring to all the previous enactments; and sometimes these words very absurdly introduce an enactment perfectly distinct from any thing that precedes it; yet, here the common sense of the whole statute stands thus:—"Authors have sustained very great detriment,—to prevent which in future, and to encourage the composition of useful books, the legislature inflicts certain penalties on the invasion of copyrights, *provided* the books be registered, and provided *also*, that nine copies be presented to the public libraries."

Although there are two intervening sections on other subjects, the 1st, 2nd, and 5th are, in all fair construction, one enactment. It is impossible that the 5th section can be connected with either the 3d or 4th, which relate to the Stationers' clerk, and the price of books.

If the conditions of registry and delivery are not complied with, the party cannot avail himself of the remedies afforded by the act.—They are conditions *precedent*, and he has no claim under the act unless he performs them; but if he is satisfied with the remedy at common law, and chooses to abandon the protection of the statute, there seems no ground for imposing on him the tax inflicted by the statute, when he seeks no benefit under its provisions. It was, indeed, understood by every one, for nearly a century, that the entry was necessary for no other purpose than to enforce the penalties against pirating the copyright. In the majority of cases no entry was made; because it is only in relation to some peculiar works that the remedy under the statutes for the penalties is preferable to the ordinary action for damages.

It appears that the books entered in the registry of

the Stationers' Company during a period of fifty years, subsequently to the statute of Anne, were not altogether at the rate of fifty annually; and it was the invariable custom to deliver to the libraries those works only which were so entered.

Such was not only the understanding of the publishers and the Stationers' Company, but of those who, acting for the libraries, were the most interested in a contrary construction. Until the case of the Cambridge University v. Bryer, which was decided in November, 1812, it was never pretended that the statute entitled the Universities to copies of *un*registered books. Nay, further, it appears by the journals of the House of Commons in 1775(1) that the House ordered "that the Committee make provision in the Bill (then pending in Parliament) for enforcing the execution of a clause in the act of Anne, which provides that the several copies of each book, printed *and registered* under the direction of the act, be delivered to the warehouse-keeper of the Stationers' Company, for the use of the several libraries therein described.

Then the act 15th Geo. III. chap. 53, section 6, *recites*, that the provision relative to the delivery of the copies had not proved effectual, but had been eluded by the entry only of the title to a single volume, or of some part of the book; and *enacts*, that no person should be subject to the penalties, unless the title to the copy of the whole book, and every volume, should be entered—*and unless* nine copies of the whole should be actually delivered for the use of the several libraries, &c.

Here it is evident that the delivery of the presentation copies was a mere condition, attached to the remedy by way of penalties given by the statute against pirating.

So also the 41st Geo. III. chap. 107, directs, that in addition to the nine copies required by law to be delivered of each book *which should be entered in the register book of the Stationers' Company*, one other copy should be delivered for Trinity College, and one for the King's Inns, Dublin, of all books which should thereafter be printed and published; *and the title to the copyright whereof should be entered in the register book of the Company*.

It is clear, therefore, that before the right of the Universities could attach, the entry must be made. There is nothing in the act to compel the entry. It was necessary only that those who sought protection under the statute, should conform to its conditions: the one was, to enter the book,—the

(1) Page 351.

other, to deliver certain copies. If the protection was not needed, the entry was not made, and consequently the copies ought not to have been required.

SECTION III.

Of the Legal Decisions relating to Unregistered Books.

The only case on this subject was that of the University of Cambridge v. Bryer(1), in which the Court of King's Bench

(1) 16 East, 317.

The following is an extract of the judgment, taken from the short-hand writer's notes, for which we are indebted to Messrs. Longman, Rees, and Co., the eminent publishers.

The University of Cambridge against Henry Bryer.—Judgment, 20th November, 1812. LORD ELLENBOROUGH.—The grand rule of construing any statute, as indeed it is the grand rule of construing any instrument, be it statute, be it will, be it deed, is to look into the body of the thing to be construed, and to collect, as far as you can, what is the intrinsic meaning of that thing to be construed, and if that thing be clearly intelligible in reference to its own contents, I should not be inclined to raise a doubt upon the construction drawn *aliunde*, if I can help it. I may certainly by subsequent statutes be obliged to put a perverse, and what I should consider an unnatural interpretation, on the statute as originally passed. I may be under such compulsion, but I should certainly endeavour, as far as I can, without violating the fair rules of construction, to maintain the integrity of the original text unvitiated by subsequent misconstruction, if I may so say.

Now the statute of 8th Anne, cap. 19, I think is susceptible of one doubt, and that one doubt has been pointed out, which is in the section respecting the delivery, where it is enjoined to be by the printer, after a demand made by the warehouse-keeper; and it then goes on, "and if any proprietor, bookseller, or printer, or the said warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, then he and they so making default in not delivering the said printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered." Now there is certainly something doubtful there, because a duty is enjoined to be performed by the printer and the warehouse-keeper only, and there appears to be a penalty imposed upon the proprietor and bookseller, in respect to whom no particular duty has been previously enjoined; that is therefore susceptible of some doubt; probably it might receive a construction that these persons, booksellers and proprietors, were to procure the thing to be done by the printer or bookseller, and that they would not be exempt from the penalty if it was not done by the manual hand of the bookseller or printer.

It has been said the act has three objects; I cannot subdivide the first into two---I think it has only two. Mr. Littledale contended that there was no right at common law; perhaps there might not be; but with that we have not particularly any thing to do. He considered the first, the protection of authors, by vesting the right in them; then the fortifying their right by penalties; and, thirdly, the encouragement of literature. I think it has simply but two, the object of protecting the copyright, and the object of the advancement of learning; and there is a section in this statute which has that in view, which it is singular enough has not been adverted to by either of the gentlemen who have argued this case. The first, second, and third sections relate to the protection of the right of the author, and to the protection of the right of the person having the property in the copy, or the purchaser; the fourth and fifth have for their objects the advancement of literature, and they are pregnant with this purpose, that literature should be made accessible, at easy rates and prices, to persons desirous of purchasing books, and therefore they subject to the Archbishops and the Chiefs of the Courts of Law the power of settling the prices of books. I am aware that that provision is repealed by the 2nd

decided, that it was necessary to deliver a copy to the warehouse-keeper of the Stationers' Company, although the book was not entered in the registry:

This determination was founded on the construction put by the court on the 8th Anne, chap. 19, and is admitted to be a construction opposed to the provisions of the subsequent sta- Geo. II. cap. 36, but though repealed, it makes a part of the one entire act, and shews the purpose of the legislature. The purpose of the legislature by the 4th section was to make learning easy of access. The purpose of the fifth was to secure the delivery of the books printed to the King's Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities of Scotland, the library of Sion College in London, and the library belonging to the Faculty of Advocates---I think five copies out of the nine being to be transmitted to Scotland---in order to secure a deposit accessible by literary persons, for the books might have been of such considerable price, that they might not be easily attainable by scholars of ordinary means. These are the two objects, and in furtherance of these objects are the provisions contained in this statute to be construed.

The first branch of the first section provides, "That the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same." That may be considered as a substantive provision vesting the copyright, and for any violation of that right, it is considered in Beckford v. Hood that an action is maintainable, independently of the penalties which are accollary to the protection of the right. There is not only given to the proprietors, but to the common informer, a right to bring that action; and therefore in Beckford v. Hood it was properly observed, that unless the proprietor of a book had an action at law, his remedy might be anticipated, or rather precluded by a common informer, who might by some species of collusion, difficult to detect, have stopped the course of his remedy entirely, and therefore in Beckford v. Hood that was maintained, and I think it has not been impeached; it was brought before the court, but I think it was generally recognized as law, that an action was maintainable on this branch of the section independently of the penalties. It was decided in the same case, that the penalties accrue on the entering at Stationers' Hall, as the act itself says in the latter part of the first section. It is provided, "that if any bookseller, printer, or other person, shall, within the times granted and limited by this act," that is fourteen years, "print, reprint, or import any such book, without the consent of the proprietor, or knowing the same to be so printed or reprinted, without the consent of the proprietor, shall sell, publish, or expose to sale any such book, he shall forfeit the same; and he shall forfeit a penny for every sheet found in his custody, published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the Queen, and the other moiety to any person who shall sue for the same."

The second section provides, "Whereas many persons may through ignorance offend against this act, unless some provision be made whereby the property of a book, as is intended to be secured to the proprietor thereof, may be ascertained, it is enacted, that no person shall be subjected to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book without consent, unless the title to the copy of such book shall, before such publication, be entered in the register book of the Company of Stationers;" therefore it is quite clear, that by the express provisions of the statute there must be a previous entry at Stationers' Hall to found an action for penalties.

Then the third provides, "That if the clerk of the Company of Stationers shall refuse or neglect to make such entry, or to give such certificate, the proprietor shall supply the place of that entry in a way there pointed out."

Then the fourth section is directed to the settling the prices of books, with reference to which is a very prominent object of this act, the cheapness of books; and then comes the fifth section, and that provides, "that nine copies of each book or books, upon the best paper that shall be printed and published as aforesaid, or reprinted and published with additions, shall, by the printer, be delivered to the warehouse-keeper of the said

tutes of 15th Geo. III. and 41st Geo. III. Besides this conflict of legislative enactment, it also appears, that Lord Ellenborough, before whom the cause was tried, observed, that he would reserve his opinion, as it might very fitly be made the subject of discussion elsewhere, and perhaps in some ulterior *Court of Appeal, to which it might not unfitly be carried.*

Company of Stationers for the time being, at the hall of the said Company, before such publication made." Now the question arises upon this section, what is the meaning of the words, "shall be printed and published as aforesaid?" And printed and published as aforesaid relates not merely to any mode of printing and publishing, if mode of printing and publishing had been previously mentioned, but it relates likewise to the persons entitled to print and publish; it relates to the persons whose property is protected for the period for which it is protected; that is the thing referred to; that shall be printed by the owner or author entitled to protection during the respective periods, that is twenty-one years for works printed before the act, and fourteen years for works printed after the act, that is during the period stated by the act, in reference to these particular works. When it directs that nine copies shall be delivered, it relates therefore to every person standing in that situation; the act directs that the copy shall be delivered to the warehouse-keeper, and it has not in this case been delivered to the warehouse-keeper.

It is said, that the entry at Stationers' Hall is necessary to recover the copies; but the entry in the terms of the act is required only to enable them to recover the forfeitures and penalties, and not the value of the book, distinct from the forfeiture. I do not advert particularly to the prior statutes, the object of which was to give the Universities copies, nor the policy of them, only as shewing that this was a matter not perfectly new, but that under former statutes the Universities had derived similar benefits. But there come two further statutes; and it is contended, that by the 15th Geo. III. cap. 53, and the 41st Geo. III. cap. 107, a sense is put upon the statute of Anne, which sense we are bound to adopt in the construction of it here. The statute of 15th Geo. III. says, "Whereas the said provision has not proved effectual, but the same hath been eluded by the entry of the title to a single volume, or of some part of such book or books so printed and published, or reprinted and republished." What is the meaning of the word eluded? It means, that the person entitled to the right has by some deception or other lost the benefit of it. Eluded means, that he was tricked or deceived as to the thing he was otherwise entitled to have. It does not mean that he was defeated, that he was effectually defeated; and unless it means effectually defeated, it is not pregnant of the construction endeavoured to be put upon it. At the same time, my difficulty has arisen here, and here only. The framers of this statute did certainly, in framing this law, advert to that as the supposed construction of the act of Anne; but have they thrown upon the court, by any enactment, the necessity of adopting that which I must assume to be their error, if the words of the act are intelligible in themselves? If the entry is not a condition precedent to the recovering of the value of the copy, which by looking at the act *per se* I may say is very clear, I cannot say that the person drawing this act, and the legislature in passing it, can over-run the intelligible sense of an Act of Parliament, such as it is.

There is a further provision in this act, and a further condition precedent to the right, "that no one shall be subject to the penalties in the statute of Anne, for printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the said act, unless the title to the copy of the whole of such book, and every volume thereof, be entered in the register of the Company of Stationers, and unless nine such copies of the whole of such book or books, and every volume thereof, shall be actually delivered to the warehouse-keeper of the said Company, as therein directed, for the several uses of the several libraries in the said act mentioned." Therefore, the delivery of the nine copies, in furtherance of the object of the act, is made a condition precedent to the right of maintaining an action for the penalties.

This statute of the 41st Geo. III. clearly was meant to put the Universities of Dublin in the same situation in point of benefit with the Universities of Great Britain, and the other bodies entitled to copies under the statute of Queen Anne. It says, "that

On the argument of the case in the Court of King's Bench, the court held, that though there arose some difficulty in the construction arising out of the two statutes of 15th and 41st Geo. III. the construction which was to be collected from those statutes as being intended by the legislature at subsequent periods, was not sufficiently strong and cogent

in addition to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each book which shall be entered in the register book of the said Company, one other copy shall be in like manner delivered for the use of the library of the said College of the Holy Trinity of Dublin, and also one other copy for the use of the library of the Society of the King's Inns, Dublin." It has been argued, that it was presumed, that inasmuch as both these things were required to be done, the copies to be delivered and the entry made, the legislature supposed both should be done, in obedience to the law; but when they appear to make the title of the University of Dublin depend upon the copy of the title being entered, it certainly appears to me at present to make the entry of the copy of the title at Stationers' Hall a condition precedent to the vesting of that right in the Universities. Certainly, therefore, there does arise some difficulty in the construction arising out of these two statutes; but I think the construction which is to be collected from these statutes, as being intended by the legislature at subsequent periods, is not sufficiently strong and cogent to overturn what I understand to be the clear distinct sense of the statute of 8th Anne, cap. 14, in which there is nothing ambiguous. But what I have adverted to as to the printer, bookseller, and author, where the duty is required only of the printer and warehouse-keeper, and the words "as aforesaid" are only intelligible in the way I have stated. Upon these grounds, it appears to me, from the clear understanding of the 8th Anne, cap. 14, not so impeached by a reference to the other statutes, as to take away its clear and intelligible sense, that the plaintiff is entitled to recover.

Mr. Justice LE BLANC.—This question arises upon the construction to be put upon the statute of Anne. That construction may certainly be materially aided and explained by the language of other statutes, but it is upon the construction of that statute that the court must act, and if the court are clear in their construction of this Act of Parliament, although they should be of opinion that an erroneous construction may have been put by others upon that act, they will be bound to give effect to it.

The previous acts of Charles II. seem to me to be so far only material to be called in aid, as shewing the attention of the legislature to have been at former periods directed to the Universities, when they were making any provisions respecting the publication of books, and that when those publications were under the consideration of the legislature, they imposed a restriction upon the authors, that copies should be sent to the Universities; thereby shewing that they considered learning to be advanced by these libraries being kept constantly supplied with books.

Then came the statute of 8th Anne, which gives this copyright to authors for a certain time; the title of it is, "An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned." The legislature thought that learning would be encouraged by vesting the right, for a certain time, in the copies of printed books, in the authors or the purchasers of those books; and then they enacted that the authors, or purchasers from the authors, should have a right vested in them, in one case for twenty-one years, and in the other case for fourteen years; and then the legislature went on to guard that by the penalties which are imposed by the first section of the act, that is, to guard this right which they have given for twenty-one years in the one case, and fourteen years in the other; and then comes the second clause of the act, which contains the direction that a copy shall be entered with the Stationers' Company, and the object of it is this, as contained in the recital to that clause: "Whereas many persons may through ignorance offend against the act, unless provision is made whereby the property in every such book as intended by this act to be secured to the proprietor thereof may be ascertained, as likewise the consent of such proprietor for the printing or reprinting of such book or books may from time to time be known, it is enacted, that nothing shall extend to sub-

to overturn what the court understood to be the clear, distinct sense of the statute of 8th Anne, in which, the court was of opinion there was nothing ambiguous.

The court having decided in favor of the University, some discussion took place as to the defendant's right to take the case into the Court of Exchequer Chamber; and

ject any bookseller, printer, or other person, to the forfeitures or penalties mentioned therein, for or by reason of printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books;" the forfeitures and penalties are those mentioned in the first section, and the first section only.—"That nothing therein contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the Company of Stationers." Therefore it shews clearly that the object of this provision is to prevent persons being misled by publishing works, the sole copyright of which was given to the author, or the purchaser under the author, for a certain limited time, which they might be unless they had notice of such right or title, and therefore that which was required to be entered in the book of the Stationers' Company, was with reference only to the penalties contained in the first section of the act.

I will pass over those clauses which have been referred to by my lord, the object of which appears to be the rendering books easy of access; and then comes the fifth section, in which there is no reference to the preventing their being unwarily led into the penalties given by the first section.—That provides, "that nine copies of each book that shall be printed and published, or reprinted and published as aforesaid, or reprinted and published with additions, shall be delivered to the warehouse-keeper of the Company of Stationers, at the hall of the Company, before such publication made, for the use of the libraries therein mentioned." The doubt arises upon the words, printed and published as aforesaid. Suppose the clause had been only that nine copies of each book that shall be printed or published, or reprinted and published, shall be delivered to the warehouse-keeper; that could not have been the intention of the legislature, because they never meant, I apprehend, to say that nine copies of any book which at any time should be printed or reprinted should be delivered, but it was, that nine copies of every book which should be printed or reprinted by any persons to whom the exclusive right of printing or reprinting is given by the first clause, shall be delivered to the register or clerk of the Company, for the use of the Universities; and *as aforesaid* means, that shall be printed and published, not under the restrictions of the registry, but that shall be printed and published by the persons to whom this right or privilege is given by the first section of the act, and that appears to me the meaning of the term "as aforesaid," instead of confining it, as contended on the part of the defendant, to printed and published, and entered as aforesaid; if that had been the object of the legislature, it would have said, that nine copies of each book which shall be printed and published, and entered as aforesaid, shall be delivered to the clerk for the use of the Universities, instead of which it is printed and published as aforesaid, which means printed and published by those to whom the exclusive right of printing and publishing is given by the preceding section of the act; and that appears to me perfectly clear.

It then goes on to direct that if any proprietor, bookseller, or printer, or the warehouse-keeper of the Company of Stationers, shall not observe the direction of the act, the person making default shall forfeit, above the value of the printed copies, the sum of five pounds. It directs the printer to deliver the copy, the warehouse-keeper to transmit it to the public libraries, and then it says, that if any proprietor, bookseller, or printer shall not observe the direction of the act, he shall incur a penalty; perhaps if the proprietor had insisted on the printer not doing it, he might have been subject to the penalty. It seems to me, therefore, that if it stood simply upon the construction of this Act of Parliament, and if we had been called upon to put a construction upon it the day after it passed, this is the clear obvious meaning of the Act of Parliament; and that connecting

Lord Ellenborough observed, that the question affected a great quantity of interest, and that no person could blame the defendant in having it further considered. It appears, however, that the defendant did not avail himself of the opportunity afforded him, but relied on the justice of Parliament, to which an application was ineffectually made, and it was then too late to appeal to the Court of Error.

that fifth section with the second section requiring the copy to be delivered to the clerk of the Company, would be fettering the act by a provision made *diverso intentu.*

But it has been stated, that a construction has since been put by the legislature as to this Act of Parliament, and of those persons under whose consideration this act may have been supposed to have been brought, and great reliance is placed on the provisions of the 15th Geo. III. and the 41st Geo. III. The 15th of the King was brought in for the purpose of securing to the Universities their copyright, and an argument arises upon the particular recital rather more than the provision; but coupling the recital with the provision in the sixth section of the act, that section recites the provision made by the statute of Anne, for securing to the Universities the nine copies which are to be delivered to the Stationers' Company for their benefit; it recites only that the nine copies shall be delivered, it does not recite that they are to be delivered only of the books so printed and entered, but it recites that provision in the language of the fifth section; and then it recites, "And whereas the said provision has not proved effectual, but the same has been eluded by the entry only of the title to a single volume, or of some part of such book or books so printed and published, or reprinted and republished;" and then it goes on to say, that no person shall be subject to the penalties inflicted by the statute of 8th Anne, which are the penalties of the first section of that act, "that no person shall be liable to the penalties in the said act mentioned, for printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the act, unless the title of the whole of such book and every volume be entered in the manner directed in the act, and also the nine copies shall be delivered to the University;" and therefore, in order to prevent that elusion or evasion by entering only the title of a single volume, where perhaps the work might consist of a great number of volumes, and to make it necessary that the titles of all the volumes should be entered with the clerk of the Company, the legislature make that which was not a condition precedent before, namely, the delivery of the nine copies to the Universities, a condition precedent to the party suing for penalties under the first section. Now, how can it be said that this right of the University can be rendered not so effectual, or eluded by the entry of the title of a single volume in the books of the Stationers' Company? That entry is originally directed by the statute of Anne, to be made for the purpose of giving notice, that there may be a place where every person may go and see every thing which is published. The clause giving the nine copies to the different libraries is only guarded by a penalty to be recovered and sued for within three months after the offence is committed, and therefore that would be ineffectual if the Universities or the owners of the libraries could be kept in the dark three months as to the books published; and if this register, which is the public notice, contains only the title of a single volume, and that is the place they are to have resort to, the three months may be elapsed before they have notice of any more than a single volume being published, and then their whole remedy would be at an end, as it respected the right vested in them by the 8th Anne; but it appears to me that the act makes the use of entering in that register that which is described, namely, that it is for the purpose of notice, to prevent ignorant people being led into penalties; therefore it provides, that the whole title shall be entered there, and the copies delivered; it seems to me, therefore, that the words of the recital of that sixth clause in the 15th of the present King is perfectly consistent with the construction of this act, though it may appear at first sight to have a different effect, for as the right to protect the privileges of the libraries could be exercised only within three months after the publication of the book, it was an elusion and a rendering ineffectual that provision in their favor, if a false account were given of the number of volumes.

The next act is the 41st of the king; and it appears upon that act, that the construc-

On a question which seems to depend rather on the technical constructions of lawyers, than on the rational grounds of the subject, it may not be unimportant, on the authority of Mr. Sharon Turner(1), to state, that when the action was brought by the University of Cambridge, the opinion of the then Attorney General(2) was taken on behalf of the printer; tion of the statute of Anne was misunderstood, for at that time it is recited as if the entry of the book at the Company's hall was a condition precedent; it is provided at least, that in future copies shall be delivered to the Universities of Ireland in the same manner as before they had been delivered to the Universities in England and Scotland; and in future it makes it a condition precedent to the delivery of the copies, that they shall have been entered. This act certainly acts upon a misunderstanding, and a misconstruction, in my opinion, of the statute of Anne; for it must certainly have been the intention of the legislature to put these learned bodies of Ireland upon the same footing as those of England and Scotland were before placed by the statute of Anne; but as the construction of the statute of Anne appears to me clear, when I do not give it that misconstruction which in later times appears to have been applied to it, I am of opinion that cannot control us in the construction to be put upon that act. I admit the force of the observations; but here it is not a positive interpretation imposed by the legislature, but only by the provisions of the legislature they seem to have apprehended such was the construction of the statute of Anne. If the court is clear that the construction is otherwise, that cannot bind us in the construction we put upon it; and it appears to me, that notwithstanding the title of the book has not been entered with the clerk of the Stationers' Company, yet inasmuch as the author of this book is, according to the decision of this court in Beckford v. Hood, entitled to all the privileges granted by the statute of Anne, and all the privileges granted by a much more effectual remedy than the penalties which are given by the first section of the act, namely, by action to recover damages against any person who shall infringe his right, this privilege to the different libraries is given by the fifth section of this act, notwithstanding he may not have complied with that which is required by the second section, but which is totally for a different purpose than that of securing the right to the Universities; therefore it appears to me, upon these grounds, the *postea* ought to be delivered to the plaintiffs.

Mr. Justice BAYLEY---I am entirely of the same opinion; but as my lord and my brother Le Blanc have gone so fully into it, I shall not enter into it.

Mr. BROUGHAM---My lord, on the reservation to turn this into a special verdict, if the court shall so please, I request to know whether it is your lordship's pleasure.

Mr. Justice BAYLEY---It is upon the record, is it not, that it was not entered at Stationers' Hall?

Mr. MARRYAT---It is not found that it was not entered at Stationers' Hall.

Lord ELLENBOROUGH---It was a point reserved at the trial.

Mr. MARRYAT---Yes, my lord.

Lord ELLENBOROUGH---There is no objection in the court to its being done; but the terms of the reservation are, "If the court shall so please." The University oppose no objection, I suppose, if the court do not.

Mr. Serjeant LENS---Unless the court entertain some doubt about it, we do not feel ourselves called upon to consent; we conceive that was left to the judgment of the court. If the court think there is a doubt, and it ought to be put into a course of further investigation, we do not wish to interpose any objection.

Lord ELLENBOROUGH---The court do not wish to enter into it. The words, "if the court shall so please," are general words, introduced for the purpose of enabling the court, if they shall have a doubt upon the subject, to let it go to the Court of Appeal; that is the way in which it is framed. It is very often put, that it shall be turned into a special verdict upon the application of either of the parties.

Mr. BROUGHAM---Your lordship at the trial was pleased to observe, that you would reserve your opinion, as it might very fitly be made the subject of discussion elsewhere, and perhaps in some ulterior Court of Appeal, to which it might not unfitly be carried.

(1) See his Address to the Chairman of the Committee on the Copyright Laws, 1818.
(2) Sir Vicary Gibbs.

and he thought that the 15th Geo. III. and 41st Geo. III. were legislative expositions of the statute of Anne, and shewed that the nine copies directed to be delivered, were nine copies of *such books as should be entered at Stationers' Hall*. And that, on a view of all the statutes taken together, and on the *reason of the thing*, he was of opinion that the Universities and other public libraries mentioned in the statutes were not entitled to have copies of such books as were *not entered* in the register book of the Stationers' Company.

Lord ELLENBOROUGH---Very well; there can be no objection on the part of the court, certainly.

Mr. Serjeant LENS---I understand that the court have given leave to my learned friend to turn it into a special verdict. The *postea* then is to be stayed; and it is to be put into that shape.

Mr. Justice LE BLANC---Upon the application of the party, it must be done without delay.

Mr. Serjeant LENS---I only wish to know whether they have the option at any future time, or whether it is to be done now?

Mr. Justice LE BLANC---On application of the counsel for the defendant, on leave given at *Nisi Prius* that they may turn it into a special verdict, that must be done within a reasonable time.

Lord ELLENBOROUGH---It must be done with our judgment upon it; we must not have it argued again.

Mr. MARRYAT---Certainly not, my lord; we have no desire for that.

Mr. Serjeant LENS---I dare say they will proceed as fast as they can to have the judgment upon it; that they will not take it into the Exchequer Chamber for delay.

Lord ELLENBOROUGH---You may get them on as fast as you can.

Mr. BROUGHAM---We merely want a fair time to consider whether it is fit to carry it elsewhere.

Lord ELLENBOROUGH---Certainly these things have been agitated, and they affect a great quantity of interest. No person can say you are to blame in having it further considered; certainly not; only it should be done soon.

BOOK II.

THE

PRESENT STATE

OF

THE LAW.

BOOK II.

The Present State of the Law.

FIRST PART.

OF THE DURATION AND EXTENT OF COPYRIGHT.

CHAP. I.——OF THE DURATION OF COPYRIGHT *IN BOOKS*, GENERALLY.

SECT. I.——*Analysis of the Statute* 54 *Geo.* ***III.*** *cap.* 156.

1st. *Its general scope.*

The principal statute by which Literary Property is at present regulated, was passed the 29th of July, 1814. It is entitled "An act to amend the several acts for the *encouragement of learning*, by securing the copies and *copyright* of printed books to the *authors* of such books, and their assigns."

The statute not only repealed several of the former enactments, and amended others, but in effect consolidated within it the whole of the provisions relating to Literary Property(1).

It is remarkable that the act does not commence, like the statute of Anne, by providing for the protection of copyright, and prescribing the period during which the protection was to be afforded. Although expressly entitled for "securing the copies and copyright of printed books," it begins with repealing the former enactments by the 8th Anne and 41st Geo. III. regarding the delivery of copies to the public libraries, and substitutes other provisions on the same subject, which will be hereafter stated(2). In effect, it imposes the tax before it bestows the protection. In support of the exaction it has been urged, that it is a reasonable compensation for the additional and superior security afforded by the statute. The legislative boon, therefore, ought to have preceded the duty, in consideration of which it was imposed. But as the act is differently constructed, its title should have been varied accordingly, and called *An act for securing* (not the copyright of authors, but) *eleven copies of the whole of every book, with all maps and prints belonging thereto, to be delivered on demand to*

(1) Godson on Patents and Copyright, 208.
(2) Vide Part II. of the Second Book.

certain corporate bodies, and [subordinately] to protect copyright for a *limited* term: such is the true description of this last act for "the encouragement of learning."

Reserving the statement of the provisions of the act relating to the library copies to the next division of our subject, we proceed in this place to set forth the several clauses which apply to the duration of copyright in books.

2nd. Of the Term during which Copyright in Books is protected.

By the 4th section of the act, after reciting the statute of 8th Anne, and 41st Geo. III., by which the author of any book and his assigns had the sole liberty of printing such book for fourteen years, and no longer; and reciting, that *it will afford further encouragement to literature if the duration of copyright were further extended*; it is enacted, that after the passing of the act, the author of any book, and his assigns, shall have the sole liberty of printing and reprinting such book for *the full term of twenty-eight years*, to commence from the day of first publishing the same.

And if the author shall be living at the end of that period, for the residue of his natural life.

The following is the language, fully detailed, of this part of the statute:—

IV. And whereas by the said recited acts of the eighth year of Queen Anne, and the forty-first year of his present majesty's reign, it is enacted, that the author of any book or books, and the assignee or assigns of such author respectively, should have the sole liberty of printing and reprinting such book or books for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years. And whereas it will afford further encouragement to literature if the duration of such copyright were extended in manner hereinafter mentioned, be it further enacted, that from and after the passing of this act, the author of any book or books composed and not printed and published, or which shall hereafter be composed, and be printed and published, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same; and also, if the author shall be living at the end of that period, for the residue of his natural life.

The 5th section relates to the entry of the title of all books at Stationers' Hall, within one month after publication(1). But provides, that no failure in making any such

(1) For the 5th Section, vide Part II.

entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty under the act.

3rd. *Of the Penalties for Pirating Copyright.*

It is then enacted, that if any bookseller, printer, or other person, in any part of the United Kingdom, or British Dominions, shall print, reprint, or import any suc' ook, without the consent in writing of the author or other ' rie-tor; or knowing the same to be so printed, shall sell, p ish, or expose to sale such book, without the like consent; such offender shall be liable to an action, to be brought in any Court of Record, for damages, and to double the costs of suit.

The forfeiture of the book, to be damasked or made waste, is also enacted; and to this is added a penalty of three pence for every sheet printed, published, or exposed to sale, contrary to the act; one moiety to the King, and the other to the informer.

In Scotland, the action may be brought in the Court of Sessions; and where damages are awarded, double costs or expences are also to be allowed.

We insert the remainder of the fourth section, to shew the precise language of the act, and the *places* to which it extends.

And that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the Isles of *Man*, *Jersey*, or *Guernsey*, or in any other part of the *British dominions*, shall, from and after the passing of this act, within the terms and times granted and limited by this act as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the author or authors, or other proprietor or proprietors of the copyright of and in such book and books, first had and obtained in writing; or, knowing the same , be so printed, reprinted, or imported, without such consent of such author or authors, or other proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the author or authors, or other proprietor or proprietors of the copyright of such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act: and every such author or authors, or other proprietor or proprietors, shall and may, by and in such special action upon the case, to be so brought against such offender or offenders, in any Court of Record in that part of the United Kingdom, or of the British Dominions, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution

of a writ of enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such offender and offenders shall also forfeit such book or books, and all and every sheet being part of such book or books, and shall deliver the same to the author or authors, or other proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors, or other proprietor or proprietors, to be made on motion or petition to the said court; and the said author or authors, or other proprietor or proprietors, shall forthwith damask or make waste paper of the said book or books and sheet or sheets; and all and every such offender and offenders shall also forfeit the sum of three pence for every sheet thereof, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same, in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed: provided always, that in Scotland such offender or offenders shall be liable to an action of damages in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in any such action where damages shall be awarded, double costs of suit or expences of process shall be allowed.

4th. Of the Copyright of Authors living at the passing of the Act, but dying before the expiration of the first fourteen years.

The eighth section enacts, that the *representatives of authors* of books published before the passing of the act, shall have the *benefit of the extension of the term*, if such authors be living at the passing of the act, and die before the expiration of the first fourteen years. But such provision is not to affect the right of the assigns of authors, or any contracts between them.

The following is the section in full:—

VIII. And whereas it is reasonable that authors of books already published, and who are now living, should also have the benefit of the extension of copyright, be it further enacted, that if the author of any book or books which shall not have been published fourteen years at the time of passing this act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author, and the assignee or assigns of such personal representative, shall have the sole right of printing and publishing the said book or books for the further term of fourteen years after the expiration of the first fourteen years: provided that nothing in this act contained shall affect the right of the assignee or assigns of such

author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the first fourteen years, or the terms of any contract between such author and such assignee or assigns.

5th. Of the Copyright of Authors living at the end of twenty-eight years, in Books published before the Act.

By the ninth section, if the *authors* of books then already published, be *living at the end of twenty-eight years* after the first publication, they shall have the sole right of printing and publishing the same for the *remainder of their lives*. But without prejudice to the right of the assigns of authors, or any contract between them.

The wording of the act is as follows :—

IX. And be it also further enacted, that if the author of any book or books which have been already published shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same : provided that this shall not affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the said twenty-eight years, or the terms of any contract between such author and such assignee or assigns.

6th. Limitation of Proceedings under the Act.

The last clause limits the commencement of legal proceedings under the act to twelve months after the offence committed, and is as follows :

X. Provided nevertheless, and be it further enacted, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced within twelve months next after such offence committed, or else the same shall be void and of no effect.

SECTION II.

Digest of Cases relating to the Duration of Copyright.

A question has arisen on the construction of the statute 54th Geo. III. cap. 156,

Whether an author whose work had been published *more* than twenty-eight years before the passing of the act, was entitled to the copyright for the remainder of his life.

This question was decided against the author in the case of Brooke v. Clarke(1). In that case, (which was determined

(1) 1 Barn. and Ald, 396. We subjoin a full report of the argument in this important case.

Mr. DENMAN, for the plaintiff.—The question depends on the statute 54th Geo. III.

in 1818) *Mr. Hargrave*, the author of Notes or Annotations on Lord COKE'S First Institute or Commentary upon Littleton, had assigned in the year 1784, to the *defendants*, his copyright therein, and such *further property* as he might thereafter become entitled to by virtue of the Act of 8th Anne, or any other law or usage. In 1817, he executed another assignment cap. 156, which, as appears from the preamble, was passed for the express purpose of extending the rights of authors. It recites the 8th Anne, cap. 19, (which first gave to authors a copyright for fourteen years) and the 41st Geo. III. cap. 107, which gave the authors living at the end of the first fourteen years, a further right for a like term; and then it proceeds to state, "that it will afford further encouragement to literature, if the duration of such copyright were extended." The object of the legislature, therefore, was to extend the duration of the copyright; and, if in the subsequent clauses any words of doubtful import occur, they should be construed with reference to the general purpose, thus expressly avowed by the legislature. The ninth section of the act (which is applicable to this case) is free from any such ambiguity. It provides, "that if the author, who might under the former act have acquired a right for twenty-eight years, shall be living at the end of such twenty-eight years, after such first publication, he shall then have the copyright for his life." The author in this case *is living*, and the twenty-eight years have expired: he is, therefore, within the very words of the act, and thereby becomes entitled to the copyright for his life, and the assignment to the plaintiffs is consequently valid. It may be argued, however, that the legislature contemplated the term then to expire, and not already expired; and the author's term having actually been exhausted when this act passed, that this case is not within its meaning. But it must then be made out that the words, "at the end of twenty-eight years," are expressive of the very moment of time at which they should expire. That would, however, be a very narrow construction of these words, and not warranted by the meaning generally given to them in common usage. The words, "at the end of any term," mean after that term is expired. In stating, that at the end of a King's reign such things were done, it would not signify that they were done at the moment he ceased to reign, but only after he had ceased to reign. So if a right of way were granted for a number of years, over certain closes, and at the end of those years the right is to cease, it would mean, that after these years are expired the right was to cease. It, therefore, appears that these words are used in the common intercourse of mankind, and not to express a precise point of time, but the expiration of a period as a thing passed. Then if the words are capable of this sense (although they may admit also of the other construction), they should be construed in this case so as to effect the general purpose of the legislature, viz., the extension of the duration of the copyright of authors. By this construction, the right of the author living at the end of twenty-eight years (expired at the time of passing this act) will be extended: by the other construction, his right will not be extended or enlarged, and the object of the legislature will therefore be defeated. By construing these words so as to give the author the copyright for his life, the court will give full effect to the words of the ninth section, and will further the general intention of the legislature, viz., the encouragement of literature, by extending the rights of authors.

Mr. RICHARDSON, contra. This Act of Parliament does not re-vest in an author a copyright, which, under the then existing laws, was spent and terminated; it only *extends*, but does not *create* a right. The language and meaning of the statute is wholly prospective. The fourth section provides, that from and after the passing of the act, the author of any book, composed and not printed and published, or which shall hereafter be composed and be printed and published, shall have the copyright for twenty-eight years; and if he be living *at* the end of that period, for the term of his life. This section, therefore, makes an alteration in the then law, by extending the author's copyright, first for twenty-eight years, and if he be living at the end of twenty-eight years, for his life. It, however, provides only as to future publications, for the work may be written either before or after the act, but unless it be *published after* the act, this clause does not attach, and it goes on to inflict very severe penalties upon persons printing the works of any authors without their consent. So far the statute had provided for the cases of authors who published after the printing of the act. It occurred, however, to the legislature, that some provisions should be made for existing authors, whose rights under former acts had not

to the *plaintiff* of all his copyright (as far as he lawfully could) in the Notes or Annotations in question, *for the remainder of his* (Mr. Hargrave's) *life.*

This case depended upon the eighth and ninth sections; the former of which recites, that it is reasonable that authors of books already published, and who where then living, should have the benefit of the *extension* of copyright.

then expired, but were concurrent; and the eighth and ninth sections provide for these cases: the eighth section recites, "that whereas it is reasonable that authors of books already published, and who are now living, should have the benefit of the *extension* of copyright." This word extension is a term properly used for the purpose of enlarging or giving further duration to any existing right, but does not import the re-vesting of any expired right; that would not be an *extension*, but a *re-creation*. The object, therefore, of the eighth section is to extend to living writers the benefit of their unexpired rights, and therefore it only applies to cases where the first fourteen years had not expired. The object of this act is to give authors an absolute right for twenty-eight years; and in pursuance of that intention, it gives a continuing interest for fourteen years to those who should be living, and whose copyright under former acts had not expired; the words following the recital in that section are, "be it further enacted, that if the author of any book, which shall not have been published fourteen years at the time of passing this act, shall be then living, and if such author shall afterwards die before the expiration of the fourteen years, then the personal representative shall have the copyright for the further term of fourteen years, provided that nothing in the act shall affect any right of the assignee to sell any of the books of the author, printed within the first fourteen years;" the eighth and ninth sections both contemplate the case of living authors; the eighth, where the first fourteen years have not yet expired, and the ninth where they have; the ninth section applies to the case where the author is living at the end of the first fourteen years, but before the expiration of the second fourteen years; these are the only two cases in which, before the passing of this act, an author could have any right capable of extension, and this statute does not create a new right not already existing, but only extends an existing right; the ninth section goes on, "and be it *also* further (i. e. upon the same recital as that which precedes the eighth section) enacted, that if the author of any book already published, shall be living at the end of twenty-eight years after such publication, he shall have the copyright for his life;" the words "*shall* be living," are prospective. The legislature does not suppose the time to have been already expired, but it contemplates a further extension of time then unexpired; the language is prospective in its terms, and the sense requires that it should be so. For taking the two sections together, it appears clearly that the legislature intended only to extend the already existing right of authors, and not to create a right then expired. This is perfectly consistent with the meaning of the word *shall*, and also with the meaning of the words, *at the end of twenty-eight years.* The words, at the expiration of a term, mean immediately after. Thus, if speaking of a reversioner who is to come into possession at the expiration of the term, that could not be said to mean after the expiration of the term, and at any future period, for the reversion attaches at the expiration of the term. But admitting that the words are capable of either sense, they must be construed so as to give effect to the other words used in these two sections, and particularly with reference to the word "shall," which is prospective in its meaning, and the word "extension," which imports the enlargement of an existing thing, and not a creation. The contrary construction would, indeed, produce an inconvenience and an injustice which could not be intended by the legislature; for at the time of passing this Act of Parliament, the author's right having become extinguished, it was competent to any person to publish the work in question, and such publications may have actually taken place at a great expence to the individual; yet according to the construction contended for, if the author's right were re-vested, the innocent publisher might have his work taken from him, and would be subject to the penalties imposed by this act: so that an individual would be guilty of an offence, and subject to a penalty for exercising his legal right. The legislature could not have intended to produce so much public inconvenience, to benefit a small, though highly

Lord ELLENBOROUGH, C. J., said the word *extension* imports the continuance of an existing thing, and must have its full effect given to it where it occurs. It is expressly used in the recital of the eighth section, which is connected with the ninth, by the subject matter, as well as by the words "be it also further enacted;" and it seems to me, that predicating the purpose to be to benefit the author by the *extension* of his rights, is adopting a very different idea from re-creating an expired right. The word extension, is too strong for me to grapple with; and, if the court were to get rid of its operation, a great public injury would be effected, by calling back a right, that by lapse of time had become extinct.

ABBOTT, J., further observed, it is admitted, that if the public had exercised their rights, by publishing the work before the act passed, that the author could not interfere with the parties who had so exercised the right: and there are no words in the Act of Parliament which admit of one construction where the public have exercised the privileges which have devolved upon them by the lapse of twenty-eight years, and another construction where they have not exercised that meritorious, class of individuals; and that cannot be the true construction of the Act of Parliament from which such a consequence would follow. Looking, therefore, to the language of the section itself, and the general intention to be collected from the several clauses, as well as the great inconvenience that would follow if the opposite construction were to prevail, it does clearly seem that the intention of the act will be best effected by confining its operation to those authors who at the time of passing the Act of Parliament had existing rights; or in other words, to those whose twenty-eight years had not then elapsed.

Mr. DENMAN, in reply.---The word "extension" does occur in the eighth section, but *not* in the ninth: it is there studiously left out; and the benefit conferred by that section need not, therefore, come within the meaning of the term extension, and there is no expression that connects the two clauses so as to make that word applicable to the ninth.

ABBOTT, Justice.---Will you mention any words in the *English* language more appropriate or apposite to connect one section with another than the words "Be it also further enacted?"

Mr. DENMAN. They are separate clauses, and are not necessarily connected; and the ninth section does not say that the author's right shall be extended, but generally, that, if living, he shall have the copyright for his life: an extension of a right is given by one clause, and a right generally conferred by the other. With respect to the inconvenience which, it is said, will result from this construction of the act, it is not true that an innocent publisher would be subjected to the penalties inflicted by the fourth section, for those penalties only attach on offences comprised in that section.

BAYLEY, J.---Is not a man penally affected who has legally vested his money in a printed book, and is afterwards prevented from selling it?

Mr. DENMAN. The act could not be meant to operate as an ex post facto law in a case where a party had exercised rights vested in the public. Certainly no right actually vested in and exercised by the public, was intended to be divested. If such rights had indeed been exercised, the case might have been very different as to the parties so exercising them; but the fact is otherwise, and therefore that question is immaterial. And that being so, then the case comes within the very words of the ninth section, and is embraced within the general object the legislature had in view in passing the Act of Parliament, viz., the extension of the copyright of authors.

privilege. The act makes no distinction between these two cases.

The COURT afterwards certified their opinion, that the plaintiff, by virtue of the last mentioned assignment, took no interest in the Notes or Annotations.

In the case of Carnan v. Bowles(1) it was also decided, that an author who sells his work in general terms, without making any limitations, has no resulting right against his own assignee after the first term has expired, formerly of fourteen, but now of twenty-eight years(2).

Although a general assignment of a copyright in writing endures only for fourteen years, yet where an author by parole gave a compilation to a publisher unconditionally, it was holden that such gift was not impliedly limited to the term of fourteen years(3).

The distinction between the point decided in the case of Carnan v. Bowles, and the eighth section of the 54th Geo. III. cap. 156, appears to be this:

If an author who has assigned his right, *outlive the first fourteen years*, (or twenty-eight years now allowed) his *assignee*, by the general assignment, will have the benefit of the resulting term, fourteen years, or the remainder of the author's life.

But if an author die after the enactment, but *within* that

(1) Carnan v. Bowles, 2 Brown's Chancery Rep. 80.

(2) The eleventh section of 8 Anne provides, that after the expiration of the term of fourteen years, the sole right of printing or disposing of copies of books shall *return* to the authors thereof, if they are then living, for a further term of fourteen years. In the case cited in the text, the author, Captain Paterson, having sold "all his right" in a Book of Roads to the plaintiff, which was printed in letter-press, after the expiration of the first fourteen years, sold it to the defendant, who published the high roads upon copper-plates, and the cross roads in letter-press.

Mr. MANSFIELD, on the part of the plaintiff, contended, that the expression in the act meant to secure something to authors even against their own acts. It gives the right to authors and their assigns during the first fourteen years, and no longer; and then, by the proviso, the right shall *return to the authors* (not their assigns), if living. So that it is a personal bounty to the authors only. In selling the right, the author sells all that is in him, not the contingent right that may return to him.

The SOLICITOR-GENERAL, on the other side, argued, that the author has an absolute and a contingent right; they are both capable of being disposed of. There is nothing in the act to make a difference between them. The *return* is only between the public and the author, not between him and his assignee. There are no negative words in the act to prevent his assigning that, as well as his other rights. In many cases, if he could not assign it, the disability would be productive of great inconvenience.

LORD CHANCELLOR.---The *contingent* interest must pass by the word "interest" in the grant. The author conveys all his interest in the copyright. The assignment must have been made upon the idea of a perpetuity. It is probable not a syllable was said or thought of respecting the contingent right. They merely followed the old precedents of such conveyances. It must, I think, be considered as conveying his whole right. If he had meant to convey his first term only, he should have said so. An injunction was therefore granted as to the letter-press.

(3) Rudell v. Murray, 1 Jacob, 311. 6 Petersdorff's Abr. 564.

term, then his assignee will enjoy the copyright for the first fourteen years only, and the *personal representatives* of the deceased will have the benefit of a further term of fourteen years, without prejudice to the sale of the books printed by the assignee within the first term(1).

SECTION III.

Digest of Cases relating to the extent of Copyright—works comprised in the Statute, or protected by the Common Law.

1st. *Of Manuscripts.*

Although the common law, on the subject of copyright in *printed* books, has been superseded by the statutes, the ancient protection afforded to all kinds of property still remains in full force in favor of literary *manuscripts*.

With the single exception of Mr. Baron Eyre, all the judges decided in the case of Donaldson v. Becket(2), that an author has complete control over his works, so long as they remain in manuscript.

Of these there are several kinds, consisting of

1. Unpublished works in general.
2. Dramatic works, whether they have been represented or not.
3. Epistolary writings.

These several descriptions of literary works are protected from invasion, and the Courts of Equity, at the instance of the author or proprietor, will stay the publication of them: and an action at law can be maintained in trover, detinue, or trespass(3).

2nd. *Of Printed Books.*

The statute, according to its construction by the courts, is not limited to publications usually termed "books," but includes every original work, however insignificant it may be in extent. There is a property even in a single page.

There is nothing (said Mr. Erskine) in the word *book* to require that it should consist of several sheets, bound in leather, or stitched in a marble cover. *Book* is evidently the Saxon Boc, and the latter term is from *beech tree*, the rind of which supplied the place of paper to our German ancestors. The latin word *liber* is of a similar etymology, meaning originally only the bark of a tree. *Book* may therefore

(1) Godson on Patents and Copyright, 211.
(2) 4 Burr. 2408.
(3) For the details on *pirating the copyright* of these works, vide Part III.

be applied to any writing, and it has often been so used in the English language(1).

If a different construction were put upon the act, many productions of the greatest genius, both in prose and verse, would be excluded from its benefits. But might the papers of the *Spectator*, or *Gray's Elegy* in a Country Church-yard, have been pirated as soon as they were published, because they were given to the world on single sheets? The voluminous extent of a production cannot in an enlightened country be the sole title to the guardianship the author receives from the law. Every man knows that the mathematical and astronomical calculations which will inclose the student during a long life in his cabinet, are frequently reduced to the compass of a few lines; and is all this profundity of mental abstraction, on which the security and happiness of the species in every part of the globe depend, to be excluded from the protection of British jurisprudence?

The point was not further argued. The rule was made absolute(2).

In a subsequent case this decision was referred to, and Lord ELLENBOROUGH said(3),

I do not at present see why a composition, printed on a single sheet, should not be entitled to the privileges of the statute. We say, "sit liber index," without referring to a volume either printed or written. I was at first startled at a single sheet of paper being called a *book*; but I was afterwards disposed to think that it might be so considered, within the meaning of this Act of Parliament; and when the matter came before the court, the other judges inclined to the same opinion(4).

This point was afterwards settled and confirmed by the whole court(5)

The statute comprises not only original works, but *Translations*, both from the ancient and modern languages(6).

(1) Sometimes the most humble and familiar illustration is the most fortunate. The *Horn Book*, so formidable to infant years, consists of one small page, protected by an animal preparation, and in this state it has universally received the appellation of a *book*. So in legal proceedings, the copy of the pleadings after issue joined, whether it be long or short, is called the Paper *Book*, or the Demurrer *Book*. In the Court of Exchequer, a roll was anciently denominated a book, and continues in some instances to the present day. An oath as old as the time of Edward I. runs in this form: "And you shall deliver into the Court of Exchequer a *book* fairly written." But the book delivered into court in fulfilment of this oath, has always been a roll of parchment. *2 Camp. 29.*

(2) Hine v. Dale, 2 Camp. 28, *note.* (3) Clementi v. Golding, 2 Camp. 30.

(4) Mr. SCARLETT, in his argument for the plaintiffs, ably contended, that the legislature by the word *book*, could not be considered as meaning only a number of printed sheets bound up together, since they talked in section 2 of a literary composition, as a book before it was printed at all. According to its original meaning, it signifies any writing, without reference to size or form, and it is so used by the most celebrated authors. Thus in Shakespeare, Henry IV., *book* stands for the indenture or instrument by which Mortimer, Glendower, and Hotspur, agreed to divide England between them(*a*), and the commentators upon that passage point out various other instances in which the word is employed in the same sense.

(*a*) *Mort.* By that time will our *book* I think be drawn. Hen. IV. Part I. Act 3. Scene 1. The instrument is a little before called *an indenture tripartite.*

(5) 11 East, 244. (6) 3 Ves. and B. 77.

It also includes *Abridgments* and *Compilations*, provided they are *bona fide*, and not fraudulently or colourably, made(1).

And after the time limited by the statute has expired, if the author, or any other writer, should reprint the book with original

Notes or *additions*,

the latter are entitled to the same degree of protection as any other original composition, for the whole time allowed by the statute(2).

3rd. Of Musical Compositions.

The statute has further received a liberal interpretation in favor of musical compositions, which have also been held, as a branch of science, to be comprehended within the meaning of the act. The work thus printed and published contains a representation (so to speak) of original musical ideas, and therefore receives the same protection, both in extent and duration, as publications which convey ideas more purely intellectual.

Lord MANSFIELD said, the words of the Act of Parliament are very large---*books and other writings*. It is not confined to language or letters. Music is a science: it may be *written*; and the mode of conveying ideas is by signs and marks. If the narrow interpretation contended for in the argument were to hold, it would equally apply to algebra, mathematics, arithmetic, hieroglyphics. All these are conveyed by signs and figures. There is no colour for saying that music is not within the act(3).

CHAP. II.

OF COPYRIGHT IN ENGRAVINGS, ETCHINGS, PRINTS, MAPS, AND CHARTS.

In the historical view of the law of copyright in general, we have not adverted to the statutes regarding engravings, etchings, and prints, inasmuch as they have not been recently consolidated, like those which relate to printed books. In treating of the present state of the law on this branch of the fine arts, which is so intimately connected with literature, we may properly consider, under one view, the *three* Acts of Parliament which have been passed for "the encouragement of the arts of designing, engraving, and etching."

(1) Amb. 403, Lofft. Rep. 775. Vide Part III. for the details regarding piracy in these compositions.

(2) 1 East, 358.

(3) Bach v. Longman, Cowp. 623.

SECTION I.

Analysis of the Statutes.

The 8th Geo. II. cap. 13, is entitled, An act for the encouragement of the arts of designing, engraving, and etching historical and other prints, by vesting the properties thereof in the inventors and engravers during the time therein mentioned.

It recites, that divers persons have, by their own genius, industry, pains and expence, invented and engraved, or worked in *mezzotinto* or *chiaro oscuro*, sets of historical and other prints, in hopes to have reaped the sole benefit of their labors; and that printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof.

For remedy thereof, and for preventing such practices for the future, the act vests the sole right and liberty of printing and reprinting the same for fourteen years, to commence from the day of first publishing thereof.

The date to be engraved, with the name of the proprietor, on each plate, and printed on every print.

The penalties for pirating, or selling, or exposing to sale, either the whole or a part of any print, without the consent of the proprietor in writing, signed in the presence of two witnesses, are a *forfeiture* of the prints, and a *fine* of five shillings each.

The act does not extend to purchasers of plates from the original proprietors. And there is a clause in favor of certain engravings then designed, relating to the Spanish invasion.

Actions under the statute must be brought within three months. The general issue may be pleaded.

We consider it essential, as a part of the present law, to set forth the remainder of the act in full. The following is the enacting part, together with the subsequent clauses.

That from and after the 24th of June, which will be in the year of our Lord, 1735, every person who shall invent and design, engrave, etch, or work in *mezzotinto*, or *chiaro oscuro*, or from his own works and inventions, shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with

the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said 24th day of June, 1735, within the time limited by this act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, or copied and sold, in the whole, or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any part thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively, in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale, or otherwise or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied and printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published and exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act: the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same; to be recovered in any of His Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoine, privilege, or protection, nor more than one imparlance, shall be allowed.

II. Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof, to print and reprint from the said plates, without incurring any of the penalties in this act mentioned.

III. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of three months after so doing, and the defendant and defendants in such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

IV. Provided always, and be it further enacted by the authority

aforesaid, that if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding.

V. And whereas John Pine, of London, Engraver, doth propose to engrave and publish a set of prints copied from several pieces of tapestry in the House of Lords and His Majesty's wardrobe, and other drawings relating to the Spanish invasion in the year of our Lord 1588, be it further enacted by the authority aforesaid, that the said John Pine shall be entitled to the benefit of this act to all intents and purposes whatsoever, in the same manner as if the said John Pine had been the inventor and designer of the said prints.

VI. And be it further enacted by the authority aforesaid, that this act shall be deemed, adjudged, and taken to be a public act, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same.

The next act is the 7th Geo. III. c. 38, and is entitled, An act to amend and render more effectual an act made in the eighth year of the reign of King George II. for encouragement of the arts of designing, engraving, and etching historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.

By this act, the term of copyright is extended to twenty-eight years.

And it includes "the prints of any portrait, conversation, landscape, or architecture, *map, chart, or plan,* or any other print."

By the 2nd section, engravings, etchings, or works taken from "any picture, drawing, model, or sculpture, either ancient or modern," are entitled to the protection of the act.

The remedies provided by this statute must be sued for within *six months* after the offence committed.

It is observable that this act does not expressly require the name of the proprietor and the date of publication to be engraved on the print; but it seems probable that the provision of the previous statute, 8 Geo. II. in that respect should be considered as included(1); and the insertion is necessary for the recovery of the penalties, though not for the purpose of maintaining an action for damages(2).

The following is an accurate statement of the act:

It recites---

That an Act of Parliament passed in the eighth year of the reign of His late Majesty King George II. intituled, An act for encouragement of the arts of designing, engraving, and etching historical

(1) 2 Evans's Stat. 637, *note.* (2) 1 Camp. 98; but see the next section.

and other prints, by vesting the properties thereof in the inventors and engravers during the time therein mentioned, had been found ineffectual for the purposes thereby intended.

And it is then enacted,

That from and after the first day of January, 1767, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro oscuro, or from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, under the restrictions and limitations hereinafter mentioned.

II. And be it further enacted by the authority aforesaid, that from and after the said first day of January, one thousand seven hundred and sixty seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.

III. The sole right of printing and reprinting the late W. Hogarth's prints, vested in his widow and executrix for twenty years.

IV. Penalty of copying, &c. any of them before expiration of the term; such copies excepted as were made and exposed to sale after the term of fourteen years, for which the said works were first licenced, &c.

V. And be it further enacted by the authority aforesaid, that all and every the penalties and penalty inflicted by the said act, and extended and meant to be extended to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act) shall recover the same, together with his full costs of suit.

VI. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

VII. And be it further enacted by the authority aforesaid, that the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act, and this act, shall be extended, continued, and be vested in the respective proprietors for

the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively herein before, and in the said former act, mentioned.

VIII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the remedy whereof, he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

The last act on this subject is the 17th Geo. III. c. 57, and is entitled, An act for more effectually securing the property of prints to inventors and engravers, by enabling them to sue for and recover penalties in certain cases.

By this statute an *action for damages* and *double costs* is given for engraving, etching, or printing any historical print, or any portrait, &c. without the consent of the proprietor, within the time limited by the former acts. The remedies provided by the former statutes were by fine and forfeiture.

The act recites---

That an act of Parliament passed in the eighth year of his late Majesty, King Geo. II. intituled, An act for the encouragement of the arts of designing, engraving, and etching historical and other prints, by vesting the properties thereof in the inventors and engravers during the time therein mentioned; and that by an Act of Parliament passed in the seventh year of the reign of his present Majesty, for amending and rendering more effectual the aforesaid act, and for purposes therein mentioned, it was (among other things) enacted, that from and after the first day of January, 1767, all and every person or persons who should engrave, etch, or work in mezzotinto or chiaro oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, should have, and were thereby declared to have, the benefit and protection of the said former act, and that act, for the term thereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman: and that the said acts have not effectually answered the purposes for which they were intended; and it is necessary, for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are hereinafter mentioned and contained.

It is therefore enacted,

That from and after the 24th day of June, 1777, if any engraver, etcher, print-seller, or any other person, shall within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in mezzotinto or chiaro oscuro, or otherwise, or in any manner copy in the whole or in part by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imprinted or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever which hath or have been, or shall be, engraved, etched, drawn, or designed in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a Writ of Enquiry thereon, shall give or assess, together with double costs of suit.

SECTION II.

Digest of Cases.

The acts are not confined in their protection to *inventions*, strictly speaking, but comprise the designing or engraving any thing that is already in nature(1).

The *degree of originality* which entitles the inventor to the protection of the statute, has been well defined by Lord ELLENBOROUGH, who states the question thus: Whether the defendant has copied the main design? Whether there be such a similitude and conformity between the prints, that the person who executed the one set, must have used the others as a model? In that case, he is a copyist of the main design. But if the similitude can be supposed to have arisen from accident, or necessarily from the nature of the subject, or from the artist having sketched his design merely from reading the letter-press of the plaintiff, the defendant is not answerable(2).

A question has arisen, whether it be absolutely necessary to support an action at law, or a bill in equity, that the *date of publication*, and the *name of the proprietor*, be engraved on each plate and print.

(1) 2 Atkins, 293. (2) 1 Camp. 94, Roworth v. Wilkes.

It is said(1) that there is a contrariety of opinion in the authorities as to the true construction of the act. *Lord Hardwicke* and *Lord Ellenborough* being on one side, and *Lord Alvanley, Lord Kenyon,* and *Judge Buller*, on the other. The case referred to, however, was not decided on the point in question, and *Lord Kenyon* himself does not appear very decided in his opinion. He says, had the question turned entirely on the point on which it has been argued, I should have thought it involved in considerable difficulty: upon that head *my opinion has floated during the course of the argument.* It should seem, that the reason for requiring the name and the date to appear on the print was, that they might convey some useful intelligence to the public. The *date* is of importance, that the public may know the period of the monopoly. The *name* of the proprietor should appear, in order that those who wish to copy it, might know to whom to apply for consent. It seems, therefore, necessary, that the date should remain, but that the name of the proprietor should be altered as often as the property is changed(2).

This decision was in the year 1792. At a subsequent period, namely, in 1807, Lord ELLENBOROUGH said, although the plaintiff's name is not engraved upon the prints, if there has been a piracy, I think the plaintiff is entitled to a verdict. *The interest being vested, the common law gives the remedy.* I have always acted on the case of Beckford v. Hood(3), in which the Court of King's Bench held, that an author whose work is pirated, may maintain an action on the case for damages, although the work was not entered at Stationers' Hall, and although it was first published without the name of the author affixed(4).

We have stated the preceding case, which arose more directly out of the *construction* of the Acts of Parliament; and for the decisions relating to the invasion of copyright in engravings and prints, we refer to the *third part of this book,* in which the whole subject of "piracy" will be considered.

CHAP. III.

OF THE RIGHT IN ORIGINAL SCULPTURE, MODELS, AND CASTS.

There are two statutes on the subject of original sculpture, models, and casts, which may not inappropriately be introduced in this place as a branch of the fine arts.

(1) Godson on Patents and Copyright, 290.
(2) 5 T. R. 45, Thompson v. Symonds. (3) 7 T. R. 620.
(4) 1 Camp. 98. See also 2 Vesey, 327, and Law Journal, May, 1827. In Newton v. Cowie, the Common Pleas held both date and name to be essential.

The first of these acts was passed in the year 1798; and the last, a short time previously to the general Copyright Act in 1814.

SECTION I.

Analysis of the Statutes.

The 38th Geo. III. chap. 71, is entitled, "An act for encouraging the art of making new models and casts of busts, and other things therein mentioned."

It vests in the proprietor the sole right and property of making new models, or copies or casts from such models, of any bust, figure, or any statue, &c. during the term of fourteen years, provided the name of the maker and the date of publication be put thereon.

Persons making copies, without the written consent of the proprietor, may be sued for damages in a special action on the case.

The act recites---

That divers persons have by their own genius, industry, pains, and expence, improved and brought the art of making new models and casts of busts, and of statues of human figures and of animals, to great perfection, in hopes to have reaped the sole benefit of their labors; but, that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid; FOR REMEDY WHEREOF, AND FOR PREVENTING SUCH PRACTICES FOR THE FUTURE, IT IS ENACTED, that from and after the passing of this act, every person who shall make, or cause to be made, any new model or copy or cast made from such new model of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal, or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals, shall he introduced, or shall make, or cause to be made, any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy, or cast, and also in every such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, and also in any such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same; provided always that every person who shall make, or cause to be made, any such new model, copy, or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

II. And be it further enacted, that if any person shall, within the said term of fourteen years, make, or cause to be made, any copy or cast of any such new model, copy, or cast, or any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to, or diminishing from, any such new model, copy or cast, or adding to or diminishing from any such new model, copy or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast from nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of, and attested by, two or more credible witnesses, then, and in all or any of the cases aforesaid, every proprietor or proprietors of any such original model, copy, or cast, and every proprietor or proprietors of any such original model or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid, respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with costs of suit.

III. Provided nevertheless that no person who shall hereafter purchase the right either in any such models, copy, or cast, or in any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this act to the contrary thereof notwithitanding.

IV. Provided also, that all actions to be brought as aforesaid against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

These provisions were rendered more effectual by the 54th Geo. III. c. 56, by which double costs were given, and an additional term of fourteen years in case the maker of *original sculpture, models, &c.* should be living, except he should have divested himself of the right previous to the passing of the act.

Before proceeding to the construction which has been put on these acts, we deem it necessary to insert the several clauses of the last act.

It is intituled,

An act to amend and render more effectual an act of his present majesty for encouraging the art of making new models and casts of busts, and other things therein mentioned, and for giving further encouragement to such arts.

It recites---

That by an act passed in the 38th year of the reign of his present majesty, intituled An act for encouraging the art of making new models and casts of busts, and other things therein mentioned, the sole right and property thereof were vested in the original proprietors for a time therein specified---that the provisions of the said act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts.

It is therefore enacted---

That from and after the passing of this act, every person or persons who shall make, or cause to be made, any new and original sculpture or model, or copy or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso relievo, representing any of the matters or things herein before mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast representing any animal or animals, and of all and in every such work representing any part or parts of any animal, combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy and cast in alto or basso relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years, from first putting forth or publishing the same, provided in all and every case the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

II. And be it further enacted, that the sole right and property of

all works which have been put forth or published under the protection of the said recited act, shall be extended, continued to, and vested into the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

III. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture or model, or copy or cast of the human figure or human figures, or of any such bust or busts or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals, combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso relievo, representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended, and protected by this act in any of the cases aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated, then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

IV. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, shall be subject to any action for copying, or casting, or vending the same, any thing contained in this act to the contrary notwithstanding.

V. Provided always, and be it further enacted, that all actions to be brought as aforesaid against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

VI. Provided always, and be it further enacted, that from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy, or cast of any of the matters or things herein before mentioned, shall return to the person or persons who

originally made, or cause to be made, the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall, by sale or otherwise, have divested himself, herself, or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things herein before mentioned, previous to the passing of this act.

SECTION II.

Construction of the Acts.

The first act on this subject (38 Geo. III. c. 71) was found to be so defective, that it was held to be no offence to *make* a cast of a bust, provided it was a *perfect* fac-simile of the original(1).

It was also held, in the case of Gahagan v. Cooper, to be no offence under that act to *sell* a pirated cast of a bust, if the piracy had any addition to, or diminution from, the original(2).

The declaration, however, confined the case to the selling *exact* copies. But in West v. Francis (which has been referred to by Mr. Godson on this subject), there was a count for selling copies in part by small variations from the main design, and therefore the point did not arise(3).

The second act remedied these defects; but no case has been decided under that act as to the insertion of the name and day of publication; yet it seems clear that the construction of the statutes relating to engravings and prints will equally apply to sculpture, models, &c. It appears also that the reasoning on the statutes regarding patterns for linen, are applicable to the present subject(4).

CHAP. IV.

OF WORKS EXCLUDED FROM LEGAL PROTECTION.

The consideration of works excluded from legal protection, on the ground of their unlawful and immoral nature, has been reserved for this part of the treatise; inasmuch as the same principle which excludes a *book*, will equally apply to an *engraving* and to *sculpture*. The cases, therefore, of this kind, whether referring to books, prints, or sculpture, will be arranged according to the nature of their injurious or illegal character.

(1) Godson on Patents, &c. 305.
(2) 3 Camp. 111.
(3) 5 Barn. and Ald. 737.
(4) Godson on Patents, &c. 306.

SECTION I.

Of Works injurious to public morals.

The courts of justice endeavour to protect society from the publication of works which tend to degrade the morals of the people; and so strong is the objection to an immoral work, that Lord ELLENBOROUGH held an apprehension of a prosecution for the immorality or illegality of a work (if proved to be well founded by the production of the part printed), would justify a person for refusing to supply a bookseller with the remainder of the manuscript agreeable to a contract.

The author might say, I now feel convinced that this work cannot be committed to the press with safety, that it is not a proper one for me to publish, or for you (the bookseller) to print; here I will pause, and will proceed no further in that which will place both of us in peril(1).

It has also been held, that a Court of Equity has a superintendency over all books, and may in a summary way restrain the printing or publishing every thing that contains reflections on religion or morality.

Protection has been denied to a *translation* of an immoral work. In the case of Burnett v. Chetwood, in the year 1720, the LORD CHANCELLOR said,

Though a translation might not be the same with the reprinting the original, on account that the translator had bestowed his care and pains upon it, yet this being a book which to his knowledge contained strange notions, intended by the author to be concealed from the vulgar in the Latin language, in which language it could not do much hurt, the learned being better able to judge of it, he thought it proper to grant an injunction to the printing and publishing it in English(2).

And an action cannot be maintained to recover the value of obscene or libellous prints or caricatures. Mr. Justice LAWRENCE observed, that

For prints whose objects are general satire, or ridicule of prevailing fashions or manners, he thought a plaintiff might recover; but he could not permit him to do so for such whose tendency was immoral or obscene(3).

SECTION II.

Of Publications injurious to Religion.

Works which deny the truth of, or vilify, the sacred scriptures, or which tend to bring them into disrepute, or

(1) Gale v. Leckje, 2 Stark. 109-10. (2) 2 Meriv. 441, n.
(3) Fores v. Jones, 4 Esp. N. P. C. 97.

which lead to a disbelief in revelation, are strictly excluded from legal protection in the Courts of Justice in this country, all of which acknowledge Christianity as part of the law of the land.

Thus in the case of *Murray v. Benbow*, in which an injunction was applied for to restrain a pirated edition of Lord BYRON's Cain, Lord ELDON said,

The jurisdiction of this court in protecting literary property is founded on this, that where an action will lie for pirating a work, then the court, attending to the imperfection of that remedy, grants its injunction, because there may be publication after publication which you may never be able to hunt down by proceeding in the other courts. But where such an action does not lie, I do not apprehend that it is according to the course of the court to grant an injunction to protect the copyright. Now this publication, if it is one intended to *vilify* and bring into discredit that portion of *scripture history* to which it relates, is a publication, with reference to which, if the principles on which that case at Warwick (Dr. Priestley's case) was decided by just principles of law, the party could not recover any damages in respect of a piracy of it. This court has no criminal jurisdiction; it cannot look on any thing as an offence; but in those cases it only administers justice for the protection of the civil rights of those who possess them, in consequence of being able to maintain an action. You have alluded to MILTON's immortal work; it did happen in the course of last long vacation, I read that work from beginning to end; it is therefore quite fresh in my memory, and it appears to me that the great object of its author was to promote the cause of Christianity; there are, 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 is clear that the object and effect were not to bring into disrepute, but to promote, the reverence of our religion. Now the real question is, looking at the work before me, its preface, the poem, its manner of treating the subject, particularly with reference to the *fall* and the *atonement*---whether its intent be as innocent as that of the other with which you have compared it; whether it be to traduce and bring into discredit that portion of sacred history. This question I have no right to try, because it has been settled, after great difference of opinion among the learned, that it is for a jury to determine that point; and where, therefore, a reasonable doubt is entertained as to the character of the work (and it is impossible for me to say I have not a doubt---I hope it is a reasonable one), another course must be taken for determining what is its true nature and character.

There is a great difficulty in these cases, because it appears a strange thing to permit the multiplication of copies, by way of preventing the circulation of a mischievous work (which I do not presume to determine that this is); but that I cannot help; and the singularity of the case, in this instance, is more obvious, because here is a defendant who has multiplied his work by piracy, and does not

think proper to appear. If the work be of that character which a Court of Common Law would consider criminal, it is pretty clear why he does not appear, because he would come *confitens reus*, and for the same reason the question may, perhaps, not be tried by an action at law; and if it turns out to be the case, I shall be bound to give my own opinion. That opinion I express no further now than to say, that after having read the work, I cannot grant the injunction until you shew me that you can maintain an action for it. If you cannot maintain an action, there is no pretence for granting an injunction; if you should not be able to try the question at law with the defendant, I cannot be charged with impropriety if I then give my opinion upon it.

It is true that this mode of dealing with the work, if it be calculated to produce mischievous effects, opens a door for its wide dissemination; but *the duty of stopping the work does not belong to a Court of Equity*, which has no criminal jurisdiction, and cannot punish or check the offence. If the character of the work is such, that the publication of it amounts to a temporal offence, there is another way of proceeding, and the publication of it should be proceeded against directly as an offence; but whether this or any other work should be so dealt with, it would be very improper for me to form or intimate an opinion(1).

In the same year (1822) occurred another case, which may be classed in the same order, namely, that of *Lawrence v. Smith;* and considering the importance of the principle established by these decisions, we deem it proper to set forth the judgment of the court at large.

It appeared that Mr. Lawrence published his Lectures on Physiology, in which, mixed with a great collection of valuable and appropriate facts, were some episodical theories on the nature of the soul, and the origin of mankind, which were supposed to lead to a *disbelief in revelation*. The lectures were soon pirated. An application was made by the piratical publisher to dissolve the injunction.

It was moved on the ground that the "the evil tendency of the work was as clear as the sun at noon(2)." The defendant was heard by his counsel to maintain that "his publication denied Christianity and revelation, and was contrary to public policy and morality; that it was more dangerous from the author's scholar-like command of the language, and his scientific mode of treating the subject, which, acting upon undisciplined minds, was calculated to bring them under its control, and thereby work the greater mischief: and that

(1) 6 Petersdorff Abf. 558-9.

(2) Was this "coming into court with *clean hands?*" Was it consistent with the principle which maintains that *a man shall not avail himself of his own wrong?*

therefore the restraint which the injunction imposed on its dissemination must be removed!"

The Lord Chancellor said, that this case had been argued at the bar with great ability. He would explain in a few words the principles on which his decision would be founded. On the observations which had been made on the College of Surgeons, as the place in which these lectures had been read, he would not touch; he would only treat the plaintiff as the author of the work. This case had been introduced by a bill filed by Mr. Lawrence, in which he stated that he was the author of this book, which the defendant had also published; and that he was entitled to the protection of this court, in preservation of the *profits* resulting from its publication. Undoubtedly the jurisdiction of this court was founded on this principle, that where the law will not afford a complete remedy to literary property when invaded, this court will lend its assistance; because, where every publication is a distinct cause of action, and where several parties might publish the book, if a man were obliged to bring an action on each occasion, the remedy would be worse than the disease. But then this court will only interfere where he can by law sustain an action for damages, equal to the injury he has sustained. He might then come here to make his legal remedy more effectual. But if the case be one which it is not clear will sustain an action at law, then this court will not give him the relief he seeks.

The present case had been opened as an ordinary case of piracy, and he took it that nothing was then said as to the general tenor of the work, or of particular passages in it. He, the Lord Chancellor, was bound to look, not only to the tenor, but also to *particular passages unconnected with its general tenor*(1); for if there were any parts of it which denied the *truth of scripture*, or which furnished a doubt as to whether a court of law would not decide that they had denied the truth of scripture, he was bound to look at them and decide accordingly.

There was a peculiar circumstance attending this case, which was, that the defendant possessed no right to the work, but said to the plaintiff, "this book is so original in its nature, as to deprive you of all protection at law against others and myself, and I will therefore publish it."

Now his Lordship knew it to be said that in cases where the work contained criminal matter, the court, by refusing the injunction, allowed the greater latitude for its dissemination. But his answer to that was, that this court possessed no criminal jurisdiction. It could only look at the civil rights of the parties, and therefore whether a different proceeding were hereafter instituted against the defendant or the plaintiff, or both, was a circumstance with which he had nothing to do. The only question for him to determine was, whether it was so clear that the plaintiff possessed a civil right in this publication, as

(1) But see the preceding case, in which it is laid down that the true criterion is to take the publication *altogether*, and thus to judge of the general intent.

to have no doubt upon his mind that it would support an action in a Court of Law.

He had read the whole of this book with attention, and it certainly did raise such a doubt in his mind. It might probably be expected, that after the able and learned argument which had gone forth to the world upon a subject so materially affecting the happiness of mankind, he should state his answer to that argument; but if he left these parties to a Court of Law (and he should leave them to a Court of Law), his opinion might have the effect of prejudicing the question to be there determined; all he would say, therefore, was, that entertaining a rational doubt upon some parts of the work as to their being directed against the truth of scripture, he would not continue this injunction, but the plaintiff might apply for another after he had cleared away that doubt in a Court of Law. Further than this, his Lordship would not interfere(1).

SECTION III.

Of Works injurious to Public Peace and Justice.

Publications which are calculated to disturb the public peace, or to be injurious to the good government of the state, or which tend to bring into contempt the administration of justice, are all shut out of the pale of the law. There can be no right of property in such compositions.

The first case in which this doctrine was judicially pronounced was that of Dr. *Priestley*, who brought an action against the hundred for damages for the injuries sustained by him in consequence of the riotous proceedings of the mob at Birmingham; and among other property alleged to have been destroyed, claimed compensation for the loss of certain unpublished MSS. 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;* upon which, Lord Chief Justice EYRE said, if any such evidence had been produced, he should have held it fit to be received as against the claim made by the plaintiff(2).

In another case, that of Hime v. Dale(3), which was an

(1) Petersdorff's Abr. 559-60. (2) 2 Meriv. 437.

(3) The mischievous tendency of the production would sufficiently appear (it was contended) 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 thro' a mill stone,
She can't see thro' *Abraham Newland.*

action for pirating the words of a song called "Abraham Newland," Mr. *Garrow* contended that the song was of such a description that it could not receive the protection of the law.

It professed, he said, to be a panegyric on money, but was in reality a gross and nefarious *libel* on the solemn *administration* of British *justice*. The object of this composition was not to satirize folly, or to raise the smile of innocent mirth, but being sung in the streets of the capital to excite the indignation of the people against the sacred ministers of the law, and the awful duties they were appointed to perform(1).

Lord ELLENBOROUGH. If the composition appeared on the face of it to be a libel, so gross as to affect the public morals, I should advise the jury to give no damages. I know the Court of Chancery on such an occasion would grant no injunction.

But I think the present case is not to be considered one of that kind.

LAWRENCE, J. The argument used by Mr. GARROW on this fugitive piece as being a libel, would as forcibly apply to the *Beggar's Opera*, where the language and allusions are sufficiently derogatory to the administration of justice.

The last case of this kind was that of *Southey v. Sherwood*, which was decided in the year 1822. The author had written a seditious poem, called "Wat Tyler," which, having come into the defendant's possession, he published it without Mr. Southey's consent, and the latter applied to the Court of Chancery for an injunction.

The work was composed in the year 1794, when the author was under twenty-one. In that year there was an intention to publish it. It was sent by the plaintiff to Mr. Ridgway. The latter gave no account how it passed out of his hands.

The LORD CHANCELLOR said, if a man leaves a book of this description in the hands of a publisher, without assigning any satisfactory reason for doing so, and has not enquired about it during twenty-three years, he can have no right to complain of its being published at the end of that period.

But his lordship, in another part of his judgment, said, there is a difference between the case of an actual publication by the author, which all the world may pirate, and that of a man, who having composed a work, of which he afterwards repents, and wishes to withhold it from the public. I will not say that a principle might not be found which would apply to such a case as that; but then it is necessary to take all the circumstances of the case into consideration(2).

The LORD CHANCELLOR subsequently delivered the following judgment.

(1) 2 Camp. 29.

(2) Meriv. 438.

"I have looked into all the affidavits, and have read the book itself. The bill goes the length of stating, that the work was composed by Mr. Southey in 1794, that it is his own production, and that it has been published by the defendant, without his sanction or authority; and therefore seeking an account of the profits which have arisen from, and an injunction to restrain, the publication. I have examined the cases that I have been able to meet with, containing precedent for injunctions of this nature, and I find that they all proceed upon the ground of a title to the property in the plaintiff. On this head a distinction has been taken, to which a considerable weight of authority attaches, supported, as it is, by the opinion of Lord C. J. EYRE, who has expressly laid it down that a person cannot recover in damages for a work which is in its nature to do injury to the public. Upon the same principle this court refused an injunction in the case of *Walcot v. Walker*, inasmuch as he could not have recovered damages in an action. After the fullest consideration, I remain of the same opinion as that which I entertained in deciding the case referred to. It is very true, that in some cases it may operate so as to multiply copies of mischievous publications, by the refusal of the court to interfere by restraining them; but to this my answer is, that sitting here as a judge upon a mere question of property, I have nothing to do with the nature of the property, nor with the conduct of the parties, except it relates to their civil interests; and if the publication be mischievous, either on the part of the author or the publisher, it is not my business to interfere with it. In the case now before the court, the application made by the plaintiff is on the ground only of his civil interest, and this is the proper place for such an application. I shall say nothing as to the nature of the book itself, because the grounds upon which I am about to declare my opinion, render it unnecessary that I should do so."

His Lordship then recapitulated the circumstances of the original intention to publish, the subsequent abandonment of the intention, the length of time during which the plaintiff had suffered the work to remain out of his possession, without inquiry, and its recent publication by the defendant.

"Taking," said his Lordship, "all these circumstances into my consideration, and having consulted all the cases which I could find at all regarding the question, entertaining also the same opinion with C. J. EYRE as to the point above noticed, it appears to me that I cannot grant this injunction, until after Mr. Southey shall have established his right to the property by an action(1).

(1) 2 Meriv. 438.

The question of the protection claimed for illegal works is one of general importance, and has been productive of much litigation. It has been ably discussed by Mr. PETERSDORFF, in his comprehensive abridgment, and we subjoin the *substance* of his observations thereon.

From the decisions of Lord ELDON, it will appear that that learned judge was well aware of the ground he was treading on, in refusing those injunctions which he felt himself bound to do from acknowledged law and precedent; but he shows that the rule, with all its practical evils and absurdities, is now part of the law of the land; and that it is only by an alteration of the law that it can be got rid of.

Two arguments are urged in defence of this system.

There is this distinction in *Southey's* case from that of *Byron and Lawrence*, that the former required the suppression of a work which had been published without his consent, which he had never previously published himself, and desired to be suppressed. In the latter instances, the object of the suit was to preserve the profit of exclusively printing and publishing the work.

It would seem that Mr. Southey might have put his case on the footing of those of *Pope* and *Swift*, in which the exclusive right to the manuscript was decided. Mr. Southey did not complain that he was deprived of the profits which he might derive from publishing the work himself, but he objected to the publication altogether. During the lapse of a quarter of a century, his views had undergone a change. He came within the reasoning advanced by Lord Mansfield(1)

1st. Admitting the incidental advantage that would arise by the protection from piracy of a work, however libellous, such protection cannot be afforded without violating the established principle of law, that *there can be no property in what is injurious.*

Waiving the answer afforded by the equally established principle that *a man shall not profit by his own wrong*; and that a defendant cannot plead that his own act is criminal, to support a maxim, established only because it is generally useful, in the cases in which it is hurtful, is a puerile preference of the means to the end.

2ndly. It is said, that by destroying the profit, it prevents the publication of injurious works.

Now, if it were true that it destroys the profit, it does not follow that it will prevent the publication. The desire of obtaining notoriety, and of producing an effect, are (often) much stronger motives to authors, than the mere contingency of profit.

Besides, the profit will not be destroyed; it will not necessarily be diminished when the piracy has been foreseen. The publisher must protect himself from being undersold, by reducing both the cost and the price of the work; and trust to a small profit on a wide scale, instead of a profit greater in each individual instance, but not so often repeated.

If *Don Juan*, and such like publications, had been the subject of copyright, and had been confined by its price to a class of readers with whom its faults might have been somewhat compensated by its merits, with whom, in fact, the ridicule which it endeavours to throw upon virtue, might have been partially balanced by that with which it overwhelms vice, no evil, comparatively speaking, would have accrued to the public. The proprietor's price was intended to confine the circulation amongst those to whom each side of the question was familiar; that of the pirate's, to diffuse it among readers with whom its impieties have all the face of novelty, and to whom the answers are unknown(*a*).

As a remedy for these evils, the Quarterly Review(*b*) suggests, that it would be sufficient if a short Act of Parliament were passed, declaring that the libellous character of the work shall never be resorted to in bar of any proceeding at law or in equity for the infringement of copyright. The effect of such an act would be to subject the piratical publisher, whatever may be the tendency of the work, to those restraints which the law has imposed upon piracy, namely, an injunction, with an account of the profits, and an action at law for damages. We at first thought (say the reviewers) of excluding the two latter remedies, and merely proposing an injunction. This would be a slighter alteration of the law, and spare the prejudices of those whom no advantage can reconcile to the enabling a plaintiff to demand damages, and an account of "the unhallowed profits of a libellous publication;" but it would leave these unhallowed profits where they ought *still less* to be—in the hands of a libellous pirate.

(*a*) 6. Petersdorff Abr. 560-1. (*b*) April, 1822.

(1) Vide pages 8, 9, *ante*.---In *Macklin v. Richardson*, it was also decided, that the author has a property in an unpublished work, independent of the statute of Anne, which is capable of being protected by injunction. *Amb.* 694.

—he had repented, and become ashamed of his former sentiments; he wished to suppress their publication; and ought to have been allowed the exclusive dominion over his own manuscript.

SECTION IV.

Of Publications injurious to private Individuals.

The Courts of Equity will not assist an author, whose work contains a libel on private character. The criterion of exclusion may be stated to be the liability of the writer to an action for damages, or a prosecution for the libel.

A case in illustration of this principle was that of *Dr. Walcot,* who filed a bill against booksellers of the name of *Walker* for an injunction to restrain them from publishing two editions of his works, upon a dispute as to the construction of the agreement between the parties.

The defendants by their answer admitted that they had published in one of the editions some of the plaintiff's works, which they were not authorized to publish. As to that edition, therefore, they submitted.

The Lord Chancellor, in his judgment, observed, "If the doctrine of Lord C. J. Eyre is right, (and I think it is) that publications may be of such a nature that an author can maintain no action at law, it is not the business of this court, even upon the submission in the answer, to decree either an injunction, or an account of the profits of works of such a nature that the author can maintain no action at law for the invasion of that which he calls his property, but which the policy of the law will not permit him to consider his property. It is no answer that the defendants are as criminal. It is the duty of the court to know whether an action at law would lie; for if not, the court ought not to give an account of the unhallowed profits of *libellous* publications. At present, I am in total ignorance of the nature of the work, and whether the plaintiff can have any property in it or not. But I will see these publications, and determine upon the nature of them, whether there is question enough to send to law, as to the property in these copies; for if not, I will act upon that submission in the answer.

If upon inspection the work appears innocent, I will act upon that submission; if criminal, I will not act at all; and if doubtful, I will send that question to the law(1).

It seems doubtful whether an action could be maintained for destroying a picture containing a scandalous libel upon individuals, and which had been publicly exhibited; but it

(1) 7 Vesey, 1. 6 Petersdorff Abr. 557.

has been decided that the owner of such a libellous picture so destroyed, is, at most, only entitled to recover the value of the materials.

Thus, in the case of *Du Bost v. Beresford*, it appeared, that the picture in question, entitled *La Belle et la Bête*, or "Beauty and the Beast," was a scandalous libel upon a gentleman of fashion and his lady, who was the sister of the defendant. It was exhibited in a house in Pall Mall, for money, and great crowds went daily to see it, till the defendant one morning cut it in pieces.

Lord ELLENBOROUGH. The only plea on the record being the general issue of not guilty, it is unnecessary to consider whether the destruction of this picture might or might not have been justified. The material question is, as to the value to be set upon the article destroyed. If it was a libel upon the persons introduced into it, the law cannot consider it valuable as a picture. Upon an application to the Lord Chancellor, he would have granted an injunction against its exhibition, and the plaintiff was both civilly and criminally liable for having exhibited it. The jury, therefore, in assessing the damages, must not consider this as a work of art, but must award the plaintiff the value of the canvas and paint which formed its component parts(1).

SECTION V.

Of Piratical Works.

As the law will not protect works which are immoral and unlawful, because there can be no right of property in such productions, so also it refuses its aid in preserving the exclusive use of books which have been pirated from previous publications. The law will not assist the robber in multiplying his spoil.

We reserve to the third part of this book the full consideration of the subject of literary piracy. It will be sufficient, in this place, to state, generally, that the law not only withholds its protection from books which are *wholly pirated*, but from those which are, *in substance*, merely *copies* and *imitations*; or which, although in some parts different, yet are in general the same.

Thus in a book of *chronology*(2), though the same facts must be related, yet if the new work transcribes literally page after page, although other parts of it are original, the former author will be entitled to recover damages, and consequently the pirate would be excluded from proceeding against any one who had subsequently copied the passages thus illegally taken.

So also in the publication of *original poems*, together with

(1) 2 Camp. 511. (2) Trusler v. Murray, 1 East, 363, *note*.

others which had been *before published*, a Court of Equity will grant an injunction to restrain the publication(1), and it follows that the pirated part of the work will receive no protection.

A similar decision was made with respect to an *abridgment* of Cook's Voyage round the World(2). A *bona fide* abridgment or compilation is considered in the nature of an original work; but whole passages must not be transcribed to the injury of the original author, nor the work abridged in a merely colorable manner(3). It seems clear, that where these rules are violated, the law will not interfere between the first and subsequent pirates, or lend itself to the protection of property thus fraudulently obtained.

CHAP. V.

OF THE SPECIAL COPYRIGHT OF THE CROWN AND THE UNIVERSITIES, AND OF PUBLISHING PARLIAMENTARY AND JUDICIAL PROCEEDINGS.

SECT. I.—*Of the former prerogative Copyright in Law Books, Almanacs, and the Latin Grammar.*

In the review which we have taken of the progressive stages of the law in relation to copyright in general, we passed over the peculiar and special nature of *prerogative* copyright. Before entering on the present state of the law in this respect, we may advert briefly to its past condition, and set forth the instances in which the Universities and the Stationers' Company, as well as the Crown, claimed an exclusive right of printing; but which claims have been exploded by the learning and independence of the distinguished judges in recent times.

We avail ourselves of the language of Mr. ERSKINE in describing the monopoly of printing, which formerly was exercised by the Crown.

"On the first introduction of printing (says this distinguished advocate), it was considered, as well in England as in other countries, to be a matter of state. The quick and extensive circulation of sentiments and opinions which that invaluable art introduced, could not but fall under the gripe of Governments, whose principal strength was built upon the ignorance of the people who were to submit to them. The *press* was therefore wholly under the coercion of the Crown; and

(1) Case of Mason's Poems, *per Lord Bathurst.* (2) 1 East, 363, *note.*
(3) Vide p. 76 *ante*, and Part III. *post.*

all printing, not only of *public* books containing ordinances, religious or civil, but *every species of publication* whatsoever, was regulated by the King's proclamations, prohibitions, charters of privilege, and, finally, by the decrees of the Star Chamber.

"After the demolition of that odious jurisdiction, the Long Parliament, on its rupture with Charles the First, assumed the same power which had before been in the crown; and after the Restoration, the same restrictions were re-enacted, and re-annexed to the prerogative by the statute of the 13th and 14th Charles II., and continued down by subsequent acts till after the revolution."

"The expiration of these disgraceful statutes (in 1694), by the refusal of Parliament to continue them any longer, formed *the great æra of the liberty of the press in this country*, and stripped the crown of every prerogative over it, except that which, upon just and rational principles of Government, must ever belong to the executive magistrate, namely, the exclusive right to publish religious or civil constitutions; in a word, to promulgate every ordinance which contains the rules of action by which the subject is to live and to be governed(1)."

Amongst the works formerly claimed as exclusively belonging to the crown, or its patentees, were law books, almanacs, and the Latin grammar.

From the time of 26th Henry VIII. down to the 12th Anne, various patents were granted to different persons, giving them full power to print and re-print prerogative copies, in exclusion of all other persons.

The King's printer in England enjoys the benefit to be derived from printing the Acts of Parliament, and other documents of the state; and the King's printers for Scotland and Ireland possess similar patents.

The Universities of Oxford and Cambridge, in common with the King's printer, claim a right to print all Bibles to be circulated in England; and the Company of Stationers *formerly* exercised, in conjunction with the Universities, an exclusive power of printing almanacs.

We shall proceed to consider in their order the several works which were thus anciently monopolized under the charters and patents granted by the crown.

1st. *Of Law Books.*

The following were the reasons on which the monopoly

(1) Ridgway's Coll. 1st. vol.

in law books was attempted to be upheld, namely—that this privilege had been always allowed, which was a strong argument in its favor; although it could not be said to amount to a prescription, as printing was introduced within time of memory;—that it concerned the state, and was matter of public care;—that it was in nature of a proclamation, which none but the King could make;—that the King had the making of judges, serjeants, and officers of the law;—that though it could not be extended to a book containing a quotation of law, it applied to those in which the principal design was to treat on that subject(1).

The King's prerogative in law publications is now, however, treated as perfectly ridiculous(2). Nothing, indeed, could be more preposterous than the argument, that because the King appointed the judges, he had a monopoly in the publication of their decisions! It was urged, also, that as he paid for the composition of the year books, he was entitled to them on the ground of purchase. Mr. Justice YATES, however, in the cause of Millar v. Taylor(3) observed, that the expence of printing prerogative books was, "in fact, no private disbursement of the King, but done at the public charge, and formed part of the expences of Government."

It could hardly, he said, be contended, that the produce of expences of a public sort, were the private property of the King, when purchased with the public money. He could not sell or dispose of one of those compositions. How, then, could they be his private property, like private property claimed by an author in his own compositions?

Besides, the purchase by the King could only comprise the right of an individual author. He did not compose the works personally, and could only acquire such right as a subject was able to dispose of. It has never been contended that the mere act of purchasing a work, conferred on the purchaser of the manuscript a copyright beyond the interest

(1) *Roper* and *Streater*, 4 Bac. Ab. Art. "Prerogative."—In this case, Roper bought of the executors of Justice *Croke*, the 3rd part of his Reports, which he printed. Colonel Streater had a grant for years from the crown for printing all law books, and printed upon Roper, on which Roper brought an action on the statute 13th and 14th Car. II. c. 33. Streater pleaded the King's grant.

On demurrer, it was adjudged in B. R. for the plaintiff, against the validity of the patent; on these reasons, that this patent tended to a monopoly—that it was of a large extent—that printing was a handicraft trade, and no more to be restrained than other trades—that it was difficult to ascertain what should be called a law book—that the words in the patent, *touching or concerning the common or statute law*, were loose and uncertain—that if this were to be considered as an office, the grant for years could not be good, as it would go to executors and administrators, and that there was no adequate remedy in the way of redress in case of abuses by unskilfulness, selling dear, printing ill, &c.

But this judgment was reversed on a writ of error in Parliament.

(2) 4 Burr. 2315. 3 Pere Williams, 255. (3) 4 Burr. 2384.

possessed by the author. The duration or extent of the right can in no degree depend on the purchaser: if it did so, it would follow, that under the present Acts of Paliament the copyright in a book would continue for the life of the assignee, and not for the life time of the author; and a copyright might thus easily be perpetuated, by the author selling his interest to two or more persons, and on the death of one of them, the survivors might transfer the copy to others, and so on for ever.

2nd. Of Almanacs.

A patent was granted by James I. for the exclusive printing of almanacs, and the right continued to be insisted upon by the Universities and Stationers' Company as matter of prerogative, after the final decision of the general question of literary property in 1774.

The origin of the prerogative claim in these publications, is put upon the following curious reasons:—

1st. Because derelict.

2nd. Because almanacs regulate the feasts of the church(1).

In the year 1778, Mr. Carnan having made several improvements in the nature of the work, and published it on his own account, the Universities and the Stationers' Company filed a bill in Chancery to restrain the publication.

The court having doubted the legality of the patent, directed a case to the Common Pleas; the judges of which court, after two arguments, decided that the patent was void(2).

A bill was then brought in "to revest the monopoly in almanacs, which had fallen to the ground by the above-mentioned judgments in the King's Courts."

Mr. ERSKINE was heard against the bill at the bar of the House of Commons, and it was rejected by a majority of forty-five votes(3).

(1) Mod. 256. (2) 2 Blac. Rep. 1004.

(3) Vol. 37, *Journals*, 388. It is from the splendid speech on this occasion that we have made the extract at the commencement of this section.

In contrast to the title of the bill given to it by its proposer, Mr. Erskine facetiously adduced the following, as more truly characterizing its nature:—

"Whereas the Stationers' Company and the two Universities, for above a century last past, *contrary to law*, usurped the right of printing almanacs, in exclusion of the rest of His Majesty's faithful people, and have from time to time harassed and vexed divers good subjects of our Lord the King for printing the same, till checked by a late decision of the Courts of Law:

Be it therefore enacted, that this usurpation be made legal, and be confined to them in future."

"This would have been a curiosity indeed, and would have made some noise in the House, yet it is nothing but the plain and simple truth; the bill could not pass without making a sort of bolus of the preamble to swallow it in."

3rd. Of the Latin Grammar.

The claim to a prerogative copyright in the old Latin grammar, was grounded on the allegation that the work had been originally written and composed at the King's expence(1).

But this pretension, like that in favour of law books, is now considered as wholly untenable(2).

The late Sir W. D. Evans, in discussing the prerogative of the crown, well observes, that although it may be rather a matter of curiosity than one of practicel utility, the examination of the nature and foundation of the right will certainly lead to the conclusion, that such right could have had no legitimate origin upon any principles of the common law at present acknowledged. It seems, indeed, that the only occasion on which the validity of any of these patents was fully considered in a court of law as between the public and the crown, it was decided against them.

SECTION II.

Of the Prerogative Copyright in Acts of State.

The works in which a prerogative copyright is still retained, (though with regard to some of them most inconsistently) are the following:—

1st. Acts relating to the *state*, namely, the statutes, the King's proclamations, the orders of Council.

2nd. Acts relating to the *church*, namely, the liturgical and other divine service, and the *English* translation of the Bible.

In some of these the crown maintains, by its own printer, a *sole* copyright; and in others it is exercised *conjointly* with the Universities, under their respective charters.

1*st. Of the Statutes.*

On grounds of political and public convenience, it is said, that the King, as executive magistrate, has the right of promulgating to the people all acts of state and government(3).

Mr. Justice Yates. "The right of the crown to the sole and exclusive printing of what is called prerogative copies, is founded on reasons of religion or state. The only consequences to which they lead are of a natural and public concern, respecting the established religion or government of the kingdom.

(1) 4 Burr. 2329, 2401. (2) Ib. 2315. 3 Pere Williams, 255.
(3) 2 Blac. Com. 410.

Lord MANSFIELD considered the existence of prerogative copies as merely a modification of the general and common right of literary property.

He discussed at length the position that crown copies were founded solely on *property*, and said, that in Basket's case(1) they had no notion of the prerogative of the crown over the press, or of any power to restrain it by exclusive privileges, or of any power to control the subject matter upon which a man might write, or the manner in which he might treat of it. They rested upon property from the King's right of original publication. The copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does not belong to the King—it is common; but the English translation he bought, and therefore it has been concluded to be his property. His power rests in property. His sole right rests on the foundation of property in the copy by the Common Law. What other ground (said he) can there be for the King's having a property in the Latin grammar, (which is one of his most ancient copies) than that it was originally composed at his expence?

The exclusive right of printing Acts of Parliament and other matters of state, has been looked upon more favorably than the other branches of the prerogative in question.

Lord CLARE, in the case of Grierson v. Jackson(2), said he could very well conceive that the King should have a power to grant a patent to print the Statute Books, because it was necessary that there should be a responsibility for correct printing, and because copy can only be had from the Rolls of Parliament, which are within the authority of the crown.

Sir William D. Evans observes, that the legal right in this monopoly of the statutes, considered with relation to its origin, rests upon no juster principles than the exploded rights respecting the Latin grammar and almanacs. Previous to the invention of printing, the usual course was to send the statutes to be proclaimed by the Sheriffs. Then, as now, every subject was bound to have taken notice of the contents of them at his peril; and there is not the slightest trace of authority for a restriction of the employment of making manuscript copies, which, to the lawyers and judges of that day, must have been essentially necessary, although in case of any question arising judicially with respect to the contents of a statute, the original record, or some duly authenticated copy, would of course be resorted to; and the learned Annotator adds, that he cannot discern any legal principle upon which a discovery, that had the effect of facilitating the multiplication of copies, could limit and restrain that common right of producing such copies which previously existed. In fact (says he), this authority, originally claimed by the crown, had no particular

(1) 1 Bl. 105. 2 Burr. 661.

(2) Ridgway's Reports, 304.

relation to the benefit of affording to the public more accurate information upon the ordinances of Parliament, than could otherwise have been obtained; but was merely one amongst many other instances of the application of that general overwhelming system of monopoly, which is now reduced to very circumscribed limits, and supported only upon grounds and principles that in former times were never thought of.

We conclude this part of the subject by referring to the case of *Baskett* v. *The University of Cambridge*, which is always quoted in support of the prerogative copyright; but it is observable that the parties in this litigation were equally interested in upholding the *general* prerogative, though they had quarreled about its exercise in that *particular instance*.

In that case the plaintiffs, who were the King's printers, brought a bill into the Court of Chancery to restrain the defendants from printing or selling a book entitled, "An exact Abridgment of all the Acts of Parliament relating to the Excise on Beer, &c." It was sent into the King's Bench for the opinion of the court upon the Acts of Parliament and Patents.

Several letters patent were insisted on by the plaintiffs, the last bore date in the 12th year of Queen Anne, by which the *sole* power of printing all, and all sorts of abridgments of all and singular statutes and Acts of Parliament, was given to the grantees, with a *prohibition* against all others.

On the other hand, the defendants contended that by a patent granted in the 26th year of Henry VIII. they might lawfully print, within the University, all manner of books approved by the Chancellor and Vice-Chancellor, and three doctors, and might put them to sale wherever they pleased; and that by a patent dated 3 Car. I. the King confirmed that right to the University, *notwithstanding* any grant or prohibition contained in the subsequent letters patent, or any of them.

The case was argued four times during the space of six years, and the following certificate was made by Lord Mansfield and the other judges.

"Having heard counsel on both sides, and considered of this case, we are of opinion that during the term granted by the letters patent, dated the 13th of *October*, in the 12th year of the reign of Queen *Anne*, the plaintiffs are entitled to the right of printing Acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the crown.

"But we think that by virtue of the letters patent, bearing date the 20th day of *July*, in the 26th year of the reign of King *Henry* VIII., and the letters patent bearing date the 6th of February, in the 3rd year of the reign of King *Charles* I. the Chancellor, Masters, and scholars of

the University of *Cambridge* are entrusted with a *concurrent authority* to print Acts of Parliament, and abridgments of Acts of Parliament, within the said University, upon the terms in the said letters patent(1).

Of the Statutes published with Notes and Selections of the Statutes.

It seems to have been agreed that the privileged copies may be printed by others than those having the patent right, *if accompanied by bona fide notes.*

In the case of Baskett v. Cunningham(2), the defendant, in conjunction with several booksellers, was publishing in weekly numbers A Digest of the Statute Law methodized under alphabetical heads, with large notes from Lord Coke, and other writers on the law. He had contracted with Strahan and Woodfall, the proprietors of the patent for printing law books, to print this work, and it was printed at their press. Baskett, the King's printer (whose patent extended to all statutes), filed a bill for an injunction. It was urged that the book was not within the meaning of the letters patent, being a work of labor and industry, and the method entirely new.

The Lord Chancellor, however, was of opinion, that the work was within the patent of the King's printer, and that the notes were merely collusive. But he would not interfere between the two contending patents in the summary method of injunction, but left them to adjust their respective rights in the course of law. He, therefore, ordered an injunction to issue to restrain the proprietors from printing at any other than at a patent press; which, as Woodfall and Strahan were strictly in league with Baskett, and were at that time jointly concerned in a new edition of the Statutes, was equivalent to a total injunction, the law printers finding means to elude their contract with Cunningham.

2nd. Of Proclamations and Orders in Council.

Though it was decided in the case of Baskett v. The University of Cambridge(3), that the University had, under letters patent, a concurrent authority with the Crown to print Acts of Parliament, and abridgments of Acts of Parliament, within the University, it seems this authority has not been extended to the King's Proclamations, Orders in Council, and other State Papers. These latter Acts of State would, therefore, appear vested in the king's printer solely.

(1) Baskett v. University of Cambridge, 1 Bla. Rep. 105. 2 Burr. 660.
(2) 1 Bl. Rep. 370. 2 Eden, 137. 2 Evans's Stat. 622.
(3) 2 Burr. 661. 1 Blac. Rep. 105, cited page 105 *ante.*

SECTION III.

Of the Copyright of the KING *as head of the* CHURCH.

1st. *Of the English Translation of the Bible.*

The King's prerogative in the exclusive printing of the Bible, is confined to the *English translation*; which, it is said, he *bought*, and, *therefore*, it has been concluded to be his property(1).

Mr. Justice BLACKSTONE rests the claim of the King on the ground as well of his being the Head of the Church, as of original purchase. "On these two principles *combined* (he says), the exclusive right of printing the translation of the Bible is founded(2)."

The assumption of the private purchase, however, being now altogether abandoned, and the claim depending entirely on the exercise of the prerogative, during a period insufficient to constitute a prescriptive right, it seems by no means clear that the patent could be sustained in a court of law.

There are conflicting authorities on the subject; and the only instances in which the prerogative has been apparently upheld, were on occasions of disputed title between rival patentees, neither of whom were competent to moot the general question upon the footing of the public interest.

Upon an application for an injunction against printing an edition of the Bible in numbers, with prints and notes, Lord CLARE, the Chancellor of Ireland, asked if the validity of the patent had ever been established at law? and said, he did not know that the Crown had a right to grant a monopoly of that kind.

In the course of the discussion he made the following observations. "I can conceive that the King, as the Head of the Church, may say that there shall be but one man who shall print Bibles and Books of Common Prayer for the use of churches and other particular purposes; but I cannot conceive that the King has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in the revealed religion; if he had, it would be in the power of the patentee to put what price he pleased upon the book, and thus prevent the instruction of men in the Christian religion." "If ever there was a time which called aloud for the dissemination of religious knowledge, it is this; and, therefore, I should with great reluctance decide in favor of such a monopoly as this, which must necessarily confine the circulation of the book." "As to very particular purposes, I have no doubt that the patentee has an exclusive right to print Bibles and Prayer Books; but unless I am bound down very strictly, I will not determine upon

(1) 4 Burr. 2405. (2) 2 Comm. 410.

motion that no man but the King's printer has a right to print such works as these."

"In giving judgment he said, that the case which had been mentioned seemed to intimate that it never had been solemnly decided how far the prerogative extends to give a sole and exclusive right of printing Bibles. Many of the old cases upon the subject were determined upon the principle of the Licencing Act;" and the motion was refused(1).

A contrary decision, however, was pronounced some years afterwards in the case of the Universities of Oxford and Cambridge v. Richardson(2), in which an injunction against the King's printer in Scotland (who had a patent for the sale of Bibles) was granted, restraining him from printing or selling them in *England*.

This took place on an interlocutory motion before the hearing of the cause, on the ground that possession, under color of title, was sufficient to warrant the injunction, until it was proved at law that there was no real title. In the course of the case it appeared that in the year 1718, Sir Joseph Jekyll, as Master of the Rolls, had granted an injunction in a similar case, which was supported upon appeal before the Lord Chancellor; and also that a decree of the Court of Session had, in the year 1717, been reversed by the House of Lords in favor of the King's printer in England, confining the right of the Scotch printer to Scotland.

In this case, also, it is evident that the general principle could not be investigated between patentees who derived their title, if valid, from the same source.

Of the Bible in the Original Languages, and portions of the English Translation.

Neither the Hebrew Bible, the Greek Testament, nor the Septuagint, belong to the King. Lord MANSFIELD (as before referred to) pronounced them to be unquestionably in common; and added, that if any man should turn the Psalms, or the writings of Solomon or Job, into verse, the King could not stop the printing or the sale of such a work. It would be the author's work. "The King has no power or control over the subject matter—his power rests in property."

Neither has any attempt ever been made to prevent any person from publishing a translation of one book, or of a *part* of the Bible, from the original text, and enjoying a copyright in his production(3).

(1) Grierson v. Jackson, Ridgway's Rep. 304. 2 Evans's Stat. 620.
(2) 6 Vesey, 689.
(3) Godson on Copyright, 325.

2nd. *Of the Common Prayer Book, &c.*

Upon the same principle as Head of the Church, the King has a right to the exclusive publication of Liturgical and other books of divine service.

In *Eyre* and *Strahan v. Carnan*, which was decided in the Court of Exchequer, a bill was filed to restrain the defendant from publishing a *form of prayer*, which had been ordered by His Majesty to be read in all churches.

The plaintiffs were the King's printers. The grant which was read, imported to be a grant of the office of printer to His Majesty, and his successors, of (amongst other things) all Bibles and Testaments in the English language; and of all Books of Common Prayer, and Administrations of the Sacraments, and other Rites and Ceremonies of the Church of England; in all volumes whatsoever heretofore printed by the King's printer, or to be printed by his command; and of all other books which he, his heirs or successors, should order to be used for the service of God in the Church of England.

The bill stated, that in December, 1779, a form of prayer was ordered by His Majesty to be used in all Churches and Chapels throughout England and Wales, upon the 4th of February, 1780; that it was printed by the plaintiffs, and a sufficient number thereof circulated for sale at sixpence each, which was a reasonable price, and at which they had been formerly sold; that the defendant had printed and sold a great number of them.

The court held that the grant was founded on public convenience, was supported by long usage, and the injunction was accordingly continued(1).

SECTION IV.

Of publishing Proceedings in Parliament and Courts of Justice.

1st. *Of Parliamentary Proceedings.*

Both Houses of Parliament consider a publication of their proceedings as a breach of privilege. By sufferance, however, the reports of the debates are allowed to appear in the diurnal and other periodical works. Not only the speeches of the members, but copies of documents, printed at the direction of either House, are thus circulated for the information of the

(1) E. T. 1781. 5 Bac. Ab. 597.

public; and it seems that the Courts of Justice will not interfere to restrain such publications, even when the matter comprised in them is libellous, provided it be a true account of the proceedings(1).

Thus the same reasons which justify the publication of judicial proceedings, were held to warrant those of the senate.

It is, said Mr. Justice LAWRENCE, of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated; and they would be deprived of that advantage if no person could publish the proceedings without being punished as a libeller. Though the defendant in the case before the court was not authorized by the House of Commons to publish the report in question, yet as he only published a true copy of it, the rule for a criminal information was discharged(2).

2nd. Of Judicial Proceedings.

The House of Lords, in its judicial capacity, exercises an exclusive privilege in publishing its own proceedings as the supreme court of judicature. The course usually adopted by the House is to direct the Lord Chancellor to cause the publication of the proceedings, and to prohibit all other persons.

Lord BATHURST, in a case of Bathurst v. Kearsley, granted an injunction in favor of the printer under his authority, of the trial of the Duchess of Kingston(3).

Lord ERSKINE, upon the precedent of the last decision, ordered an injunction, until the hearing in the case of Gurney v. Longman, with respect to the trial of Lord Melville, at the same time intimating, that unless he had a strong impression that at the hearing he should continue of the same opinion, and should grant a perpetual injunction, he would not then grant an injunction(4).

But on the day of his quitting office as Lord Chancellor, he desired that he should be understood that he had not delivered any judgment, further than by granting the injunction until the hearing upon the precedent of the former case of Bathurst v. Kearsley, and should therefore consider the question as open in any future stage. A demurrer was afterwards put in, but was never argued, a compromise taking place.

In the Court of Common Pleas, in the time of C. J. EYRE, an action was brought by *Currie* against *Walter*, the proprietor of "The Times," for publishing a supposed libel, which consisted in merely stating a speech made by a counsel on a motion for leave to file a criminal information.

The CHIEF JUSTICE, who tried the cause, ruled, that this was not a libel, nor the subject of an action, it being a true account of what had passed in court; and in this opinion the Court of Common Pleas

(1) 8 T. R. 296-7. Godson, 253, 341. But see 7 East, 503.
(2) 8 T. R. 298. (3) Cited 13 Vesey, 493. (4) 13 Vesey, 493.

afterwards, on a motion for a new trial, all concurred, though some of the judges doubted whether or not the defendant could avail himself of that defence on the general issue.

In a subsequent case in the Court of King's Bench, Mr. Justice LAWRENCE entered somewhat fully into the question, and said, the proceedings of courts of justice are daily published, some of which highly reflect on individuals. Many of these proceedings contain no point of law, and are not published under the authority or the sanction of the courts, but they are printed for the information of the public.

Though the publication of such proceedings (he continued) may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings(1).

In a later case, Lord ELLENBOROUGH and Mr. Justice GROSE observed, that it must not be taken for granted that the publication of every matter which passes in a Court of Justice, however truly represented, is, under all circumstances, and with whatever motive published, justifiable; but that doctrine must be taken with grains of allowance.

It often happens, said Lord ELLENBOROUGH, that circumstances necessary for the sake of public justice to be disclosed by a witness in a judicial inquiry, are very distressing to the feelings of individuals on whom they reflect: and if such circumstances were afterwards wantonly published, I should hesitate to say that such unnecessary publication was not libellous, merely because the matter had been given in evidence in a Court of Justice(2).

It seems at all events clear, that the several Courts of Justice possess the power of restraining the publication of a trial *during its progress*.

Thus in the case of *The King* against *Clement*(3), it was held, that a court of general gaol delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience of such order by fine.

The facts were as follows: on the 17th of April, 1820, Arthur Thistlewood was put upon his trial at the Old Bailey, upon an indictment for high treason.

Lord Chief Justice ABBOTT, one of the justices, stated publically before the commencement of the trial, that as there were several persons charged with the offence of high treason by the same indictment, whose trials were likely to be

(1) 8 Term Rep. 298. (2) 7 East, 503. (3) 4 Barn. and Ald, 218.

taken one after another, he thought it necessary strictly to prohibit the publishing of any proceedings of that or any other day, until the whole trial should be brought to a conclusion, and that it was expected all persons would attend to the admonition.

This order was infringed by the *Observer* Newspaper, and the proprietor was fined £500 for a contempt of Court.

An appeal was subsequently made to the King's Bench, and a rule nisi obtained to remove the case by certiorari into that court. On the argument for a rule absolute, the following judgment was pronounced by the remaining judges of the court---the Chief Justice and Mr. Justice BEST (before whom the order was made) having briefly stated their adherence to their former opinions.

BAYLEY, J. As to the validity of the order, it was contended in argument, first, that the court had no power to make an order prohibiting the publication of these trials pending the proceedings. Now, in order to judge of that, it becomes necessary to consider what the nature of the proceedings was. An indictment had been found against a number of individuals for the crime of high treason, and they were then about to be tried. The whole trial of all these individuals constituted one entire proceeding; for if they had not severed in their challenges, the prisoners would have been tried all at once. In point of fact, however, they did sever in their challenges, and were tried seriatim. It could not, therefore, be said, that the whole proceedings was terminated until the last of those prisoners had taken his trial. Now the court before whom the trial was about to take place, was a court of general gaol delivery, and had authority to make any order which they might judge to be necessary, in order to preserve the purity of the administration of justice, in the course of the proceedings then depending before them, and to prohibit any publication which might have a tendency to prevent the fair and impartial consideration of the case. On the present occasion it occurred to the court that it would be of great importance, with a view both to the interest of the prisoners and that of the public, that a publication like the present should be prohibited until after the termination of all the trials; and if upon the first trial one or more of the witnesses had been of doubtful character, it might have been of the utmost importance to keep them apart from the rest, and to examine carefully whether upon each successive trial they continued to give the same account which they did upon the first. Now all this would be prevented if by a publication like the present such persons were enabled to see a printed account of the trial, and to read over not only their own evidence, but also that of the other witnesses who had been examined. This would give them an opportunity of explaining those parts of their statement which might be at variance with the other facts proved in the case. But it is argued, that if the court have this power of prohibiting publication, there is no limit to it, and that they may prohibit altogether any

publication of the trial. I think that does not follow. All that has been done in this case is very different; for the prohibition here has only been until the whole trial was completed.

Holroyd, J. This was an order made in a proceeding over which the court had judicial cognizance: the subject matter respecting which it was made, was then in the course of judicature before them. The object for which it was made was clearly, as it appears to me, one within their jurisdiction, viz. the furtherance of justice in proceedings then pending before the court; and it was made to remain in force so long, and so long only, as those proceedings should be pending before them. Now I take it to be clear that a Court of Record has a right to make orders for regulating their proceedings, and for the furtherance of justice in the proceedings before them, which are to continue in force during the time that such proceedings are pending. It appears to me that the arguments as to a further power of continuing such orders in force for a longer period, do not apply. It is sufficient for the present case that the court have that power during the *pendency of the proceedings*. This order was made to delay publication only so long as it was necessary for the purposes of justice, *leaving every person at liberty to publish the report of the proceedings subsequently to their termination*. I am, therefore, of opinion that this was an order which the court had power to make.

SECOND PART.

OF THE LIBRARY TAX,

AND

REGISTRY AT STATIONERS' HALL.

CHAP. I.——ANALYSIS OF THE STATUTE 54 GEO. III. CAP. 156.

SECT. I.——*Of the Tax on Original Works.*

The first section of the act commences by reciting the statute of Anne, so far as relates to the delivery of nine copies of each book, on the best paper, for the use of the several libraries therein mentioned; and after also reciting the 41st Geo. III. cap. 107, in regard to the additional two copies for Ireland, it is then stated, that it is expedient that future copies of books should be delivered to the libraries therein mentioned, with the modifications provided by the act.

It then proceeds to repeal so much of the acts of Anne, and 41st Geo. III. as required the delivery of the copies.

The following is the preamble of the statute, and the enacting part of the first clause.

Whereas by an act, made in the eighth year of the reign of Her late Majesty Queen Anne, intituled An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned, it was among other things provided and enacted, that nine copies of *each book* or books, *upon the best paper*, that from and after the tenth day of April, one thousand seven hundred and ten, should be printed and published as in the said act mentioned, or reprinted and published with additions, should, by the printer and printers thereof, be *delivered to the warehouse-keeper* of the Company of Stationers for the time being, at the hall of the said company, *before such publication* made, for the use of the Royal Library, the libraries of the Universities of Oxford and Cambridge, the libraries of the four Universities in Scotland, the library of Sion College in London, and the library of the Faculty of Advocates at Edinburgh; which said warehouse-keeper is by the said act required to deliver such copies for the use of the said libraries; and that if any proprietor, bookseller, or printer, or the said warehouse-keeper, should not observe the directions of the said act therein, that then he or they so making default in not delivering the said printed copies, should forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered: And whereas by an act made in the forty-first year of the reign of His present Majesty, intituled *An act for the further encouragement of*

-ing *in the United Kingdom of* Great Britain and Ireland, *by secu.* · *the copies and copyright of printed books to the authors of such books* .. *their assigns, for the time herein mentioned,* it is amongst other things provided and enacted, that in addition to the nine copies required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each and every book and books *which shall be entered in the register books* of the said company, two other copies shall *in like manner* be delivered for the use of the library of the College of the Holy Trinity, and the library of the Society of the King's Inns in Dublin, by the printer and printers of all and every such book and books as should thereafter be printed and published, and the title of the copyright whereof should be *entered* in the said register book of the said company: And whereas it is expedient that copies of books hereafter printed or published, should be delivered to the libraries herein-after mentioned, *with the modifications* that shall be provided by this act; may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said several recited acts of the eighth year of Queen Anne, and of the forty-first year of His present Majesty, as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof to the warehouse-keeper of the said Company of Stationers, for the use of any of the libraries in the said act mentioned, and as requires the delivery of the said copies by the said warehouse-keeper for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies, shall be, and the same is hereby, repealed.

In the second section it is enacted, that eleven printed copies of the whole of every book, upon the paper on which the largest impression shall be printed for sale, together with maps and prints, *on demand made in writing at the publisher's within twelve months,* shall be delivered to the warehouse-keeper of the Stationers' Company, within *one month* after such demand, for the use of the libraries following: videlicet,

The British Museum,
Sion College,
The Bodleian Library at Oxford,
The Public Library at Cambridge,
The Library of the Faculty of Advocates at Edinburgh,
The Libraries of the four Universities of Scotland,
Trinity College Library, and
The King's Inns Library, at Dublin.

And the warehouse-keeper is required, within *one month* after such deposit, to deliver the same for the use of the libraries.

We here present so much of the second section as relates to the preceding analysis.

II. And be it further enacted, that eleven printed copies of the *whole* of every book, and of every volume thereof, upon the paper upon which the *largest number* or impression of such book shall be printed for sale, together with *all maps and prints* belonging thereto, which, from and after the passing of this act, shall be printed and published, *on demand* thereof being made in writing to, or left at the place of abode of, the publisher or publishers thereof, at any time *within twelve months* next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian or other person thereto authorized by the persons or body politic and corporate, proprietors or managers of the libraries following, *videlicet*, the *British Museum*, *Sion College*, the *Bodleian Library* at *Oxford*, the *Public Library* at *Cambridge*, the library of the *Faculty of Advocates* at *Edinburgh*, the libraries of the four Universities of *Scotland*, *Trinity College Library*, and the *King's Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively, within *one month after demand* made thereof in writing as aforesaid, to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall, and he is hereby required to, receive at the hall of the said Company, for the use of the library for which such demand shall be made, within such twelve months as aforesaid; and the said warehouse-keeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library.

SECTION II.

Of the Tax on Second and subsequent Editions.

By the third section it is provided, that no copy shall be demanded or delivered for the use of the libraries of any second or subsequent edition of any book, unless the same shall contain *additions or alterations*.

And such additions or alterations only, if printed in an uniform manner with the former editions of the book, may be delivered for the use of the libraries entitled to such former editions.

The following is the clause in full.

III. Provided always, and be it further enacted, that no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries herein before mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any edition after the first, of any

book so demanded and delivered as aforesaid, shall contain any addition ar alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid.

SECTION III.

Of Periodical Publications.

In the case of magazines, reviews, or other periodical publications, it is provided that it shall be sufficient to make such entry in the register book of the Company, within *one month* next after the publication of the first number or volume of such magazine, review, or other periodical publication(1).

SECTION IV.

Of Maps and Prints and the quality of Paper.

All maps and prints belonging to the works delivered, must accompany them(2).

The copy of every book that shall be demanded by the British Museum, (according to the third section) must be delivered of the *best paper* on which such work shall be printed.

The copies for the other public libraries are directed to be upon the paper on which the largest number or impression shall be printed for sale(3).

SECTION V.

Of the Registry of Books at Stationers' Hall.

In order to ascertain what books shall be from time to time published, it is by the fifth section enacted, that publishers shall enter them at Stationers' Hall, within *one calendar month* after the day on which they shall be first sold, published, advertised, or offered for sale within the *bills of mortality*, or within *three* calendar months for books published in any other part of the United Kingdom, and one copy on the best paper to be delivered for the use of the British Museum.

The payment for each entry in the register book of the Stationers' Company, is two shillings, and it may be inspected

(1) Section V. 54 Geo. III. (2) Section II. Ib. (3) Ib.

at all seasonable times on the payment of one shilling to the warehouse-keeper.

A certificate of the entry may also be obtained on paying one shilling.

The clause thus far referred to, is as follows:

V. And in order to ascertain what books shall be from time to time published, be it enacted, that the publisher or publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall, within one calendar month after the day on which any such book or books respectively shall be first sold, published, advertised, or offered for sale, within the bills of mortality, or within three calendar months if the said book shall be sold, published, or advertised in any other part of the United Kingdom, enter the title to the copy of every such book, and the name or names and place of abode of the publisher or publishers thereof, in the register book of the Company of Stationers in London, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such register book, and deliver *one copy, on the best paper as aforesaid, for the use of the British Museum*; which register book shall at all times be kept at the hall of the said company; for every of which several entries the sum of two shillings shall be paid, and no more; which said register book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehouse-keeper of the said Company of Stationers; and such warehouse-keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid.

SECTION VI.

Of the Duty of the Warehouse-keeper.

The sixth clause enacts, that the warehouse-keeper of the Company shall, without any greater interval than three months, transmit to the libraries correct lists of the books entered, and on request of the libraries call on the publishers for the copies to be demanded.

The wording of the clause is as follows:

VI. And be it further enacted, that the said warehouse-keeper of the Company of Stationers shall from time to time, and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before mentioned, correct lists of all books entered in the books of the said company, and not contained in former lists; and that on being required so to do by the said librarians or other authorized person, or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

SECTION VII.

Of the Penalties for non-registration.

In case the titles of books are not duly made in the Stationers' Registry within the period prescribed, the publisher is liable to forfeit five pounds, together with eleven times the price at which the book shall be sold or advertised, to be recovered, with full costs, by the party injured, in any Court of Record.

The words of the clause are the following:

And in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books, within the said calendar month, or three months, as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with *eleven times the price* at which such book shall be sold or advertised, to be recovered, together with full costs of suit, by the person or persons, body politic or corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed(1).

SECTION VIII.

Of the Place of delivering the Books.

If any publisher be desirous of delivering the copies at the libraries entitled to them, he is authorized to do so under the 7th section, which is in the following terms:

VII. Provided always, and be it further enacted, that if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to deliver the same at such library, to the librarian or other person authorized to receive the same (who is hereby required to receive and to give a receipt in writing for the same); and such delivery shall, to all intents and purposes of this act, be held as equivalent to a delivery to the said warehouse-keeper.

SECTION IX.

Of the Penalties for non-delivery.

Publishers or the warehouse-keeper making default in not delivering or receiving the copies, are liable by the second section to forfeit the value of the printed copies, and five pounds for each copy not delivered, with full costs of

(1) Sec. V. 54 Geo. III. c. 156.

suit, to be recovered by the party injured, who is authorized to sue in any Court of Record.

The conclusion of this clause of the act is as follows:

And if any publisher, or the warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons, body politic or corporate, is or are now hereby authorized to sue by action of debt or other proper action, in any Court of Record in the United Kingdom.

It is provided by the fifth section of this act, that no failure in making any entry, shall in any manner affect any copyright, but shall only subject the person making default to the penalty under the act.

For the other clauses of the act regarding the duration of copyright, we refer to the first part of this book(1).

CHAP. II.

OF THE CONSTRUCTION OF THE ACT.

SECT. I.——*Of Works included in the Act.*

It does not appear that any case has been authentically reported since the passing of the act relating to its judicial construction, until the commencement of the present year.

The only previous occasion on which the claim of the public libraries was brought into litigation, was in the year 1812, when it was decided that the copies must be delivered, though the work should not have been entered at Stationers' Hall. This solitary decision, pronounced in the absence of one of the judges(2), we have fully stated in the first book(3).

In addition to which, it may be here observed, that the University of Cambridge claimed, in that case, to be entitled to a copy of the book on the *best paper*; and it is stated in the margin of the report(4),

(1) Page 55, *ante*. (2) Mr. Justice *Grose*. (3) Vide page 55, *ante*.
(4) 16 East, 317. The Chancellor, Masters and Scholars of the University of *Cambridge v. Bryer*.