THE

LAW OF LITERATURE

REVIEWING

THE LAWS OF LITERARY PROPERTY IN MANUSCRIPTS; BOOKS, LECTURES, DRAMATIC AND MUSICAL COMPOSITIONS; WORKS OF ART, NEWSPAPERS, PERIODICALS, &C.; COPYRIGHT TRANSFERS, AND COPYRIGHT AND PIRACY; LIBEL AND CONTEMPT OF COURT BY LITERARY MATTER,

ETC.

WITH AN APPENDIX OF THE AMERICAN, ENGLISH, FRENCH, AND GERMAN STATUTES OF COPYRIGHT

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THE LAW OF LITERATURE.

BOOK III.

OF PROPERTY IN LITERARY COMPOSITION AFTER PUBLICATION.

CHAPTER I.

OF COPYRIGHT.

208. Before the invention of the art of printing, we have seen that literary compositions were published,[1] either by delivery, by word of mouth, or by a laborious and careful copying of the manuscript upon parchment, which was then wound upon rollers into a volume or book. Still later, writings were published by being inscribed upon parchment, and scattered broadcast along the highways, or over the fields. Says the outlaw's song of Trail le Baston:[2]

[1] The German word which corresponds to the English "publish," signifies not only a "giving out," but an "appearance," or a "knowledge," such as could only be possessed by copies of the publication being issued. A book, they say, is "ausgegeben," when it has been issued from the press. It is only fully published when it has "appeared," "erscheinen." Vid. Klostermann,—"Das Urheberrecht und das Verlagsrecht," § 24, p. 248.

[2] Date of Edward I. See Foss's Judges of England, 30 b. And see also Darcy v. Markham, Hobart, 120; Political Songs of England, from John to Edward I., published by Thomas Wright, for the Camden Society, 1839; London Quarterly Review, April, 1857.

"Escrit estoit en parchemyn pur mont remember
Egitté en haut chemyn qe um le dust trover."

This method of publication seems to have been employed until quite the sixteenth century. We find mention of "a libel or book entitled 'The Supplication of Beggars,' thrown and scattered at the procession in Westminster, on Candlemas day (2 February, 1562), before King Henry the Eighth, "for him to read and peruse"; and of Wolsey, complaining to that king, "of divers seditious persons having scattered abroad books." So, too, Burdett was tried "for conspiring to kill the king and prince by casting their nativities, fortelling the speedie death of both, and scattering letters containing the prophecy among the people."[1] Copyright is a modern contrivance by which an author may, if he will, still scatter his productions to the four winds, and yet retain, if he will, the exclusive control over them, and over their further multiplication. It is a provision by which the contents of the scattered page are still his (disconnected from any possession in plate, or type, or paper, or in any other physical existence[2]), constituting a property in which he can traffic, and which he can buy and sell and bestow.[3]

209. The privilege of an author to the exclusive sale of his works for a limited number of years, although practically in the nature of a monopoly, is not a monopoly in the odious meaning of the term.

[1] Cro. Car. 121; Foss's Judges of England, 9.

[2] See remarks of Thompson, J., in Stevens v. Cady, 14 How. 530; Stowe v. Thomas, 9 Am. Law Reg. 228.

[3] *Ante*, vol. i. pp. 15, 16. "By section 9 of the act of congress of 1831, no new right is secured or conferred, but simply a remedy for the violation of an existing right in another form." Pierrepont v. Fowle, 2 Wood & M. 43; Woolsey v. Judd, 4 Duer, 379; Palmer v. Dewitt, 7 Am. 480; 47 N. Y. 532.

A monopoly proper is a right given to one individual to produce or traffic in a commodity which others are fully as able to produce or traffic in as he, if permitted to do so. A monopoly is a rule against competition. But there can be no competition in the productions of a man's own brain. A man has, by natural law, a right to the exclusive power of first disposing of his own productions or manufactures; and the pursuit and enjoyment of that exclusive right can never be a monopoly.[1] The author only has given him, by law, what in morality, equity, and good conscience, he had before. Or, to speak more accurately, the law gives him a method of asserting and protecting his right. Statutes of copyright only shift the burden of proof in favor of the author.

That copyright laws are beneficial to the public, as well as to the author, cannot be questioned. Rich and vast as are our stores of literature, how much richer and vaster might they have been, if the first English copyright act had been the act of Elizabeth instead of the act of Anne;[2] or if the days of Chaucer, no less than the days of Dryden, had been enlightened by such protective legislation!

It is not improbable that we owe to the fact, that, in his day, a manuscript or published work, was practically without protection and not to be intrusted beyond the writer's hand, that no authentic and authoritative text of Shakespeare exists, and nothing but inaccurate, interpolated, and expurgated texts of Fletcher, Beaumont, Webster, and a score of other

[1] See Bentham's Works (by Bowring), Edinburgh, William Tait, 1843, vol. i. p. 136. And see Thompson, J., in Blunt v. Patten, 2 Paine, 395; *ante*, vol. i. p. 19; Stowe v. Thomas, 5 Am. Law Reg. 228.

[2] The first English copyright act is known as 8 Anne, c. 19.

contemporary writers. So long as a service to literature is a service to the people, copyright laws cannot be classed as mere individual monopolies. The only property which is reserved to the author, and which the law gives him, is the exclusive right to multiply copies of that particular combination of character which exhibits, to the eye of another, the ideas he intends to convey.[1]

210. It was settled in the year 1769,[2] after long and nice consideration, and elaborate and careful argument as to the nature of the property which an author has in his work, that such property consists in the "right of copy," that is, in the sole right of printing, publishing, and selling his literary composition or book. And not that he has such a property in his original conceptions, that he alone can use them in the composition of a new work, or clothe them in a new dress, by means of epitomization, translation, or abridgment.[3] It was furthermore declared, in that renowned controversy, that the right of an author to control his copy exists by statute; although, as we have urged, the right to the copy itself, is a moral and a natural one. But it is not worth while insisting on the distinction. If the statute right had opposed the moral right, it would have been time to protest. As it did not,- -but only, by superseding, confirmed and declared it,—it is to be praised and accepted. *Longum est iter per precepta—*

[1] Stowe v. Thomas, 9 Am. Law Reg. 228.

[2] *I.e.*, in the leading cases of Millar v. Taylor and Donaldson v. Beckett, 4 Burr. 2303.

[3] Stowe v. Thomas, 5 Am. Law Reg. 228, 230; Clayton v. Stone, 2 Paine, 383; following Donaldson v. Beckett, 4 Burr, 411; Dudley v. Mayhew, 3 Const. 12; Wheaton v. Peters, 8 Pet. 661.

Breve et efficax per statuta.[1] In the United States this statute law, under and by virtue of which alone the author has exclusive property or copyright in his published production, consists of acts of Congress. In passing the copyright act, congress did not legislate merely in reference to existing rights. It did not merely sanction—it created a right.[2]

211. It was not to be supposed that traces of the peculiar legislation of which we are treating, should have made their appearance at a very early date. So long as the mechanical or other processes of multiplication were cumbersome and tedious, there was no necessity for it. The works of the Roman author, as we have seen, were published by being transcribed from the waxen tablet, upon which he had traced with his stylus, to sheets of parchment, which, when exposed for sale, were covered with skins smoothed with pumice stone,[3] and annointed with some fragrant oil[4] to aid in their preservation, with a ball or boss of wood, bone, horn, or other durable material, attached to the outside for security and ornament.[5]

Under this slow and laborious process of book-making, it does not seem unnatural that the Institutes,

[1] Attributed to Seneca:

"Ut monitus caveas, ne forte negoti
Incutiat tibi quid sanctarum inscitia legum."—Horace.

[2] Wheaton v. Peters, 8 Pet. 661.

[3] 1 Horat. Epit. 1, 20; Plin. xxxvi. 21, 23, 42; Catull, xx. 8; Tibull, iii. 1, 10.

[4] Posse lindena cedro, et levi servanda cupresso.—Hor. Art. Poet. 332.

[5] Called *umbillicus*, from its resemblance to that part of the human body (Hor.Epod. xiv. 8), or cornæ (Martial, xi. 108, Ovid Inst. i. 1, 8). The present form of a book was invented by Julius Cæsar, who divided his letters to the senate into pages; and folded them as we do now. Suet Caes. 56; Suet Aug. xiv. 53; Tib. xviii, 66, cl. 15, N. 15; Domit. 17; Martial, viii. 31.

while recognizing the subject-matter of a writing, as distinguished both from the material upon which it was inscribed, and from the manual labor involved in the inscription,[1] should have apparently made no effort to protect that property from infringement. So long as the published volume of his works was nothing more than an engrossed copy of his manuscript, the author's protection existed in the length and tediousness of the processes by which alone his works could be multiplied; the unprofitable nature of the wrong-doing; and, without doubt, as well in the "*sic vos non vobis*," *i.e.*, the social ignominy attending the discovery of the plagiarist; for, said Martial:

> Mutare dominum non potest liber notus
> Sed pumice ala frente, si quis est nondum
> Nec umbillicus cultus, atque membrana
> Mercare tales adeo, nec sciet quisquam.
> Aliena quio quis recitat et petit famam
> Non emere librum, sed silentium debet.[2]

When, however, the invention of printing had made the multiplication of copies of a published work a comparatively trifling task, and the revival and diffusion of learning had added a pecuniary value to such multiplicates, this branch of natural law could be no longer neglected, and clamored for recognition upon the statute book.

212. The earliest instance of a protected copyright for printed books, was granted by the senate of Venice, in 1469; and, as early as 1486, a censorship of the press, or restraint on the sale of printed books,

[1] *Ante*, vol. 1, p. 14; Inst. 2, 1, 13.

[2] Martial, Epig. xiv. 194. A well-known book cannot change its master; but if there is one to be found, yet unpolished by the pumice-stone, yet unadorned with bosses and cover, buy it. I have such by me, and none shall know it. Whoever recites another's compositions and seeks for fame, must buy, not a book, but its author's silence.

was introduced in Germany.[1] In England, the law seems to have always favored and fostered learning. Not only did it, in the darkest ages, found universities and colleges, but it extended, in its criminal code, an immunity and forgiveness to the scholar, which it refused to the illiterate culprit. Few and heinous were those crimes to which it refused the "benefit of clergy." Again, in the feudal procedure, distress for rent, for suit, or services, was superseded, not only in favor of the needful implements of husbandry and trade, but as well in favor of the "books of a scholar."[2] And up to the act of Anne, or, more properly speaking, up to and until the decision in Millar v. Taylor, in 1769, it was the ancient and invariable custom to regard copyright in an author as a perpetuity—the subject of family settlements and of devises. In that case this was specially found by the jury at *nisi prius*

[1] Hallam's Introduction to the Literature of Europe, vol. i. 344, 348. When the copyright, or the exclusive privilege of printing and selling books for a limited period. was introduced in Spain, under Isabella, it was granted in consideration only of the grantee's selling at a reasonable rate; and foreign books of every description were allowed to be imported into the kingdom free of all duty whatsoever.—Prescott's Ferdinand and Isabella, vol. ii. p. 207.

[2] Maugham on Lit. Prop. vii. "The contrast is singular," says Maugham, in 1828, "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 burdens." "But," says Christian (since the principles which now prevail on the law of copyright are totally at variance with the opinions of many distinguished judges, and especially of Lord Mansfield and Mr. Justice Blackstone), "every person may be permitted to indulge his own opinion upon the propriety of these laws without incurring the imputation of arrogance."

—their special verdict expressly setting forth, "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."[1] And the preamble of an act of Charles II., in 1684, confirming a former charter of the stationer's company, recited "that divers brethren and members of the company have great part of their estate in books and copies," while the act itself goes on to provide for the sole enjoyment of such book or copies "as in that case has been usual heretofore."

213. But, whatever may be owing to a just popular sentiment, it is none the less the apparent fact, that the statutes of copyright in England—not unlike many other wise and benignant provisions—had their origin in tyranny and injustice.

As the principles and doctrines regulating the transmission and alienation of real property had their root in the feudal system of the dark ages; so statutes of copyright in England grew out of the despotism of that notorious and unrighteous tribunal—the star

[1] 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 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 (Carte, cited Maugham, Lit. Prop. 17). Bentham discusses the encouragement of literature by positive rewards (Works by Bowring, Edinburgh: William Tait, 1843, vol. ii. p. 136.)

chamber. The origin of the star chamber itself, is involved in obscurity. Sir Thomas Smith, in his "Commonwealth of England,"[1] says, speaking of it, "This court began long before, but took augmentation and authority at the time that Cardinal Woolsey, archbishop of York, was chancellor of England, who of some was thought to have first devised that court, because that he, after some intermission of time, augmented the authority of it," &c.

The star chamber has been said to date from the statute of 3 Henry VII., yet Sir Edward Coke[2] in 1614, solemnly declared, in open court, that that statute "extendeth not in any way to this court" (of star chamber). Lord Hale, Sir Thomas Smith, and others, have also recorded their opinions which have also been considered by Hallam, in his "Constitutional History," who acknowledges "the difficulty of determining at what time the jurisdiction legally vested in this court."

The statute 3 Henry VII., recited and enacted

[1] "The Commonwealth of England, and the Manner of the Government thereof, by Honorable Sir Thomas Smith." London, 1609.

[2] Sir Stephen Proctor's Case. Sir Edward Coke sat as a judge in the star-chamber, where he lent the authority of his reputation for legal knowledge to strain its power to its utmost, as it was natural, to support the proceedings of the judge in his writings. Brodie says that Sir Edward cites fifteen cases to show the antiquity of the court, but nine of them are quite inapplicable, and refers to Prynne's Animad. on the 4th Institute, p. 419. Had such a court existed, Sir John Fortescue could not have failed to allude to it in his De Laudibus Legum Angliæ, written about 1470 (Burns's Star-Chamber, p. 1; vol. II.). "And therefore," says Hudson, in his Treatise on the Star-Chamber, after quoting Bracton ("father of our laws"), who wrote in the reign of King Henry III., and Britton (writing in the reign of Edward I. of what he calls the king's council), "it is plain that this court was not founded by act of parliament in Henry the VII.'s time."

that "The king, our said sovereign lord, remembereth how by unlawful maintenances, giving of liveries, signs and tokens, and retainders by indentures, promises, oaths, writings or otherwise, embraceries of his subjects, untrue demeanings of sheriffs in making of panels and other untrue returns, by taking of moneys by juries, by great riots and unlawful assemblies—the policy and good rule of this realm is almost subdued. It is ordained that the chancellor and treasurer of England for the time being, and the keeper of the king's privy seal, or two of them, calling to them a bishop and a temporal lord of the knights' most honorable council, and the two chief justices of the king's bench and common pleas for the time being, or other two justices in their absence, upon bill or information put to the said chancellor, for the king or any other against any person for any misbehavior above rehearsed, have authority to call before them, by writ or by privy seal, the said misdoers, and them to punish as if convicted according to law."[1]

[1] This was the star chamber in effect certainly, if not in origin. "In our ancient year-books," says Hudson (in his Abstract of a Treatise on the High Court of Star Chamber), written by a person well acquainted with the proceedings of the same, "it is called camera stellata, not because the chamber where the court is kept is adorned with stars, but because it is the seat of the great court; and the name is given according to the nature of the judges thereof, denminaotio being a præstantiori and majus dignum trahit ad se minus. And it may be so fitly called, because the stars (in the common opinion) have no light but that which is cast upon them from the sun by reflection, it being a representative body; and as King James was pleased to say, when he sat there in his royal person, 'Representation must needs cease when the person is present.'"

"So in the presence of his majesty, which is the sun of honor and glory, the shining of those stars is put out, not having any power to pronounce any sentence in this court (for the judgment is the king's only) but by way of advice to de-

Of the various matters of which the star chamber took cognizance, one of the earliest was the publishing, printing, and even the keeping and read-

liver their opinions, which his wisdom alloweth or disalloweth, increaseth or abateth at his royal pleasure, which was performed by King James, even like unto Solomon's wisdom, in the great case of the Countess of Exeter against Sir Thomas Lake, wherein his majesty sat five continued days in a chair of state, elevated above the table about which his lords sat; and after a long and patient hearing, and the opinions particularly of his great council, he pronounced a sentence more accurately, eloquently, judicially, grave, and honorably, more just to the satisfaction of all hearers, and all lovers of justice, than all the records extant in this kingdom can declare to have been done by any of his royal progenitors. There is no man will deny that in all monarchies the king is the fountain of all justice, to whom is the first refuge for those that are distressed, and the last to whom appeals are to be made," &c. &c.

Sir Thomas Smith (*ubi supra*), however, says that it is "called the star chamber (chambre des estoyers, or estoilles), either because it is full of windows, or because at the first all the roof thereof was decked with images of stars gilded." *Vid.* the Archæologia, vol. 25.

Blackstone suggests that the name was derived from a repository for deeds, &c., relating to the Jews, and called *starr*, or *shetar*, which was near to the star chamber. He cites a record of 41 Edw. III., that the king's council, his chancellor, treasurer, justices, and other sages were assembled "en la chambre des estoilles pres la rescript at Westminster (Beval, 4, p. 266). Before the banishment of the Jews under Edward I. their contracts and obligations were denominated in the ancient records, *sterra*, or *starras*, from the Hebrew word *shetar*, a covenant. These starrs, by an ordinance of Richard I., preserved by Hoveden, were commanded to be enrolled and deposited in chests, under three keys, in certain places, one and the most considerable of which was in the king's exchequer. This room was probably called the starr chamber; and, when the Jews were expelled, the room was applied to the use of the king's council, sitting in their official capacity. In confirmation of this, the first time the star chamber is mentioned it is said to have been situated near the receipt of the exchequer at Westminster. In process of time, when the Jewish starrs were forgotten, the word starr chamber was naturally rendered, in law French, "le chambre les estoilles," and in law Latin,

ing of books. On the twenty-eighth day of January, in the year 1540, one Thomas Marsh, a stationer, was arraigned for selling books without license of the patentees, when we find it "Ordered, that the persons detected for the printing and corrupting of the bishop of London's book shall be bound to print no more."[1]

In 1567, Cooke and others[2] were accused *ore tenus* for buying, reading and keeping seditious books against the religion professed; sent to the Fleet and ordered to pay a fine of 100 marks.

April 20th, 1632, certain persons were fined £200, and £100 for publishing certain libelous books, which were printed and sold at Bristol, and the books were ordered burned.

In 1637, John Liliburne and John Warton were accused, in the star chamber, of unlawfully printing and publishing libelous and seditious books, entitled "News from Ipswich." They refused the oath ex officio, says "The Record,"[3] and were sent to prison. Four days later, they were brought to the court, and still refusing the oath, the court remanded them to the fleet, and fined them £500 each. Liliburne to be whipt through the streets from the Fleet to the pillory, between Westminster Hall gate and the star chamber, where Warton was also to be put. At the pillory he spoke against the bishops, &c., and scattered copies of phamphlets, whereupon the star chamber, which was then sitting, ordered him to be

"*camera stellata*," which continued to be the style in Latin until the dissolution of that court. Lamb. Arch. Blackst., vol. 4.

[1] The court then made several rules and orders for the government of printers (Star Chamber MS. 639, 8 Eliz.), ordinances for reformation of disorders in printing and selling of books; Burn's Star Chamber, 63.

[2] Id. 64.

[3] Burn's Star Chamber, 149.

gagged, which was done. This was followed by an order of the star chamber, dated April 8th, 1637, that Liliburne should be laid alone with iron on his hands and legs, &c., &c. He remained in prison until 1640.[1] "In 1649 he was tried at the Guildhall, for a seditious book, and by his courage, tenacity, and logical skill, eventually beat the twelve judges and council of state."[2]

In 1637, the year in which Bostwick, Burton and Prynne were sentenced,[3] the court made the decree (July 11, 1637) respecting books and printing. It imposed restrictions on the importation and sale of books, upon type founders, printers, merchants and masters of ships, carpenters and smiths, employed in making presses, &c.; it prohibited any "haberdasher of small wares, iron-monger, chandler, shopkeeper," or any person not having served an apprenticeship to a bookseller, to receive, buy or sell any "bibles, testaments, psalm books, primers, abcees, almanacks," or other books, upon pain of punishment by the star chamber or high commission.[4] It appointed twenty persons by name, to have printing presses, and four persons to be letter founders. And it forbade any merchant or other tradesman to open any packs of books from abroad, before the archbishop of

[1] Rushworth, ii. 468. When the court called upon Liliburne to answer interrogatories, he refused, and said that it was the oath *ex officio*, and that no freeborn Englishman ought to take it, not being bound by the law to accuse himself. Whence he was called, ever after, "Freeborn John."

[2] "Omitted Chapters of the History of England," by Andrew Basset, 1864.

[3] About his Histrio Mastix, Anno, 1633, and of losing his ears a second time, Anno, 1637.—Hudson's Treatise on the Star Chamber.

[4] A court which played into the hands of the star chamber, and *vice versa*. The High Commission, Notices of the Court, and its Proceedings, London, 1865.

Canterbury or the bishop of London, had appointed their chaplain, or some other learned man to be present at the opening thereof, that all seditious, schismatical, or offensive books might be seized.

This decree was followed by orders of parliament and occasioned Milton's "Areopagitica," written, he says, "in order to deliver the press from the restraints with which it was encumbered; that the power of determining what was true and what was false, what ought to be published, and what to be suppressed, might no longer be intrusted to a few illiterate and illiberal individuals, who refused their sanction to any work which contained views or sentiments at all above the level of the vulgar superstition."

214. In order to comprehend the organization of the body known as the stationers' company, it is necessary to somewhat retrace our steps. Printing had become extensive in England about a century after its discovery. In the year 1556,[1] Philip and Mary granted a charter to the stationers' company,[2] an incorporation consisting, not of venders of stationery, in the present sense of the word, but of booksellers and printers, who, for their general benefit, determined to keep at their hall a register, in which

[1] Their second charter was in 1558.

[2] "Why Stationers' Hall was intrusted with the profitable privilege of registering new publications, of demanding fees, of imposing vexatious restraints upon searchers for titles in their office, is not very clear, unless this arose from the reverence for vested interests, which, though it is sometimes justifiable, on moral grounds, is certainly carried, in this country, to superstitious lengths. A vested interest over somebody else's property; a prescriptive right vested in individuals to interfere with the future work of other people's hands and brains, or to derive an exclusive profit from it, cannot be defended."—John Camden Hotten, Seven Letters, &c., on Literary Property, London, Hotten, 1871.

should be entered the title of every new book, the name of the proprietors, and the successive transfers of the copyright.

The desire of the crown to suppress the reformed religion led to the severest restrictions being laid upon the press, and there are various decrees and ordinances of the star chamber of this date,[1] "regulating the manner of printing, the number of presses throughout the kingdom, and prohibiting all printing against the force and meaning of any of the statutes or laws of the realm, or in any injunction, letters patent, or ordinance, set forth, or to be set forth, by the queen's grant, commission, or authority."[2]

[1] *Vid.* Millar v. Taylor, 4 Burr. 2312, 2313. In 1583, two printers, Wolf and Ward, insisted upon a right of printing all books, even where there were copyrights existing (Stowe, 223, tit. Stationers' Company). But commissioners, appointed by the crown, willed them to desist. See Wedderburn's Argument in Tonson v. Collins, 1 W. Black. R. 304.

[2] "It is natural to suppose that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free inquiry through the press. The trades of printing and book-selling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors, the council frequently issued proclamations to restrain the importation of books, or to regulate their sale. It was penal to utter, or so much as to possess, even the most learned works on the Catholic side; or if some connivance was used in favor of educated men, the utmost strictness was used in suppressing that light infantry of literature, the smart and vigorous pamphlets with which the two parties arrayed against the church assaulted her opposite flanks. Stow, the well-known chronicler of England, who lay under suspicion of an attachment to popery, had his library searched by warrant, and his unlawful books taken away; several of which were but materials for his history. Whitgift, in this, as in every other respect, aggravated the rigor of preceding times. At his instigation, the star chamber, 1585, published ordinances for the regulation of the press. The preface to these recites 'enormities and abuses of disorderly persons professing the art of printing and selling

By another decree of the star chamber, June 23, 1585,[1] every book or other publication was to be licensed, "nor shall," it proceeds, "any one print any book, work or copy, against the form or meaning of any restraint contained in any statute or laws of this realm, or in any injunction made by her majesty or her privy council; or against the true intent and meaning of any letters patent. Commissions or prohibitions, under the great seal, or contrary to any allowed ordinance set down for the good government of the stationers' company." A proclamation of September 25, 1623,[2] recites the above de-

books," to have more than increased in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer, therefore, is enjoined to certify his presses to the stationers' company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer, who has only set up his trade within six months, to exercise it any longer, nor any to begin it in future until the excessive multitude of printers be diminished and brought to such a number as the archbishop of Canterbury and bishop of London for the time being shall think convenient; but whenever any addition to the number of master-printers shall be required, the stationers' company shall select proper persons to use that calling, with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the archbishop of Canterbury or bishop of London, except the queen's printer, to be appointed for some special service, or law-printers, who shall require the license only of the chief justices. Every one selling books printed contrary to the intent of this ordinance, to suffer three months' imprisoment. The stationers' company were empowered to search houses and shops of printers and booksellers, and to seize all books printed in contravention of this ordinance, to destroy and deface the presses, and to arrest and bring before the council those who shall have offended therein (Hallam's Constitutional History of England, vol. 1, p. 238).

[1] 28 Eliz., art. 4. [2] 121 Jac. 1.

cree, 28 Elizabeth, and that the same had been evaded, among other things, by printing "beyond sea such allowed books, works or writings, as have been imprinted within the realm, to such to whom the sole printing thereof by letters patent, or lawful ordinance, or authority, doth appertain, and goes on to enforce the said decree."[1]

By another decree of the star chamber, made on the 11th day of July, 1637,[2] no person was to print or import any book or copy thereof, which the company of stationers, "or any other person or company hath or shall by any letters patent, order, or enter, in their register book, or otherwise have the right, privilege, or allowance, solely to print."

The abolition of the star chamber, in 1640, and the consequent lifting from the press of all restraint, including the charter powers of the stationers' company, seems to have been immediately succeeded by a license almost unbounded. "The king's author-

[1] No case of a prosecution in the star chamber for printing without license, or against letters patent, or pirating another man's copy, or any other disorderly printing has been found. Most of the judicial proceedings of the star chamber are lost or destroyed. 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 license 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 license, was liable to great penalties. It appears that there is no ordinance or by-law relative to copies till after the year 1640, and yet, from the first charter of the stationers' company, copies were entered as property, and pirating was punished. . . . . It is remarkable that the decree of the star chamber in 1637, expressly supposes a copyright to exist otherwise than by patent, order or entry in the register of the stationers' company, which could only be by common law.—Willes, J., in Millar v. Taylor, 4 Burr. pp. 2313, 2314.

[2] Art. 7.

ity was set at naught, all regulations of the press and restraints of unlicensed printing, by proclamations, decrees of the star chamber and charter powers, given to the stationers' company, were deemed to be and certainly were illegal."[1]

215. The extremes to which libels upon itself were carried, induced parliament to pass an ordinance forbidding publication of a book, unless it were first licensed, and entered in the register of the stationers' company. This ordinance further contained a prohibition against printing a work without its author's or owner's consent, or importing copies of such work, if printed abroad, upon pain of forfeiting the same to the owner of the work.[2]

In November, 1644, Milton published his famous speech for the liberty of unlicensed printing, against this ordinance.[3]

"The Areopagitica"[4] is a state paper of the

[1] Willes, J., in Miller v. Taylor, 4 Burr. p. 2314.

[2] Copyrights in their opinion then, (*i..e.* the parliament) could only stand upon the common law; both houses take it for granted. . . . . This provision necessarily supposes the property to exist. It is nugatory if there was no owner. An owner could not exist at that time save by the common law. Id. *Vid.* Copinger on Copyright, p. 11.

[3] 4 Burr. 2315.

[4] The Areopagitica illustrates the influence of Greece upon Milton scarcely less than the Samson Agonistes. Its name is Greek, and its model was Greek. In the prose work, Isocrates is to the author what Euripides was to him in the dramatic poem. And it is introduced with a Greek motto.

In looking round for parallels to himself, in his oration to the English Parliament in behalf of a free press, he naturally turned his eyes to Greece, and the men who in the days of Greece "professed the study of wisdom and eloquence." He saw the nearest resemblance to his own case in the *Λόγος Ἀρεοπαγιτικός*, the Areopagitic Discourse of Isokrates, and he adopted the name, or a mere variation of it. It is Isokrates he means when he speaks of him 'who from his private house

republic of letters. It is the Declaration and the Bill of Rights of the liberty of literature. It was written at a time when there was no freedom of letters, or of unlicensed printing, and bridges over an interval in

wrote that discourse to the parliament of Athens that persuades them to change the form of democracy which was then established."

It was one of the dearest hopes of his youth to visit this Athens in the body, but "when I was preparing to pass over into Sicily and Greece, the melancholy intelligence which I received of the civil commotions in England made me alter my purpose; for I thought it base to be traveling abroad while my fellow-citizens were fighting for liberty at home." It may well be believed that this resignation of his Greek tour was not the least of the sacrifices Milton made at the call of duty. Such was the fascination of Greek artistic form over him that, as is well-known, his first design for his great poem was formed on the model of the Greek drama. Towards the close of his life, he did so plan and compose his Samson Agonistes.

Of the circumstances under which the Areopagitica was written, Milton has himself given an account in his "Second Defense of the People of England" (*Defensio Secunda pro Populo Anglicano contra infamem libellum anonymum cui titulus Regii Sanguinis Clamor ad Cælam adversus Parricidos Anglicanos*). In that work, to refute fully the calumnies heaped on his name by his enemy, he gives a rapid sketch of his past life. After speaking of his earlier days, he mentions his travels abroad, and then how, coming home, he was drawn into the great struggle that he found prevailing, or beginning to prevail. He continues, "Lastly I wrote my 'Areopagitica,' after the true Attic style, in order to deliver the press from the restraints with which it was encumbered; that the power of determining what was true and what was false, what ought to be published and what to be suppressed, might no longer be intrusted to a few illiterate and illiberal individuals, who refused their sanction to any work which contained views or sentiments at all above the level of the vulgar superstition. On the last species of civil liberty I said nothing, because I saw that sufficient attention was paid to it by the magistrates; nor did I write anything on the prerogative of the crown till the king, voted an enemy by the parliament, and vanquished in the field, was summoned before the tribunal which condemned him to lose his head."—*Hales.*

the history of letters, otherwise without its record.[1]

In 1649 the long parliament made an ordinance

[1] "The attempt made to reimpose restrictions upon the freedom of expressed thought, against which Milton raises his voice in the 'Areopagitica' with so noble a vehemence, so that it will still be heard to the very end of time, was only too significant of the temper and tendencies of the Presbyterian rule that then lay upon his country. From the meeting of the long parliament in November, 1640, to June, 1643, the press had been practically free (Masson's "Life of John Milton and History of his Time," iii. 265, *et seq.*)." Hales. Even the custom of registering publications in the books of the stationers' company had been widely neglected. On June 14, 1643, the following ordinance was ordered by the lords and commons assembled in parliament:

"An order of the lords and commons assembled in parliament, for the regulating of printing, and for suppressing the great late abuses and frequent disorders in printing many false, scandalous, seditious, libellous, and unlicensed pamphlets, to the great defamation of religion and government.

"Also authorizing the masters and wardens of the company of stationers to make diligent search, seize and carry away all such books as they shall finde printed or reprinted by any man having no lawfull interest in them, being entred in the hall book to any other man as his proper copies.

"Die Mercurii, 14 June, 1643.—Ordered by the lords and commons assembled in parliament that this order shall be forthwith printed and published.—J. Brown Cler. Parliamentorum: Hen. Elsing, Cler. D. Com.

"Die Mercurii, 14 Junii, 1643.

"Whereas divers good orders have bin lately made by both houses of parliament, for suppressing the great late abuses and frequent disorders in printing many false, forged, scandalous, seditious, libellous, and unlicensed papers, pamphlets, and books to the great defamation of religion and government. Which orders (notwithstanding the diligence of the company of stationers, to put them in full execution) have taken little or no effect: By reason the bill in preparation, for redresse of the said disorders, hath hitherto bin retarded through the present distractions, and very many, as well stationers and printers, as others of sundry other professions not free of the stationers company, have taken upon them to set

forbidding the printing of any book legally granted or any book entered, without consent of the owner, upon pains of forfeiture, &c.

up sundry private printing presses in corners, and to print, vend, publish and disperse books, pamphlets, and papers, in such multitudes, that no industry could be sufficient to discover or bring to punishment, all the severall abounding delinquents: And by reason that divers of the stationers company and others being delinquents (contrary to former orders and the constant custome used among the said company) have taken liberty to print, vend, and publish, the most profitable vendible copies of books, belonging to the company and other stationers, especially of such agents as are imployed in putting the said orders in execution, and that by way of revenge for giveing information against them to the houses for their delinquences in printing, to the great prejudice of the said company of stationers and agents, and to their discouragement in this publik service.

"It is therefore ordered by the lords and commons in parliament, that no order or declaration of both, or either house of parliament shall be printed by any, but by order of one or both the said houses: Nor other book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched or put to sale by any person or persons whatsoever, unlesse the same be first approved of and licensed under the hands of such person or persons as both, or either of the said houses shall appoint for the licensing of the same, and entred in the register book of the company of stationers, according to ancient custom, and the printer thereof to put his name thereto. And that no person or persons shall hereafter print, or cause to be reprinted any book, or books or part of book, or books heretofore allowed of and granted to the said company of stationers for their relief and maintenance of their poore, without the license or consent of the master, wardens, and assistants of the said company; nor any book or books lawfully licenced and entred in the register of the said company for any particular member thereof, without the licence and consent of the owner or owners thereof. Nor yet import any such book or books, or part of book or books formerly printed here, from beyond the seas, upon paine of forfeiting the same to the owner, or owners of the copies of the said books, and such further punishment as shall be thought fit.

"And the master and wardens of the said company, the

The practical fruits of indices expurgata, of the licensing and burning of books which prevailed in Europe to a greater or less extent from the era of

gentleman usher of the house of peers, the sergeant of the commons house and their deputies, together with the persons formerly appointed by the committee of the house of commons for examinations, are hereby authorized and required, from time to time, to make diligent search in all places, where they shall think meete, for all unlicensed printing presses, and all presses anyway imployed in the printing of scandalous or unlicensed papers, pamphlets, books, or any copies of books belonging to the said company, or any member thereof, without their approbation and consents, and to seize and carry away such printing presses letters, together with the nut, spindle, and other materialls of every such irregular printer, which they find so misimployed, unto the common hall of the said company, there to be defaced and made unserviceable according to ancient custom; and likewise to make diligent search in all suspected printing-houses, warehouses, shops, and other places for such scandalous and unlicensed books, papers, pamphlets, and all other books, not entred, nor signed with the printers name as aforesaid, being printed, or reprinted by such as have no lawfull interest in them, or any way contrary to this order, and the same to seize and carry away to the said common hall, there to remain till both or either house of parliament shall dispose thereof, and likewise to apprehend all authors, printers, and other persons whatsoever imployed in compiling, printing, stitching, binding, publishing, and dispersing of the said scandalous, unlicensed, and unwarrantable papers, books and pamphlets as aforesaid, and all those who shall resist the said parties in searching after them, and to bring them afore either of the houses or the committee of examinations, that so they may receive such further punishments, as their offences shall demerit, and not to be released untill they have given satisfaction to the parties imployed in their apprehension for their paines and charges, and given sufficient caution not to offend in like sort for the future. And all justices of the peace, captaines, constables and other officers, are hereby ordered and required to be aiding and assisting to the foresaid persons in the due execution of all, and singular the premisses and in the apprehension of all offenders against the same. And in case of opposition to break open doores and locks.

"And it is further ordered, that this order be forthwith

Henry the Eighth, to the times of Charles I. of England, were never such as to encourage the dignataries who maintained that policy. The institution unprinted and published, to the end that notice may be taken thereof, and all contemners of it left inexcusable.

"FINIS."

For some account of the previous history of book-censorship the reader may be referred to the "Areopagitica" itself, where, in the opening part of his argument, Milton rapidly surveys the conduct of other countries and times in this respect (See also Standard Library Cyclop. s. v. Press Censorship; Beckmann's Hist. of Inventions, on Book Censors, and on Exclusive Privilege for Printing Books (ii. 512–522, of the 4th Engl. edit.); Knight's London, vol. 5; The Old London Booksellers; Hart's Index Expurgatorius Anglicanus, parts i. and ii; Hallam's Constitut. Hist. of Engl. *passim*; D'Israeli's Curiosities of Literature, on Licensers of the Press; Hunt's Fourth Estate, 1850, &c.). It is clear that books enjoyed an immunity from restriction in the middle ages, only because they were held to be of comparatively slight account. As soon as ever their influence began to extend, and the printing press to multiply copies without limit, so soon were they regarded with jealous eyes and threatened with a rigorous supervision. From the close of the fifteenth century a formal censorship became a more and more common institution.

"The oldest mandate, for appointing a book-censor," says Beckmann, "is, as far as I know at present, that issued by Berthold, Archbishop of Mentz, in the year 1486, and which may be found in the fourth volume of Guden's Codex Diplomaticus. In the year 1501, Pope Alexander VI. published a bull, the first part of which may form an excellent companion to the mandate of the Archbishop of Mentz. After some complaints against the devil, who sows tares among the wheat, his holiness proceeds thus: 'Having been informed that, by means of the said art, many books and treatises containing various errors and pernicious doctrines, even hostile to the holy Christian religion, have been printed, and are still printed in various parts of the world, particularly in the provinces of Cologne, Mentz, Triers, and Magdeburg; and being desirous, without further delay, to put a stop to this detestable evil, . . . we, by these presents, and by authority of the Apostolic chamber, strictly forbid all printers, their servants, and those exercising the art of printing under them, in any manner whatsoever, in the abovesaid prov-

doubtedly originated in the Inquisition, although previously we learn that the monks had a part of their libraries called the inferno, not indeed as being

inces, under pain of excommunication, and a pecuniary fine to be imposed and exacted by our venerable brethren, the archbishops of Cologne, Mentz, Triers, and Magdeburg, and their vicars-general or official in spirituals, according to the pleasure of each in his own province, to print hereafter any books, treatises, or writings, until they have consulted on this subject the archbishops, vicars, or officials above-mentioned, and obtained their special and express license to be granted free of all expense, whose consciences we charge, that before they grant any license of this kind, they will carefully examine, or cause to be examined, by able and Catholic persons, the works to be printed; and that they will take the utmost care that nothing may be printed wicked or scandalous, or contrary to the orthodox faith.' The rest of the bull contains regulations to prevent works already printed from doing mischief. All catalogues and books printed before that period were to be examined, and those which contained anything prejudicial to the Catholic religion were to be burned. In the beginning of the sixteenth century it was ordered by the well-known council of the Lateran, held at Rome in the year 1515, that in future, no books should be printed but such as had been inspected by ecclesiastical censors. In France, the faculty of theology usurped, as some say, the right of censuring books; but in the year 1650, when public censors, whom the faculty opposed, were appointed, without their consent, they stated the antiquity of their right to be two hundred years. For they said, 'It is above two hundred years since the doctors of Paris have had a right to approve books without being subjected but to their own faculty, to which they assert they are alone responsible for their decisions.'"

In countries where the inquisition was established, the work of the censorship was undertaken by the holy office. Elsewhere it was taken up by the bishops. In England it was especially discharged by the star chamber, a court that was in fact, whatever the theoretic constitution, mainly in the hands of the bishops. Long before Archbishop Laud's time this court had exercised authority over the press (as, for example, at Whitgift's instance in 1585); but it was under him that its restrictive power was put forth in its severest form. On the 11th day of July, 1637, was passed the notorious "Decree of Starre-Chamber concerning printing." This document is one

the part least visited by them, which contained all prohibited books. This inquisitorial power assumed its most formidable shape in the council of Trent,

of the few decrees of this notorious tribunal which has been completely preserved, and runs as follows:

"In Camera Stellata coram Concilio ibidem, vndecimo die Iulii, Anno decimo tertio Caroli Regis.

"*Imprimis*, That no person or persons whatsouer shall presume to print, or cause to bee printed, either in the parts beyond the seas, or in this realme, or other his maiesties dominions, any séditious, scismaticall, or offensive bookes or pamphlets, to the scandall of religion, or the church, or the government, or governours of the church or state, or commonwealth, or of any corporation, or particular person or persons whatsoeuer, nor shall import any such booke or bookes, nor sell or dispose of them, or any of them, nor cause any such to be bound, stitched, or sowed, vpon paine that he or they so offending shall loose all such bookes and pamphlets, and also haue, and suffer such correction, and severe punishment, either by fine, imprisonment, or other corporall punishment, or otherwise, as by this court, or by his maiesties commissioners for causes ecclesiasticall in the high commission court, respectiuely, as the several causes shall require, shall be thought fit to be inflicted upon him, or them, for such their offence and contempt.

"II. Item, That no person or persons whatsoeuer, shall at any time print, or cause to be imprinted, any booke or pamphlet whatsoever, vnlesse the same booke or pamphlet, and also all and euery the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other matters and things whatsoeuer, thereunto annexed, or therewith imprinted, shall be first lawfully licenced and authorized onely by such person and persons as are hereafter expressed, and by no other, and shall be also first entred into the registers booke of the company of stationers; vpon paine that euery printer offending therein shall be for euer hereafter disabled to use or exercise the art or mysterie of printing, and receiue such further punishment, as by this court, or the high commission court respectiuely, as the severall causes shall require, shall be thought fitting.

"III. Item, That all bookes concerning the common laws of this realme, shall be printed by the especiall allowance of the lords chief iustices, and the lord chiefe baron for the time being, or one or more of them, or by their appointment: And

when some gloomy spirits from Rome and Madrid, foresaw the revolution of this new age of books. "The triple-crowned pontiff had in vain rolled the thunders

that all bookes of history, belonging to this state, and present times, or any other booke of state affaires, shall be licenced by the principall secretaries of state, or one of them, or by their appointment; and that all bookes concerning heraldry, titles of honour and armes, or otherwise concerning the office of earle marshall, shall be licenced by the earle marshall, or by his appointment; and further, that all other bookes, whether of diuinitie, phisicke, philosophie, poetry, or whatsoeuer, shall be allowed by the lord arch-bishop of Canterbury, or bishop of London for the time being, or by their appointment, or the chancellours, or vice-chancellors of either of the vniuersities of this realme for the time being.

"Alwayes prouided, that the chancellour or vice-chancellour, or either of the vniuersities, shall licence onely such booke or bookes that are to be printed within the limits of the vniuersities respectively, but not in London, or elsewhere, not medling either with bookes of the common law, or matters of state.

"IV. Item, That euery person and persons, which by any decree of this court are, or shall be appointed or authorised to licence bookes, or giue warrant for imprinting thereof, as is aforesaid, shall haue two seuerall written copies of the same booke or bookes with the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other things whatsoeuer thereunto annexed. One of which said copies shall be kept in the publike registries of the said lord arch-bishop, and bishop of London respectively, or in the office of the chancellour, or vice-chancellour of either of the vniuersities, or with the earie marshall or principall secretaries of state, or with the lords chiefe iustices, or chiefe baron, of all such bookes as shall be licenced by them respectiuely, to the end that he or they may be secure, that the copy so licenced by him or them shall not bee altered, without his or their priuitie, and the other shall remain with him whose copy it is, and vpon both the said copies, he or they that shall allow the said booke, shall testifie vnder his or their hand or hands, that there is nothing in that booke or books contained, that is contrary to Christian faith, and the doctrine and discipline of the church of England, nor against the state or gouernment, nor contrary to good life, or good manners, or otherwise, as the nature and

of the Vatican, to strike out of the hands of all men the volumes of Wickliffe, of Huss, and of Luther, and even menaced their eager readers with death. At this

subiect of the work shall require, which licence or approbation shall be imprinted in the beginning of the same booke, with the name, or names of him or them that shall authorize or licence the same, for a testimonie of the allowance thereof.

"V. Item, That every merchant of bookes, and person and persons whatsoeuer, which doth, or hereafter shall buy, or import, or bring any booke or bookes into this realme, from any parts beyond the seas, shall before such time as the same book or books, or any of them be deliuered forth, or out of his, or their hand or hands, or exposed to sale, giue, and present a true catalogue in writing of all and euery such booke and bookes vnto the lord arch-bishop of Canterbury, or lord bishop of London for the time being, vpon paine to haue and suffer such punishment for offending herein, as by this court, or by the said high commission court respectiuely, as the seueral causes shall require, shall be thought fitting.

"VI. Item, That no merchant, or other person or persons whatsoeuer, which shall import or bring any book or books into the kingdome, from any parts beyond the seas, shall presume to open any dry-fats, bales, packs, maunds, or other fardals of books, or wherein books are; nor shall any searcher, wayter, or other officer belonging to the custome-house, vpon pain of loosing his or their place or places, suffer the same to passe, or to be deliuered out of their hands or custody, before such time as the lord arch-bishop of Canterbury, or lord bishop of London, or one of them for the time being, haue appointed one of their chaplains, or some other learned man, with the master and wardens of the company of stationers, or one of them, and such others as they shall call to their assistance, to be present at the opening thereof, and to view the same: And if there shall happen to be found any seditious, schismaticall, or offensiue booke or bookes, they shall forthwith be brought vnto the said lord arch-bishop of Canterbury, lord bishop of London for the time being, or one of them, or to the high commission office, to the end that as well the offendor or offendors may be punished by the court of star chamber, or the high commission court respectiuely, as the seuerall causes shall require, according to his or their demerit; as also that such further course and order may be taken concerning the same booke or bookes, as shall bee thought fitting.

council Pius IV. was presented with a catalogue of books of which they denounced that the perusal ought to be forbidden; his bull not only confirmed this list

"VII. Item, That no person or persons shall within this kingdome, or elsewhere imprint, or cause to be imprinted, nor shall import or bring in, or cause to be imported or brought into this kingdome, from, or out of any other his maiesties dominions, nor from other, or any parts beyond the seas, any copy, book or books. or part of any booke or bookes, printed beyond the seas, or elsewhere, which the said company of stationers, or any other person or persons haue, or shall by any letters patent, order, or entrance in their register book, or otherwise haue the right, priuilege, authoritie, or allowance soly to print, nor shall bind, stitch, or put to sale, any such booke or bookes, vpon paine of losse and forfeiture of all the said bookes, and of such fine, or other punishment, for euery booke or part of a booke so imprinted or imported, bound, stitched, or put to sale, to be leuyed of the party so offending, as by the power of this court, or the high commission court respectiuely, as the seuerall causes shall require, shall be thought fit.

"VIII. Item, Euery person and persons that shall hereafter print, or cause to be printed, any bookes, ballads, charts, portraiture, or any other thing or things whatsoeuer, shall thereunto or thereon print and set his and their owne name or names, as also the name or names of the author or authors, maker or makers of the same, and by, or for whom any such booke, or other thing is, or shall be printed, vpon pain of forfeiture of all such books, ballads, chartes, portraitures, and other thing or things, printed contrary to this article; and the presses, letters and other instruments for printing, wherewith such books, ballads, chartes, portraitures, and other thing or things shall be printed, to be defaced and made vnseruiceable, and the party or parties so offending, to be fined, imprisoned, and have such other corporall punishment, or otherwise, as by this honourable court, or the said high commission respectiuely, as the seuerall causes shall require, shall be thought fit.

"IX. Item, That no person or persons whatsoeuer, shall hereafter print, or cause to be printed, or shall forge, put, or counterfeit in or vpon any booke or books, the name, title, marke or vinnet of the company or society of stationers, or of any particular person or persons, which hath or shall haue lawfull

of the condemned, but added rules how books should be judged. Subsequent popes enlarged these catalogues, and added to the rules, as the monstrous

priuiledge, authoritie, or allowance to print the same, without the consent of the said company, or party or parties that are or shall be so priuiledged, authorized, or allowed to print the same booke or books, thing or things, first had and obtained, vpon paine that euery person or person so offending, shall not onely ioose all such books, and other things, but shall also, haue, and suffer such punishment, by imprisonment of his body fine, or otherwise, as by this honourable court, or high commission courte respectively, as the seuerall causes shall require, it shall be to him or them limited or adiudged.

"X. Item, That no Haberdasher of small wares, ironmonger, chandler, shop-keeper, or any other person or persons whatsoeuer, not hauing beene seuen yeeres apprentice to the trade of a book-seller, printer, or book-binder, shall within the citie or suburbs of London, or in any other corporation, market-towne, or elsewhere, receive, take or buy, to barter, sell againe, change or do away any bibles' testaments, psalmbooks, primers, abcee,s almar[illegible].es, or other booke or books whatsoeuer, vpon paine of forfeiture of all such books so receiued, bought or taken as aforesaid, and such other punishment of the parties so offending, as by this court, or the said high commission court respectiuely, as the severall causes shall require, shall be thought meet.

"IX. Item, For that printing is, and for many yeers hath been an art and manufacture of this kingdome, for the better incouraging of printers in their honest, and iust endeavours in their profession, and preuention of diuers libels, pamphlets, and seditious books printed beyond the seas in English, and thence transported hither:

"It is further ordered and decreed, that no merchant, bookseller, or other person or persons whatsoever, shall imprint, or cause to be imprinted, in the parts beyond the seas or elsewhere, nor shall import or bring, nor willingly assist or consent to the importation or bringing from beyond the seas into this realme, any English bookes, or part of bookes, or bookes whatsoeuer, which are or shall be, or the greater or more part whereof is or shall be English, or of the English tongue, whether the same booke or books haue been here formerly printed or not, vpon pain of the forfeiture of all such English bookes so imprinted or imported, and such further

novelties started up. Inquisitors of books were appointed; at Rome they consisted of certain cardinals and 'the master of the holy palace;' and literary

censure and punishment, as by this court, or the said high commission court respectively, as the seurall causes shall require, shall be thought meet.

"XII. Item, That no stranger or forreigner whatsoeuer, be suffered to bring in, or vent here, any booke or bookes, printed beyond the seas, in any language whatsouer, either by themselues, or their secret factors, except such onely as bee free stationers of London, and such as haue beene brough vp in that profession, and haue their whole meanes of subsistance, and liuelihood depending thereupon, vpon paine of confiscation of all such books so imported, and such further penalties, as by this court, or the high commission court respectiuely, as the seurall causes shall require, shall be thought fit to be imposed.

"XIII. Item, That no person or persons within the citie of London,or the liberties thereof, or elsewhere, shall erect or cause to be erected any presse or printing-house, nor shall demise, or let, or suffer to be held or vsed, any house, vault, celler, or other roome whatsoeuer, to, or by any person or persons, for a printing-house, or place to print in, vnlesse he or they which shall so demise or let the same, or suffer the same to be so vsed, shall first giue notice to the said master and Wardens of the Company of stationers for the time being, of such demise, or suffering to worke or print there, vpon paine of imprisonment, and such other punishment as by this court, or the said high commission court respectiuely, as the seuerall causes shall require, shall bee thought fit.

"XIV. Item, That no ioyner, or carpenter, or other person shall make any printing-presse, no smith shall forge any irone-worke for a printing-presse, and no founder shall cast any letters for any person or persons whatsoeuer, neither shall any person or persons bring, or cause to be brought in from any parts beyond the seas, any letters founded or cast, nor by any such letters for printing, vnless he or they respectively shall first acquaint the said master and wardens, or some of them, for whom the same press, iron-works, or letters, are to be made, forged, or cast, vpon paine of such fine and punishment, as this court, or the high commission court respectiuely, as the seuerall causes shall require, shall thinke fit.

"XV. Item, The court doth declare, that as formerly, so now,

inquisitors were elected at Madrid, at Lisbon, at Naples, and for the low countries; they were watching the ubiquity of the human mind. These catalogues

there shall be but twentie master printers allowed to haue the vse of one presse or more, as is after specified, and doth hereby nominate, allow, and admit these persons whose names hereafter follow, to the number of twentie, to have the vse of a presse, or presses and printing-house, for the time being, viz., Felix Kingstone, Adam Islip, Thomas Purfoot, Miles Flesher, Thomas Harper, Iohn Beale, Iohn Legat, Robert Young, Iohn Haviland, George Miller, Richard Badger, Thomas Cotes, Bernard Alsop, Richard Bishop, Edward Griffin, Thomas Purflow, Richard Hodgkinsonne, Iohn Dawson, Iohn Raworth, Marmaduke Parsons. And further, the court doth order and decree, That it shall be lawfull for the lord arch-bishop of Canterbury, or the lord bishop of London, for the time being, taking to him or them six other high commissioners, to supply the place or places of those which are now already printers by this court, as they shall fall void by death, or censure, or otherwise: Prouided that they exceed not the number of twentie, besides his maiesties printers, and the printers allowed for the vniuersities.

"XVI. Item, That euery person or persons, now allowed or admitted to have the vse of a presse, and printing-house, shall within ten dayes after the date hereof, become bound with sureties to his maiestie in the high commission court, in the sum of three hundred pounds, not to print or suffer to be printed in his house or presse, any booke, or bookes whatsoeuer, but such as shall from time to time be lawfully licensed, and that the like bond shall be entred into by all, and euery person and persons, that hereafter shall be admitted or allowed to print, before he or they be suffered to haue the vse of a presse.

"XVII. Item, That no allowed printer shall keep above two presses, vnlesse he hath been master or upper warden of his company, who are hereby allowed to keep three presses and no more, vnder paine of being disabled for euer after to keepe or vse any presse at all, vnlesse for some great and special occasion for the publique, he or they haue for a time leaue of the lord archbishop of Canterbury, or lord bishop of London for the time being, to have or vse one, or more aboue the foresaid number, as their lordships, or either of them shall thinke fit. And whereas there are some master printers that

of prohibited books were called indexes; and at Rome a body of these literary despots are still called 'the Congregation of the Index.' The simple index is a

haue at this present one or more presses allowed them by this decree, the court doth further order and declare, That the master and wardens of the company of stationers, doe foorthwith certifie the lord archbishop of Canterbury, or the lord bishop of London, what number of presses each master printer hath, that their lordships or either of them, taking vnto them six other high commissioners, may take such present order for the suppressing of the supernumarie presses, as to their lordships, or to either of them shall seem best.

"XVIII. Item, That no person or persons, do hereafter reprint, or cause to be reprinted, any booke or bookes whatsoeuer (though formerly printed with licence) without being reuiewed, and a new licence obtained for the reprinting thereof. Alwayes provided, that the stationer or printer be put to no other charge hereby, but the bringing and leauing of two printed copies of the book to be printed, as is before expressed of written copies, with all such additions as the author hath made.

"XIX. Item, The court doth declare, as formerly, so now, That no apprentices be taken into any printing house, otherwise then according to this proportion following (viz.) euery master printer that is, or hath beene master or upper warden of his company, may haue three apprentices at one time and no more, and euery master printer that is of the liuerie of his company, may have two apprentices at one time and no more, and euery master printer of the yeomanry of the company may have one apprentice at one time and no more, neither by copartnership, binding at the scriueners, nor any other way whatsoeuer; neither shall it be lawfull for any master printer when any apprentice or apprentices, shall run or be put away, to take another apprentice, or other apprentices in his or their place or places, vnlesse the name or names of him or them so gone away, be raced out of the hall booke, and never admitted again, vpon paine of being for euer disabled of the vse of a presse or printing-house, and of such further punishment, as by this court or the high commission court respectiuely, as the seuerall causes shall require, shall be thought fit to be imposed.

"XX. Item, The court doth likewise declare, that because a great part of the secret printing in corners hath been caused

list of condemned books never to be opened; but the expurgatory index indicates those only prohibited till they have undergone a purification.' No book was to

for want of orderly imployment for iourneymen printers, There-fore the court doth hereby require the master and wardens of the company of stationers, to take especiall care that all iourneymen printers, who are free of the company of stationers, shall be set to worke, and imployed within their own company of stationers; for which purpose the court doth also order and declare, that if any iourneyman printer, and free of the company of stationers, who is of honest, and good behauiour, and able in his trade, do want imployment, he shall repaire to the master and wardens of the companie of stationers, and they or one of them, taking with him or them one or two of the

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[1] "Pursuant to the decree of the star chamber in 1637, concerning the press, all books of divinity, physic, philosophy, and poetry, were licensed either by the Archbishop of Canterbury, or the Bishop of London, or by substitutes of their appointment. The document is in Rushworth, Hist. Col. iii. 306, appendix; and is reprinted in the Memoirs of Thomas Hollis, p. 641." (Holt White.) Lambeth House, the residence of the Archbishop of Canterbury, "from at least the thirteenth century."

Disraeli in his Curiosities of Literature (p. 99, § 1), preserves the following documentary relics of this epoch, which, he says, serves as a curious instance, in what manner the censors of books clipped the wings of genius when it was found too daring or excursive—

"I, the underwritten John Paul Marano, author of a manuscript Italian volume, intituled 'l'Esploratore Turco, tomo terzo," acknowledge that Mr. Charpentier, appointed by the lord chancellor to revise the said manuscript, has not granted me his certificate for printing the said manuscript, but on condition to rescind four passages. . . The first beginning, &c. . . By this I promise to suppress from the said manuscript the places above marked, so that there shall remain no vestige; since without agreeing to this, the said certificate would not have been granted me by the said Mr. Charpentier; and for surety of the above, which I acknowledge to be true, and which I promise punctually to execute, I have signed the present writing. Paris, 28th September, 1686.—John Paul Marana."

be allowed on any subject, or in any language which contained a single position, an ambiguous sentence, even a word, which, in the most distant sense, could

master printers, shall go along with the said iourneyman printer, and shall offer his seruice in the first place to the master printer vnder whom he serued his apprentiship, if he be liuing, and do continue an allowed printer, or otherwise to any other master printer, whom the master and wardens of the said coupany shall thinke fit. And euery master printer shall bee bound to imploy one iourneyman, being so offered to him, and more, if need shall so require, and it shall be so adiudged to come to his share, according to the proportion of his apprentices and imployments, by the master and wardens of the company of stationers, although he the said master printer with his apprentice or apprentices be able without the helpe of the said iourneyman or iourneymen to discharge his owne worke, vpon paine of such punishment, as by this court, or the high commission court respectiuely, as the several causes shall require, shall be thought fit.

"XXI. Item, The court doth declare, That if the master and wardens of the companie of stationers, or any of them, shall refuse or neglect to go along with any honest and sufficient iourneyman printer, so desiring their assistance, to finde him employment, vpon complaint and proofe made thereof, he, or they so offending, shall suffer imprisonment, and such other punishment as by this court, or the high commission court respectively, as the seuerall causes shall require, shall be thought fit to be imposed. But in case any master printer hath more imployment then he is able to discharge with helpe of his apprentice or apprentices, it shall be lawful for him to require the helpe of any iourney-man or iourney-men-printers, who are not imployed, and if the said iourney-man, or iourney-men-printers so required, shall refuse imployment, or neglect it when hee or they haue vndertaken it, he or they shall suffer imprisonment, and vndergo such punishment, as this court shall thinke fit.

"XXII. Item, The court doth hereby declare, that it doth not hereby restraine the printers of either of the vniuersities from taking what number of apprentices for their service in printing there, they themselues shall thinke fit. Prouided alwayes, that the said printers in the vniuersities shall imploy all their owne iourney-men within themselues, and not suffer any of their said iourney-men to go abroad for imployment to the printers of London (vnlesse vpon occasion some prin-

be construed opposite to the doctrines of the supreme authority of this council of Trent; where it seems to have been enacted, that all men, literate and illiterate,

ters of London desire to imploy some extraordinary workman or workmen amongst them, without preiudice to their owne iourneymen, who are freemen) vpon such penalty as the chancellor of either of the vniuersities for the time being, shall think fit to inflict vpon the deliaquents herein.

"XXIII. Item, That no master-printer shall imploy either to work at the case, or the presse, or otherwise about his printing, any other person or persons, then such only as are free-men, or apprentices to the trade or mystery of printing, vnder paine of being disabled for euer after to keep or vse any presse or printing house, and such further punishment as by this court, or the high commission court respectiuely, as the severall causes shall require, shall bee thought fit to be imposed.

"XXIV. Item, The court doth hereby declare their firme resolution, that if any person or persons, that is not allowed printer, shall hereafter presume to set vp any presse for printing, or shall worke at any such presse, or set, or compose any letters to bee wrought by any such presse; hee, or they so offending, shall from time to time, by the order of this court, bee set in the pillorie, and whipt through the citie of London, and suffer such other punishment, as this court shall order or thinke fit to inflict vpon them, vpon complaint or proofe of such offence or offences, or shalbe otherwise punished, as the court of high commission shall thinke fit, and is agreeable to their commission.

"XXV. Item, That for the better discouery of printing in corners without licence; The master and wardens of the company of stationers for the time being, or any two licensed master printers, which shall be appointed by the lord archbishop of Canterbury, or lord b. of London for the time being, shall haue power and authority, to take vnto themselues such assistance as they shall think needfull, and to search what houses and shops (and at what time they shall think fit) especially printing-houses, and to view what is in printing, and to call for the license to see whether it be licenced or no, and if not, to seize vpon so much as is printed, together with the severall offendors, and to bring them before the lord archbishop of Canterbury, or the lord bishop of London for the time being, that they or either of them may take such further order therein as shall appertaine to iustice.

prince and peasant, the Italian, the Spaniard, and the Netherlander, should take the mint-stamp of their thoughts from the council of Trent, and millions of

"XXVI. Item, The court doth declare, that it shall be lawfull also for the said searchers, if vpon search they find any book or bookes, or part of booke or books which they suspect to containe matter in it or them, contrary to the doctrine and discipline of the church of England, or against the state and gouernment, vpon such suspition to seize upon such book or books, or part of booke or books, and to bring it, or them, to the lord arch-bishop of Canterbury, or the lord bishop of London for the time being, who shall take such further course therein, as to their lordships, or either of them shall seeme fit.

"XXVII. Item, The court doth order and declare, that there shall be foure founders of letters for printing allowed, and no more, and doth hereby nominate, allow, and admit these persons, whose names hereafter follow, to the number of foure, to be letter-founders for the time being, (viz.) John Grismand, Thomas Wright, Arthur Nichols, Alexander Fifeild. And further the court doth order and decree, that it shall be lawfull for the lord arch-bishop of Canterbury, or the lord bishop of London for the time being, taking unto him or them, six other high commissioners, to supply the place or places of these who are now allowed founders of letters by this court, as they shall fall void by death, censure, or otherwise.

"Prouided, that they exceede not the number of foure, set downe by this court. And if any person or persons, not being an allowed founder, shall notwithstanding take vpon him, or them, to found, or cast letters for printing, vpon complaint and proofe made of such offence, or offences, he, or they so offending, shall suffer such punishment, as this court, or the high commission court respectiuely, as the seuerall causes shall require, shall think fit to inflict vpon them.

"XXVIII. That no master-founder whatsoeuer shall keepe aboue two apprentices at one time, neither by copartnership, binding at the scriueners, nor any other way whatsoeuer, neither shall it be lawfull for any master-founder, when any apprentice or apprentices shall run, or be put away, to take another apprentice, or other apprentices in his, or their place or places, vnlesse the name or names of him, or them so gone away, be rased out of the hall booke of the company, whereof

souls be struck off at one blow, out of the same used mould."

The result, of course, was that an insertion of its

the master-founder is free, and never admitted again, vpon pain of such punishment, as by this court, or the high commission respectiuely, as the seuerall cases shall require, shall be thought fit to bee imposed.

"XXIX. Item, That all iourney-men-founders be imployed by the master-founders of the said trade, and that idle iourneymen be compelled to worke after the same manner, and vpon the same penalties, as in case of the iourneymen printers is before specified.

"XXX. Item, That no master-founder of letters, shall imploy any other person or person in any worke belonging to the casting or founding of letters, then such only as are freemen or apprentices to the trade of founding letters, saue onely in the pulling off the knots of mettle hanging at the ends of the letters when they are first cast, in which work it shall be lawfull for euery master-founder, to imploy one boy only that is not, nor hath beene bound to the trade of founding letters, but not otherwise, upon pain of being for euer disabled to vse or exercise that art, and such further punishment, as by this court, or the high commission court respectiuely, as the severall causes shall require, be thought fit to be imposed.

"XXXI. Item, That every person or persons whatsoeuer, which shall at any time or times hereafter, by his or their confession, or otherwise by proof be conuicted of any of the offences, by this, or any other decree of this court made, shall before such time as he or they shall be discharged, and ouer and aboue their fine and punishment, as aforesaid, be bound with good sureties, never after to transgresse, or offend in that or the like kinde, for which he, or they shall be so conuicted and punished as aforesaid; and that all and euery the forfeitures aforesaid (excepting all seditious schismaticall bookes, or pamphlets, which this court doth hereby order to bee presently burnt.) And except such bookes, as the forfeitures are already granted by letters patent, shall be diuided and disposed of, as the high commission court shall find fit. Alwaies prouiding that one moitie be to the king.

"XXXII. Item, That no merchant, master, or owner of any ship or vessel, or any other person or persons whatsoeuer shall hereafter presume to land, or put on shore any booke or

title in an index was the most valuable of advertisements for the book itself; as fast as the names appeared the owners were enabled to print new editions and

bookes, or the part of any booke or books, to be imported from beyond the seas, in any port, hauen, creek, or other place whatsoeuer within the realme of England, but only in the port of the city of London, to the end the said bookes may there be viewed, as aforesaid; and the seuerall officers of his maiesties ports are hereby required to take notice thereof.

"XXXIII Item, That whereas there is an agreement betwixt Sir Thomas Bodley, Knight, founder of the vniuersity library at Oxford, and the master, wardens, and assistants of the company of stationers (viz.), That one booke of euery sort that is new printed, or reprinted with additions, be sent to the vniuersitie of Oxford for the vse of the publique librarie there; The court doth hereby order and declare, that euery printer shall reserue one book new printed, or reprinted by him, with additions, and shall before any publique venting of the said book, bring it to the common hall of the companie of stationers, and deliuer it to the officer thereof to be sent to the librarie at Oxford accordingly, vpon paine of imprisonment, and such further order and direction therein, as to this court, or the high commission court respectiuely, as the severall causes shall require, shall be thought fit.

"FINIS."

"In camera stellata coram concilio ibidem, vndecimo die iulij, anno decimo tertio Caroli regis.—This day Sir John Bankes, knight, his maiesties attourney-generall, produced in court a decree drawn and penned by the aduice of the right honourable the lord keeper of the great seale of England, the most reuerend father in God the lord arch-bishop of Canterbury his grace, the right honorable and right reuerend father in God the lord bishop of London lord high treasurer of England, the lord chief iustices, and the lord chiefe baron, touching the regulating of printers and founders of letters, whereof the court hauing consideration, the said decree was directed and ordered to be here recorded, and to the end the same may be publique, and that euery one whom it may concerne may take notice thereof, the court hath now also ordered, that the said decree shall speedily be printed, and that the same be sent to his maiesties printer for that purpose. Whereas the three and twentieth day of June in the eight and twentieth yere of the reigne of the late Queene Elizabeth, and before, diuers decrees and ordinances haue been made for the better

make their own fortunes. The publisher of Erasmus's "Colloquies" intrigued to procure the burning of his book, which raised the sale to twenty-four thousand.

gouernment and regulating of printers and printing, which orders and decrees haue been found by experience to be defectiue in some particulars; ana diuers abuses haue sithence arisen, and been practiced by the craft and malice of wicked and evill disposed persons, to the preiudice of the publike; and diuers libellous, seditious, and mutinous bookes haue been vnduly printed, and other bookes and papers without licence, to the disturbance of the peace of the church and state: For prevention whereof in time to come, it is now ordered and decreed, that the said former decrees and ordinances shall stand in force with these additions, explanations, and alterations following, viz.

"An order made by the honorable house of commons.

"Die Sabbati, 29, Januarii. 1641 [1642].

"It is ordered that the master and wardens of the company of stationers shall be required to take especiall order, that the printers doe neither print, nor reprint anything without the name and consent of the author; and that if any printer shall notwithstanding print or reprint anything without the consent and name of the author, that he shall then be proceeded against, as both printer and author thereof, and their names to be certified to this house. H. Elfinge Cler. Parl. do. com.

"Die Iovis 9. Maatii 1642 [1643].

"An order of the commons assembled in parliament for regulating printing.

"It is this day ordered by the commons house of parliament, that the committee for examinations, or any foure of them, have power to appoint such persons as they thinke fit, to search in any house or place where there is iust cause of suspition, that presses are kept and employed in the printing of scandalous and lying pamphlets, and that they do demollish and take away such presses and their materials, and the printers nuts and spindles which they find so employed, and bring the master-printers, and workmen printers before the said committee; and that the committee or any four of them, have power to commit to prison any of the said printers, or any other persons that do contrive, or publikely or privately vend, sell, or publish any pamphlet scandalous to his majesty or the proceedings of both or either houses of parliament, or that shall refuse to suffer any houses or shops to be searched,

In the times of Henry VII., Tonstall, bishop of London, whose extreme moderation, of which he was accused at the time, preferred burning books to burning authors, to testify his abhorrence of Tindal's principles, who had printed a translation of the New Testament, a sealed book for the multitude, thought of purchasing all the copies of Tindal's translation, and annihilating them in the common flame. When passing through Antwerp in 1529, then a place of refuge for the Tindalists, he employed an English merchant there for this business, who happened to be a secret follower of Tindal, and acquainted him with the bishop's intention. Tindal was extremely glad to hear of the project, for he was desirous of printing a more correct edition of his version; but the first impression still hung on his hands, and he was too poor to make a new one; he furnished the English merch-

where such presses or pamphlets as aforesaid are kept; and that the persons imployed by the said committee shall have power to seize such scandalous and lying pamphlets as they find uppon search, to be in any shoppe or warehouse, sold, or dispersed by any person whomsoever, and to bring the persons (that so kept published, or sold the same), before the committee; and that such persons as the committee shall commit for any offences aforesaid, shall not be released till the parties imployed for the apprehending of the said persons, and seizing their presses and materialls, be satisfied for their paines and charges. And all iustices of the peace, captains, officers, and constables, are required to be assisting in the apprehending of any the persons aforesaid, and in searching of their shopps, houses, and warehouses; and likewise all iustices of peace, officers, and constables, are hereby required from time to time to apprehend such persons as shall publish, vend, or sell the said pamphlets. And it is further ordered, that this order be forthwith printed and published, to the end that notice may be taken thereof, that the contemners of this order may be left inexcusable for their offence. (A collection of all the publike orders, ordinances and declarations, &c. By Edward Husband, p. 1 London, 1646."

chant with all his unsold copies, which the bishop as eagerly bought, and had them all publicly burnt in Cheapside: which the people not only declared was "a burning of the word of God," but it so inflamed the desire of reading that volume, that the second edition was sought after, at any price; and when one of the Tindalists, who was sent here to sell them, was promised by the lord chancellor in a private examination, that he should not suffer if he would reveal who encouraged and supported his party at Antwerp, the Tindalist immediately accepted the offer, and assured the lord chancellor that the greatest encouragement was from Tonstall, the bishop of London, who had bought up half the impression, and enabled them to produce a second![1] The indexes themselves were republished with preface and annotation. "The parties," says Disraeli, "made an opposite use of them. While the Catholic crossed himself at every title, the heretic would purchase no book which had not been indexed. One of their portions exposed a list of those authors whose heads had been exposed as well as their books; it was a catalogue of men of genius."[2] These indices or "indexes," being compiled in different countries were usually exactly antipodal to each other. The learned compiler of indexes at Antwerp, Arias Montanus, lived to see his own works placed in the Roman index. "Men who began by insisting that all the world should not differ with their opinions, ended by not agreeing with themselves. A civil war raged among the index makers, and if one criminated, the other retaliated. If one discovered ten places necessary to be expurgated, another found thirty, and the third inclined to place the whole work in the con-

[1] Curiosities of Literature, p. 257. [2] Id.

demned list. The inquisitors at length became so doubtful of their own opinions, that they sometimes expressed, in their license for printing, that they "tolerated the reading after the book had been corrected by themselves, until such time as the work should be considered worthy of some further correction," and sometimes they kept the books themselves until they had properly qualified them, "interem se calificum," which in one instance is said to have taken them forty years! As to the books themselves, after being licensed, as will be imagined, they became—like a record which had been tampered with—anything but an expression of their author's opinion or result of his research.

"The commentaries on the Luciad, by Faria de Souza, had occupied his zealous labors for twenty-five years, and were favorably received by the learned. But the commentators were brought before this tribunal of criticism and religion, as suspected of heretical opinions; when the accuser did not succeed before the inquisitors of Madrid, he carried the charge to that of Lisbon; an injunction was immediately issued to forbid the sale of the commentaries, and it cost the commentator an elaborate defense, to demonstrate the catholicism of the poet, himself."[1]

"Nani's history of Venice was allowed to be printed, because it contained nothing against princes. Princes then were either immaculate, or historians false. The history of Guicciardini is still scarred with the merciless wound of the papal censor; and a curious account of the origin and increase of papal power was long wanting in the third and fourth book of his history. Velly's history of France would have been an admirable work, had it not been printed at Paris!"[2]

[1] Disraeli's Curiosities of Literature, p. 257. [2] Id.

When the insertions in the index were found of no other use than to bring the peccant volumes under the eyes of the curious, they employed the secular arm in burning them in public places. The history of these literary conflagrations has often been traced by writers of opposite parties; for the truth is, that both used them; zealots seem all formed of one material, whatever be their party. "They had yet to learn that burning was not confuting, and that these public fires were an advertisement by proclamation."[1]

In England the same system was carried to all lengths. Camden declares that he was not suffered to print all his "Elizabeth," and sent those passages over to De Thou, the French historian, who printed his history faithfully two years after Camden's first edition, 1615. The same happened to Lord Herbert's history of Henry VIII., which has never been given according to the original. In the poems of Lord Brooke, we find a lacuna of the first twenty pages; it was a poem on religion, canceled by the order of archbishop Laud. The great Sir Matthew Hale ordered that none of his works should be printed after his death; as he apprehended, that in the licensing of them, some things might be struck out or altered, which he had observed, not without some indignation, had been done to those of a learned friend; and he preferred bequeathing his uncorrupted MSS. to the society of Lincoln's Inn, as their only guardians; hoping that they were a treasure worth keeping. Contemporary authors have frequent allusions to such books, imperfect and mutilated at the caprice or the violence of a licenser.

Proclamations were occasionally issued against

[1] Disraeli's Curiosities of Literature, p. 257.

authors and books; and foreign works were, at times, prohibited. The freedom of the press was rather circumvented, than openly attacked, in the reign of Elizabeth, who dreaded the Roman Catholics, who were at once disputing her right to the throne and the religion of the state. Foreign publications, or "books from any parts beyond the seas," were therefore prohibited. The consequence of which prohibitation was that "men of learning were at a loss to know what arms the enemies of England and of her religion were plotting against her."[1]

Queen Elizabeth had a keen scent after what she called treason, which she allowed to take in a large compass. She condemned one author (with his publisher) to have the hand cut off which wrote his book; and she hanged another.[2] With the fear of Elizabeth

[1] Strypes' Life of Whitgift, p. 268.

[2] The author, with his publisher, who had their right hands cut off, was John Stubbs of Lincoln's Inn, a hot-headed Puritan, whose sister was married to Thomas Cartwright, the head of that faction. This execution took place upon a scaffold, in the market-place at Westminster. After Stubbs had his right hand cut off, with his left he pulled off his hat, and cried with a loud voice, "God save the Queen!" the multitude standing deeply silent, either out of horror at this new and unwonted kind of punishment, or else out of commiseration with the man. whose character was unblemished. Camden, who was a witness to this transaction, has related it. The author, and the printer, and the publisher, were condemned to this barbarous punishment, on an act of Philip and Mary, against the authors and publishers of seditious writings. Some lawyers were honest enough to assert, that the sentence was erroneous, for that act was only a temporary one, and died with Queen Mary; but, of these honest lawyers, one was sent to the tower, and another was so sharply reprimanded, that he resigned his place as a judge in the common pleas. Other lawyers, as the lord chief justice, who fawned on the prerogative far more then than in the Stuart-reigns, asserted, that Queen Mary was a king; and that an act made by any king, unless repealed, must always exist, because the king of England never

before his eyes, Holinshed castrated the volumes of his history. When Giles Fletcher, after his Russian embassy, congratulated himself with having escaped with his head, and on his return wrote a book called "The Russian Commonwealth," describing what he termed its tyranny, Elizabeth forbade the publishing of the work.[1] And as we have seen one of Milton's noblest similies in the "Paradise Lost," all but cost the world the poem itself.

James I. proscribed Buchanan's history, and a political tract of his, at "the Mercat Cross;" and every one was to bring his copy "to be perusit and purgit of the offensive and extraordinare materis," under a heavy penalty. Knox, whom Milton calls "the Reformer of a Kingdom," was also curtailed; and "the sense of that great man shall, to all posterity, be lost for the fearfulness, or the presumptuous rashness of a perfunctory licenser."

The regular establishment of licensers of the press

dies! It was Sir Francis Bacon, or his father, who once pleasantly turned aside the keen edgo of her regal vindictiveness; for when Elizabeth was inquiring whether an author, whose book she had given him to examine, was not guilty of treason, he replied, "Not of treason, madam; but of robbery, if you please; for he has taken all that is worth noticing in him from Tacitus and Sallust." Disraeli's Curiosities of Literature, p. 259.

[1] It is curious to contrast this fact with another better known, under the reign of William III.; then the press had obtained its perfect freedom, and even the shadow of the sovereign could not pass between an author and his work. When the Danish ambassador complained to the king of the freedom which Lord Molesworth had exercised on his master's government, in his account of Denmark; and hinted that, if a Dane had done the same with the king of England, he would, on complaint, have taken the author's head off: "That I cannot do," replied the sovereign of a free people; "but, if you please, I will tell him what you say, and he shall put it into the next edition of his book."—Id.

appeared under Charles I. and his archbishop of Laud. When Charles printed his speech on the dissolution of the parliament, which excited such general discontent, some one printed Queen Elizabeth's last speech, as a companion-piece. This was presented to the king by his own printer John Bill, not from a political motive, but merely by way of complaint that another had printed without leave or license, that which, as the king's printer, he asserted was his own copy-right. Charles does not appear to have been pleased with the gift, and observed, "You printers print anything."[1]

[1] Disraeli's Curiosities of Literature, p. 259.

The reading of the Bible itself was prohibited by Henry VIII., except by those who occupied high offices in the state; "a noble lady or gentleman might read it in their garden or orchard, or other retired place;" but men and women in the lower ranks of life were positively forbidden to read it, or to have it read to them. It appears by an act dated 1516, that in those days, the Bible was called "Bibliotheca" or "The Library." The word "library" then was limited in its signification to the Biblical writings. The Bible was not only prohibited but actually improved. There have been several remarkable attempts to expurgate the Bible, even archbishop Tillotson having been credited with such a design. Dr. Geddes' version is, says Disraeli, "aridly literal and often ludicrous by its vulgarity." Castillon endeavored to make the Bible classical, by introducing into its text such phrases and episodes as he thought proper, from profane writers, and Père Burrnyer, recomposed the entire Bible into a romance, which he styled "Histoire du Peuple de Dieu." His histories of Joseph, and of King David, are relishing morsels, and were devoured eagerly in all the boudoirs of Paris. For instance, he tells us: "Joseph combined with a regularity of features, and a brilliant complexion, an air of the noblest dignity; all which contributed to render him one of the most amiable men in Egypt." At length "she declares her passion, and pressed him to answer her. It never entered her mind that the advances of a woman of her rank could ever be rejected. Joseph at first only replied to all her wishes by his cold embarrassments. She would not yet give him up. In vain he flies from her: she was too passionate to waste even

But the whole career of the so-called licensers of the press is such a mass of ridiculous and quite incredible absurdity as to merit preservation rather among the curiosities than among the Laws of Literature. Milton, who raised the strongest voice for literary freedom, was by turns under the disfavor of both church and Puritan, of both king and commons. Among the French instances are retained. Malebranche said, that he could never obtain an approbation for his "Research after Truth," because it was unintelligible to his censors; and at length Mezeray, the historian, approved of it as a book of geometry. Latterly in France, the greatest geniuses were obliged to submit their works to the critical understanding of persons who had formerly been low dependents on some man of quality, "who never printed their names

the moments of his astonishment." This good father, however, does ample justice to the gallantry of the Patriarch Jacob. He offers to serve Laban seven years for Rachel. "Nothing is too much," cries the venerable novelist, "when one really loves;" and this admirable observation he confirms by the facility with which the obliging Rachel allows Leah for one night to her husband! In this manner the patriarchs are made to speak in the tone of the tenderest lovers; Judith is a Parisian coquette, Holofernes is rude as a German baron; and their dialogues are tedious with all the reciprocal politesse of metaphysical French lovers! Moses in the desert, it was observed, is precisely as pedantic as Père Berruyer addressing his class at the university. One cannot but smile at the following expressions: "By the easy manner in which God performed miracles, one might easily perceive they cost no effort." When he has narrated an "Adventure of the Patriarchs," he proceeds, "After such an extraordinary, or curious, or interesting adventure, &c." Quite the reverse of this treatment was that of the gothic bishop, mentioned by Jortin (Remarks on Ecclesiastical History, A. 2), who translated the scriptures into the Gothic language, but omitted the Book of Kings, lest the wars, of which so much is there recorded, should increase their inclination to fighting, already too prevalent!

but to their licenses." One of these suppressed a work, because it contained principles of government, which appeared to him not conformable to the laws of Moses. Another said to a geometrician, "I cannot permit the publication of your book; you dare to say, that, between two given points, the shortest line is the straight line. Do you think me such an idiot as not to perceive your allusion? If your work appeared, I should make enemies of all those who find, by crooked ways, an easier admittance into court than by a straight line. Consider their number!" In Austria, they condemned two books as heretical; of which one, entitled "Principes de la Trigonometrie," the censor would not allow to be printed, because the Trinity, which he imagined to be included in trigonometry, was not permitted to be discussed; and the other on the "Destruction of Insects," he insisted had a covert allusion to the Jesuits, who, he conceived, were thus malignantly designated.[1]

216. In 1662, was passed the licensing act,[2]—which was an act confirming all the rules, regulations, and resolutions of the stationers' company,[3] which it had proceeded upon its organization to enact, as well

[1] A curious literary anecdote has been recorded of the learned Richard Simon. Compelled to insert in one of his works the qualifying opinions of the censor of the Sorbonne, he inserted them within crotches. But the printer, who was not let into the secret, printed the work without these essential marks, and the author beheld his own opinions overturned in the very work he had written to maintain them.

[2] 13 and 14 Car. II., 33.

[3] Following is a fac similie of an early page of the books of the stationers' company:

23 April

John wolf Entred for his copie vnder th[e h]and of the lord Bysshop of LONDON a book intituled. . *A shorte answere to the reasons which the popyshe Recusantes alege*

as to levy, considerable fines upon members acting in controvention thereof.

This licensing act interdicted the printing of any book unless first entered in the registry of the stationers' company, and licensed by the lord chamberlain, and

why they will not come to our churches \ FFRAUNCIS BENNY beinge the Author . . . . vj[d]

xviij° Aprilis

Richard ffeild assigned over to master Harrison senior 25 *Junij* 1594

Entred for his copie vnder th[e h]andes of the Archbisshop of CANTERBURY and master warden **Stirrop** a booke intituled *VENUS and ADONIS* . vj[d]

3 Aprilis

Master Woodcock

Entred for his copie A booke entituled. *Idea. The sheperdes garlond. ffasshioned in x eccloges.* and alowed vnder master **hartwelles** hand *intratur in curia.* vj[d]

[By MICHAEL DRAYTON.]

Wydowe Charlwood

Entred for her copie a booke intituled. GERVIS MARKUM *his THEWSIS and DAPHNE* . vj[d]

[This work is apparently now lost.]

2 Maij [1593]

Richard ffeild

Entred for his copie a book intituled, *the first parte of christian passions conteyninge a hundred Sonnettes of meditacion humiliacon and prayer*, aucthorised vnder the hande of the L[ord] Bisshop of LONDON . vj[d]

[This edition is apparently now lost.]

7 May

Thomas Orwin

Entred for his copies by assent of a Court holden this Day these bookes followinge which were first **kingstons** and after **Georg**[e] **Robinsons** whose widowe the said **Orwin** hath married . v[s] viij[d]

viz

The whetston of wytt
master WILSONS *Retorik* and *logik*
master CALVINS *Catechisme.*
VIRGIL in Latin.
TULLIES Offices latin
ACOLASTUS.
SturmIUS *epistles*
SUSEMBROTUS *figures*
pueriles confabulationes
pueriles Scriptur[a]*e*

prohibited the printing of any work without its owner's consent upon pain of forfeiture, and a penalty, a moiety of which was to go to the owner of the work infringed.[1]

This act, after being continued by several successive parliaments, expired May 9th, 1679,[2] but was revived by the statute of James I.,[3] continued by the statute of William and Mary,[4] and finally expired in the reign of William in 1694.

217. During all these years, while all these different charters, acts and statutes had been seeking to expand, abridge, protect and regulate the property of the publisher, even down to the printers they should employ and the presses they should use, no statute had regulated, or even apparently recognized the rights of the author of the manuscript from which the book was printed. But when we reflect upon the state of English literature all this time, and upon the illustrious names that even then filled its history, it is difficult to believe that the word "owners," when used in these statutes, meant only the royal patentees, to the exclusion of the actual producers of the work, or that a right in the author to the product of his own labor was not conceded. Indeed, in 1681, two years after the first expiration of the licensing

[1] The various provisions of this act effectually prevented piracies, without actions at law or bills in equity. But cases arose of disputed property. Some of them were between different patentees of the crown; some whether the property "belonged to the author from his invention and labor, or the king, from the subject-matter." . . . . The legislature which passed this act could never have entertained the most distant idea that the productions of the brain were not a subject-matter of property. Copinger on Copyright, 12.

[2] 31 C. I.

[3] 1 Jac. I. c. 7.

[4] 4 W. & M. c. 24.

act of 1679, we find the stationers' company adopting an ordinance or by-law, reciting that several of its members have "great part of their estate in copies;" that "by ancient usage of the company, when any copy or book is duly entered in their register to any member he hath always been reputed to be the proprietor, and entitled to the sole right of printing thereof," and that "this privilege hath of late been often violated and abused; and providing a penalty for any further transgressions of the sort." This ordinance, which could have no possible vitality outside of themselves,—even if it had not been a sort of windy pronunciamento to the effect that their own members should not violate the law of the land,—the stationers probably intended as a sort of advertisement to the rest of the public that, although their rights had been taken away from them, they were not disheartened. It certainly could have served no other purpose. For five years successively, attempts were made to secure a new licensing act. Such a bill, indeed, once passed the house of lords, but afterwards miscarried upon constitutional objections to a license.

218. It was during these years that the so-called "prerogative" or "crown copyright cases were brought."[1] Indeed, from its first introduction, the art

[1] From 1556 (the abolition of the star chamber in 1640) no records exist, of any prosecutions for literary piracy. The judicial proceedings of the star chamber having been lost or destroyed. "But," says Mr. Curtis, "it is obvious that no man could print another's copy, because he could not obtain a license to do so, for two reasons. In the first place, the literature of England was not then so extensive, that the officers of the crown, whose duty it was to license publications, would not, generally, know to whom the copyright of any work belonged, which any applicant might find it worth while to reprint. There was, therefore, little danger that licenses would be incautiously granted. In the second place, the decree of

of printing had been considered a state right and franchise, belonging to the crown, and not a mere private industry to be assumed by the subject at will. And furthermore, the art was said to belong to the king, because it had been introduced at the king's expense: that Henry the VI., upon learning of the new invention of printing which was beginning to make some stir in Europe, was moved by the archbishop of Canterbury to procure a printing mold to be brought into England,[1] and that Mr. Robert Toarnor, the master of the Rolls, disguised himself by shaving his beard and hair, and taking to his assistance Mr. Caxton, "a citizen of good abilities, who traded in Holland, who proceeding to Leyden (not daring to enter Haarlem), succeeded in bringing away in the night one Corsells, or Corsellis, and that Corsellis was carried under guard to Oxford, where the

28th Elizabeth prohibited all printing 'contrary to any allowed ordinance set down for the good government of the stationers' company.' Now, although we know of no ordinance or by-law of the company relative to copies, until after the year 1640, yet from 1558 to 1582 there are, it is said, entries in the records of the company which show that copies were entered as property, and that pirating was punished (4 Burr. 2313). In 1583, two printers, Wolf and Ward, insisted upon a right of printing all books, even where there were copyrights existing (Stowe, 223, tit. Stationers' Company). But commissioners, appointed by the crown, willed them to desist. See Wedderburn's Argument in Tonson v. Collins, 1 W. Black. R. 304. This shows the contemporary opinion as to this species of property, and renders it highly probable that no license could have been obtained for printing another man's copy, because it would have been asking for an authority to do what was then held to be immoral, dishonest, and unjust. It is a just inference, that what was so held by the stationers' company, in that age a recipient of royal favor and of extraordinary powers from the crown, would have been so held by the crown itself."

[1] See *ante*, vol. i. notes, pp. 429, 430, et seq.

first printing press was set up at the king's expense."[1] Afterwards the king set up a press at St. Albans, and another at Westminster, the king thereafter permitting "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."[2] Indeed, it seems to have been generally conceded, upon the introduction, that this "black art"[3] was a dangerous craft, and only to be exercised at the king's license.[4] And from whatever source this theory sprung, it was well that it was so for the preservation of the industry itself, since, if assumed at will, in those early days, it might have died out for want of support.

The crown, besides licensing those who should be printers, claimed an exclusive right to the copy of all law-books, reports and statutes, almanacs, Lelys' Latin grammar, the English bible, and the book of common prayer.

The first prerogative case arose in the eighteenth

[1] Maugham. Lit. Prop. p. 45. But, says Maugham, "even if the credit of the introduction belongs to the crown and not to Caxton, which does not seem to have been discovered until it became the interest of Atkyns, the king's printer (who tells this strange story), in a quarrel with the stationers' company, to set up the right of the crown; the crown would only have a monopoly of the use of wooden types, (which were all that were brought by Corsellis from Holland), since Caxton himself introduced the use of metal types.

[2] Id. p. 45. Dibdin's Life of Caxton, 1 Ames. p. xcvii.; 4 Burr. 2417; Id. 2401; Harleian's MS. vol. 1, p. 528, note on Essay from the Anthology, 1696.

[3] "So called, because the letters imprinted were exact counterparts of each other, an identity of shape which seemed inexplicable to those familiar with manuscript, and so ascribed by them at once to the devil."

[4] Bacon's Abridgment, tit. Prerogative, F. 5, Carter 90; 3 Mod. 75; Skin. 234; Vern. 275; Carter on C. p. 39.

year of Charles I., when one Atkyns, the law-patentee, claimed the right to print all law books. Certain members of the stationers' company had printed "Rolles' Abridgment," and upon his bill, an injunction was granted, restraining the defendants. The case was subsequently appealed to and argued in the house of lords, who stated the reason of the crown's copy in law book to be that it hires and pays the judges who pronounce that law.[1] And although the claim is no longer pressed, yet its influence is still apparent both in England and the United States, where no copyright can exist in the opinions of judges—although the annotation, synopsis or analyses accompanying them can and does exist in the reporter or commentator.[2]

The next case, Roper v. Streater,[3] turned upon the same question. Roper had purchased of the executors of Mr. Justice Croke, one-third share in his reports, whereas Streater was at the time, as Atkyns had been, the law patentee. But the house of lords held that the king was the owner of Croke's reports, and that therefore, Croke's executors could not have conveyed them to Roper.

The Stationers' Company v. Seymour,[4] was the case of Gadsbury's almanac. It was laid down in this case that the property in an almanac is in the crown.

[1] Atkyns' Case, Carter, 89; 4 Burr. 2315; Bacon's Abr. Prerog. F. 5.

[2] Wheaton v. Peters, 8 Pet. 591. And see *post*, chapter on Legal Reports.

[3] Skin. 234; 22nd and 24th Charles, 11; 1 Mod. 257; Bacon Abr. Prerog. F. 5; 4 Burr. 2316. There was also a case of the Stationers' Company v. Parker, 1 Jac. 2; Skin. 233. It does not appear what book was in controversy, but the question was substantially the same as the above, holding that the king had power to grant the right to print books concerning law or religion.

[4] 1 Mod. 256; vid. Stationers' Company v. Partridge, 10 Mod. 105; 6 Bac. Abr. 508; 4 Burr. 2402.

Because (1) an almanac has no certain author, and (2) because it must be more or less a following of the calendars printed in the book of common prayer, regulating the festivals and fasts of the church, and there o c an infringement on that part of the king's prerogative as head of the church.

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, though it was not until in 1781, in Eyre and Strahan v. Carnan,[1] which was decided in the court of exchequer, that 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 who were the king's printers, produced 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 rights 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 fourth 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, and thereupon the court held that the grant was founded on public convenience, was supported by

[1] 6 Bac. Abr. Prer. F. p. 509.

long usage, and the injunction was accordingly continued.[1]

In the Stationers' Company v. Parker,[2] the name of the particular book in controversy does not appear, but it was undoubtedly a law book, and the question was between concurrent patentees, whether the plaintiff's patent excluded the defendants. Holt, arguing for the defendant, agreed that the king had power to grant the printing of books concerning law or religion, and admitted it to be an interest, but not a sole interest. The court inclined for the defendant, but reserved the question for advisement.[3]

There is no case in the books concerning the Latin Grammar, but the right of the king was grounded on the allegation, that he paid for compiling and publishing it. This claim to Lillys' Grammar, is now of course obsolete; but, it being apparent that the right was independent of any idea of prerogative, this claim also goes to prove the very early existence of a theory of literary property. With regard to the "Year Books," the claim rested also upon the fact that the crown was at the expense of taking the notes.[4]

There is no reported case of this date as to crown copy in the Bible, but it was founded upon the claim that the crown is the supreme head of the church, and besides, had paid its translators[5] (as in the case of the "Year Books," it was held that the crown had been at

[1] E. T. 1781; 5 Bac. Ab. 597.—Maugham on Literary Property, p 109.

[2] (1 Jac. 2), 1 Skin. 233.

[3] Prerog. F. 5; 4 Burr. 2317.

[4] See Shortt, p. 39.

[5] Maugham on Literary Property, p. 103; 2 Black. Com. 410; 4 Burr. 2315, 2329, 2405; 3 Perciv. 255. But see an application for an injunction to prevent the printing of an edition of the Bible in numbers—which appears to have been

the expense for making the notes),[1] and in the case of the Latin Grammar, that the crown had paid for its preparation and publishing.[2]

These crown prerogative cases are important, as showing that no sooner had the art of multiplication of copies arisen, than an exclusive right to such multiplication was held to exist somewhere, and to be capable of transmission by license, upon the ground that it was property, like any other possession.

219. The proprietors of copies applied to parliament in 1703, 1706, and 1709, for a bill to protect their copyrights which had been invaded, and to secure their properties. They had so long been secured by penalties, that they thought an action at law an inadequate remedy, and had no idea a bill in equity could be entertained but upon letters patent adjudged to be legal.[3]

In one of the cases given to parliament in 1709 in support of their application for a bill, the petitioner said, "The liberty now set on foot of breaking through this ancient and reasonable usage, is no way to be effectually restained 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 hundred thousand counterfeit copies may be dispersed into as many different hands, all over the kingdom, and he not be able to prove the sale of ten. Besides the defendant is al-

denied — Grierson & Jackson; Ridgway's R. 304: See Maugham on Literary Property, p. 107; 2 Evans Stat. 620.

[1] Curtis on C. p. 42.

[2] 4 Burr. 2329.

[3] A bill in equity in any other case had never been attempted or thought of. An action on the case was thought of in 31 C. 2, but was not proceeded in. Millar v. Taylor, 4 Burr, 2318.

ways a pauper; so the plaintiff must lose the costs of his suit. No man of substance has been known to offend in this particular; nor will any ever appear in it. Therefore the only remedy by the common law is to confine a beggar to the rules of the king's bench or fleet; and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders."[1]

220. On the 11th of January, 1709, pursuant to an order made upon 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 committed to a committee of the whole house; and reported with amendments on the 21st day of February, 1709.

Such is a brief resumé of the events which led to the enacting of the first statute of copyright known as the Statute of Eighth Anne, chapter xix., which became law on the tenth day of April, in the year of our Lord one thousand seven hundred and ten.[2]

221. Before advancing chronologically with this and the succeeding statutes of copyright, let us proceed to trace the history of literary property somewhat further.

After making a recognition national, the next step is

[1] Burr, p. 2318.

[2] But even this bill did not satisfy everybody. Said Sir John Dalrymple, a counsel engaged on the trial of Donaldson v. Becket, "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. A price was fixed and a clause inserted to force them to send copies to public libraries. What encouragements are these? They are rather discouragements." —Maugham, Lit. Prop., p. 17.

to make it international. The English statutes of international copyright are of the present reign.

In pursuance of the powers conferred on the Sovereign by the Act 7 & 8 Vict. c. 12, a convention for an international copyright between England and the French Republic was signed at Paris on the 3rd November, 1851, and presented to both Houses of Parliament in 1852. An Order in Council was made on the 10th January, 1852. After reciting that the convention had been made, the Order proceeds: "Her Majesty, by and with the advice and consent of her Privy Council, and by virtue of the authority committed to her by an Act passed in the session of Parliament holden in the seventh and eighth years of her reign, intituled 'an Act to amend the Law relating to International copyright,' doth order, and it is hereby ordered, that from and after the 17th day of January, 1852, the authors, inventors, designers, engravers, and makers of any of the following works (that is to say), books, prints, articles of sculpture, dramatic works, musical compositions, and any other works of literature and the fine arts, in which the laws of Great Britain give to British subjects the privilege of copyright, and the executors, administrators, and assigns of such authors, inventors, designers, engravers and makers respectively, shall, as respects works first published within the dominions of France, after the said 17th day of January, 1852, have the privilege of copyright therein for a period equal to the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the United Kingdom are by law entitled to, provided such books, dramatic pieces musical compositions, prints, articles of sculpture, or other works of art, have been registered, and copies thereof have been delivered according to the require-

ments of the said recited Act, within three months after the first publication thereof in any part of the French dominions; or if such work be published in parts, then within three months after the publication of the last part thereof.

"And it is hereby further ordered that the authors of dramatic pieces and musical compositions which shall after the said 17th day of January, 1852, be first publicly represented or performed within the dominions of France, or their assignees, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during a period equal to the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom, or their assignees, are entitled by law to the sole liberty of representing or performing the same, provided such dramatic pieces or musical compositions have been registered, and copies thereof have been delivered, according to the requirements of the said recited Act, within three months after the time of their being first represented or performed in any part of the French dominions."

By the terms of the Convention of 3rd November, 1851, to secure a copyright in France for works first published in the British dominions, every such work must be registered at the Bureau de la Librairie of the Ministry of the Interior at Paris; the charge for registration not to exceed one franc and twenty-five centimes; the charge for a certificate of such registration not to exceed six francs and twenty-five centimes, and a copy of the best edition, or in the best state, is to be given for deposit at the National Library at Paris.

The provision in the preceding Order in Council as to works published in parts, which gives a copyright

in them if registered within three months after the publication of the last part, must, according to Sir W. Page Wood, V. C. (now Lord Hatherley, C.), be interpreted as referring to publications which are to be completed in a specified number of parts, and not to those which are to be continued for an indefinite period as newspapers. The effect of the other construction would be that at any period the publisher of such a work might register it, and carry back his copyright to the earliest period in 1852, when French authors first had a copyright in this country—a result which could not have been intended by the Order in Council.

In the case of a newspaper, the first number must be registered within three months after publication, in order to bring it within the provisions of the International Copyright Act; and where it was not proved in evidence that the first number of a newspaper had not been so registered, an injunction to restrain its infringement was refused.

Besides the convention made with France, conventions to secure international copyright have also been made with Prussia, Saxony, Saxe-Weimar, Saxe-Meningen, Saxe-Altenburg, Saxe-Coburg Gotha, Brunswick, Schwarzburg-Rudolstadt, Schwarzburg-Sondershauser, Reuss in 1846, registration and delivery of copies being required within twelve months after the first.[1]

An act has recently been printed to amend the law relating to international copyright. By the 15th Vict. cap. 12, her Majesty the Queen was enabled to carry into effect a convention with France on the subject of copyright, and empowered by an Order of Council to grant certain privileges to dramatic authors, and it was further enacted that, subject to any provisions or quali-

[1] Shortt, p. 146.

fications contained in the order, and to the provisions in the said act, the law for the time being in force for insuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same should be applied for the purpose of preventing the representations of any translations of the dramatic pieces to which such order extends which were not sanctioned by the authors thereof. The recited act provided that nothing in it should be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country. The object of the present statute is to amend the last-mentioned provision (the sixth section) under certain circumstances. It is provided that in any case in which by virtue of the enactments recited, any Order in Council has been or may hereafter be made for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for her Majesty, by Order in Council, to direct that the sixth section of the act shall not apply to the dramatic pieces to which protection is so extended, and thereupon the said recited act shall take effect with respect to such dramatic pieces, and to the translations thereof, as if the said sixth section were repealed.

223. Although treaties of International Copyright exist between most of the European nations, resulting in considerable practical advantages, a difficulty appears to exist to a treaty of reciprocal copyright between the United States and Great Britain; the subject having been in a state of greater or less agitation for the last fifty years. In February, 1837, a petition signed by fifty-six British authors, including some of the most illustrious of the number, was presented to the United

States Senate by Henry Clay, praying for the privilege of copyright upon this side of the Atlantic.' And the arguments of justice and morality—which are, of course,

' This petition was as follows—

"The humble address and petition

"Of certain authors of Great Britain, to the Senate and House of Representatives of the United States, in Congress assembled,

"Respectfully showeth—

"1. That your petitioners have long been exposed to injury in their reputation and property, from the want of a law by which the exclusive right to their respective writings may be secured to them in the United States of America.

"2. That, for want of such a law, deep and extensive injuries have, of late, been inflicted on the reputation and property of certain of your petitioners; and on the interests of literature and science, which ought to constitute a bond of union and friendship between the United States and Great Britain.

"3. That, from the circumstance of the English language being common to both nations, the works of British authors are extensively read throughout the United States of America, while the profits arising from the sale of their works may be wholly appropriated by American booksellers, not only without the consent of the authors, but even contrary to their express desire—a grievance under which your petitioners have, at present, no redress.

"4. That the works thus appropriated by American booksellers are liable to be mutilated and altered, at the pleasure of the said booksellers, or of any other person who may have an interest in reducing the price of the works, or in conciliating the supposed principles or prejudices of purchasers in the respective sections of your union; and that the names of the authors being retained, they may be made responsible for works which they no longer recognize as their own.

"5. That such mutilation and alteration, with the retention of the authors' names, have been of late actually perpetrated by citizens of the United States; under which grievance your petitioners have no redress.

"6. That certain of your petitioners have recently made an effort in defence of their literary reputation and property, by declaring a respectable firm of English publishers in New York to be the sole authorized possessors and issuers of the works of the said petitioners; and by publishing in certain American newspapers their authority to this effect.

unanswerable and which it is not necessary to recapitulate here—were sounded on all hands, and exhaustively canvassed, not only in Congress but outside of it,

"7. That the object of the said petitioners has been defeated by the act of certain persons, citizens of the United States, who have unjustly published, for their own advantage, the works sought to be thus protected; under which grievance your petitioners have, at present, no redress.

"8. That American authors are injured by the non-existence of the desired law. While American publishers can provide themselves with works for publication by unjust appropriation, instead of by equitable purchase, they are under no inducement to afford to American authors a fair remuneration for their labors; under which grievance American authors have no redress but in sending over their works to England to be published, an expedient which has become an established practice with some of whom their country has most reason to be proud.

"9. That the American public is injured by the non-existence of the desired law. The American public suffers, not only from the discouragement afforded to native authors, as above stated, but from the uncertainty now existing as to whether the books presented to them as the works of British authors, are the actual and complete productions of the writers whose names they bear.

"10. That your petitioners beg humbly to remind your honors of the case of Walter Scott, as stated by an esteemed citizen of the United States, that while the works of this author, dear alike to your country and to ours, were read from Maine to Georgia, from the Atlantic to the Mississippi, he received no remuneration from the American public for his labors; that an equitable remuneration might have saved his life, and would, at least, have relieved its closing years from the burden of debts and destructive toils.

"11. That your petitioners, deeply impressed with the conviction that the only firm ground of friendship between nations is a strict regard to simple justice, earnestly pray that your honors, the representatives of the United States in Congress assembled, will speedily use, in behalf of the authors of Great Britain, your power 'of securing to the authors the exclusive right to their respective writings.'

"And, as in duty bound, your petitioners will ever pray."

"On the 16th day of February, 1837, Mr. Clay made the

among lawyers, publishers, and authors. Very ingenious and plausible objections, with a greater or less degree of sincerity,[1] were made to the proposed measure,

following report, as chairman of a committee to whom the above petition had been referred—to the Senate.

"The select committee to whom was referred the address of certain British, and the petition of certain American authors, have, according to order, had the same under consideration, and beg leave now to report—

"1. That, by the act of congress of 1831, being the law now in force regulating copyrights, the benefits of the act are restricted to citizens or residents of the United States; so that no foreigner, residing abroad, can secure a copyright in the United States, for any work of which he is the author, however important or valuable it may be. The object of the address and petition therefore, is to remove this restriction as to British authors, and to allow them to enjoy the benefits of our law.

"2. That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius, is incontestible; and that this property should be protected as effectually as any other property is, by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent exclusively upon their own mental labors for the means of subsistence; and are frequently, from the nature of their pursuits or the constitution of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

"3. It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws, they throw around it effectual security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here, and republished, without any compensation whatever being made to the author.

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[1] See "Remarks on Literary Property," by Philip H. Nicklin. Philadelphia, 1838.

but it is at least doubtful if any argument is advancable against an international copyright, upon general principles, which is not equally an argument against any copyright at all, either local or general.

We should be all shocked if the law tolerated the least invasion of the rights of property, in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws.

"4. The committee think that this distinction in the condition of the two descriptions of property is not just; and that it ought to be remedied by some safe and cautious amendment of the law. Already the principle has been adopted in the patent laws, of extending their benefits to foreign inventions or improvements. It is but carrying out the same principle to extend the benefit of our copyright laws to foreign authors. In relation to the subjects of Great Britain and France, it will be but a measure of reciprocal justice; for, in both of those countries, our authors may enjoy that protection of their laws for literary property which is denied to their subjects here.

"5. Entertaining these views, the committee have been anxious to devise some measure which, without too great a disturbance of interests, or affecting too seriously arrangements which have grown out of the present state of things, may, without hazard be subjected to the test of practical experience. Of the works which have heretofore issued from the foreign press, many have been already republished in the United States; others are in a progress of republication, and some probably have been stereotyped. A copyright law which should embrace any of these works, might injuriously affect American publishers, and lead to collision and litigation between them and foreign authors.

"6. Acting, then, on the principles of prudence and caution, by which the committee have thought it best to be governed, the bill which the committee intend proposing, provides that the protection which it secures shall extend to those works only which shall be published after its passage. It is also limited to the subjects of Great Britain and France; among other reasons, because the committee have information that, by their laws, American authors can obtain there protection for their productions; but they have no information that such is the case in any other foreign country. But, in

Mr. Clay's bill was framed by a committee, to whom had been referred a petition to the senate and house of representatives, of the above-mentioned principle, the committee perceive no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it. The bill also provides that an American edition of the foreign work for which an American copyright has been obtained, shall be published within a reasonable time.

"7. If the bill should pass, its operation in this country would be to leave the public, without any charge for copyright, in the undisturbed possession of all scientific and literary works published prior to its passage—in other words, the great mass of the science and literature of the world, and to entitle the British or French author only to the benefit of copyright in respect to works which may be published subsequent to the passage of the law.

"8. The committee cannot anticipate any reasonable or just objection to a measure thus guarded and restricted. It may, indeed, be contended, and it is possible that the new work, when charged with the expense incident to the copyright, may come into the hands of the purchaser at a small advance beyond what would be its price if there were no such charge; but this is by no means certain. It is, on the contrary, highly probable that, when the American publisher has adequate time to issue carefully an edition of the foreign work, without incurring the extraordinary expense which he now has to sustain to make a hurried publication of it, and to guard himself against dangerous competition, he will be able to bring it into the market as cheaply as if the bill were not to pass. But, if that should not prove to be the case, and if the American reader should have to pay a few cents to compensate the author for composing a work by which he is instructed and profited, would it not be just in itself? Has any reader a right to the use, without remuneration, of intellectual productions which have not yet been brought into existence, but lie buried in the mind of genius? The committee think not; and they believe that no American citizen would not feel it quite as unjust, in reference to future publications, to appropriate to himself their use, without any consideration being paid to their foreign proprietors, as he would to take the bale of merchandise, in the case stated, without paying for it; and he would the more readily make

"eminent British authors." That committee, "anxious to devise," so ran the report, "some measure which, without too great a distubance of interests, or affecting this trifling contribution, when it secured to him, instead of the imperfect and slovenly book now often issued, a neat and valuable work, worthy of preservation.

"9. With respect to the constitutional power to pass the proposed bill, the committee entertain no doubt, and congress, as before stated, has acted upon it. The constitution authorizes congress 'to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' There is no limitation of the power to natives or residents of this country; such a limitation would have been hostile to the object of the power granted. That object was to promote the progress of science and the useful arts. They belong to no particular country, but to mankind generally. And it cannot be doubted that the stimulus which it was intended to give to mind and genius, in other words, to the promotion of the progress of science and the arts, will be increased by the motives which the bill offers to the inhabitants of Great Britain and France.

"10. The committee conclude by asking leave to introduce the bill which accompanies this report."

The bill accompanying this report was as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, That the provisions of the act to amend the several acts respecting copyrights, which was passed on the third day of February, eighteen hundred and thirty-one, shall be extended to, and the benefits thereof may be enjoyed by, any subject or resident of the United Kingdom of Great Britain and Ireland, or of France, in the same manner as if they were citizens or residents of the United States, upon depositing a printed copy of the title of the book or other work for which a copyright is desired, in the clerk's office of the district court of any district in the United States, and complying with the other requirements of the said act: Provided, That this act shall not apply to any of the works enumerated in the aforesaid act, which shall have been etched or engraved, or printed and published, prior to the passage of this act: And provided also, That, unless an edition of the work for which it is intended to secure the copyright, shall be printed and published in the United States simultaneously with its issue in the foreign country, or

too seriously arrangements which grow out of the present (*i.e.* 1837) state of things, may, without hazard be subjected to the test of practical experience," reported a bill in thirty lines, which seemed to them all that was necessary in the matter, which, however, failed to become a law.

The subject was again seriously agitated in 1873, on the seventh day of February, in which year the Hon. Lot M. Morrill, United States senator from Maine, submitted a unanimous and unfavorable report of the joint committee on the library, to whom was referred the resolution directing them to inquire into the practicability of securing to authors the benefit of international copyright.[1]

within one month after depositing as aforesaid the title thereof in the clerk's office of the district court, the benefits of copyright hereby allowed shall not be enjoyed as to such work."

[1] The committee reported that, after attentive consideration of the subject-matter, they have found the question of international copyright attended with grave practical difficulties, and of doubtful expediency, not to say of questionable authority.

At the outset of the examination much contrariety of opinion between those who demand the measure as a just recognition of the rights of authors to their works and those representing the manifold interests, occupations, and domestic industries involved in the contemplated legislation became conspicuous; in the prominency and fervor of which the primary motive of any and all contemplated constitutional action, namely, the promotion of the progress of science and the useful arts, seemed—unconsciously, of course—likely to be overcast.

On behalf of authors and artists it is insisted that congress owes it to universal authorship to grant protection to literary and scientific productions, irrespective of nationality, as a matter of justice and right; that the constitution in this respect, as in the case of domestic authors, is mandatory in its character; that the mode and manner of such protection are prescribed, in terms, in its provisions; and that none other than the mode prescribed is at all allowable, leaving congress no discretion in the premises, and that not to legislate in this behalf is to refuse the performance of an obvious duty; and that, having by the law of copyright secured to domestic authors exclusive

Mr. Morrill's report is, perhaps, the most ambitious attempt in the history of legislation upon this subject, to defend, upon constitutional and legal grounds, the rights to. their works, thereby recognizing the obligation of protection to authorship. Congress stands derelict in the performance of its whole duty, in that it has not provided equal protection to universal authorship.

Upon the soundness and cogency of this proposition both American and foreign authors are understood generally to be agreed.

A portion of the American publishers (and they are among the most important) are willing to accede to the demands of the authors, upon the condition of satisfactory stipulations as to the medium of communication with the American public through their publishing houses; while the authors divide on the question of publication, a portion, not illogically, insisting upon the supposed duty of absolute protection without stint, limit, or condition, and a part are disposed to yield to the terms of the publishers; and this adjustment of the matter, it is supposed, would redound to the progress of science and the arts.

A portion, and much the larger number of domestic publishers, are understood to be either hostile to the whole subject of international copyright, or consider all action in regard to it at least of questionable utility to the world of letters, and especially to the progress of science and the arts in this country and among our own people.

The printers, type-founders, binders, paper-makers, and others engaged in the manufacture of books, in large numbers remonstrate against the measure as calculated to diminish the popular sale and circulation of books by raising the price thereof, and thus prejudicial to this branch of industry.

These classes, interests, and industries, have been ably represented before the committee, and it may be observed that from these the measure is invested with its special interest, as we are not aware of any popular representation or demand, by memorial or remonstrance, or otherwise, on behalf of either book buyers or readers or the mass of the people.

The protection in his works that the author demands, it will be noticed, is an absolute and exclusive right of property therein. To all such appeals to congress (without entering into the consideration of such a pretension as an abstract proposition) it is deemed sufficient to reply that the framers of the constitution did not seem to have apprehended the jus-

non-existence of an international copyright. The argument of that report is divided into two parts. First, into an attempt to show that neither the letter nor

tice of a claim so extensive on the part of authors, nor to have contemplated the promotion of the progress of science by legislation so partial and engrossing as that proposed; but, on the contrary, in the interests of science, and altogether subservient to its ends, and as an incentive to authorship to enter into its service, did provide for the enjoyment in their works of an especial privilege for a limited period.

The nature of the prerogative conferred, its use and limitation, are each and all alike inconsistent with the assumed rights; and whatever abstract rights of property the author may be supposed to have in his production, it is clear that his appeal to congress for protection can be recognized only within the express limitations of the constitution.

It became important, in the outset, to bring to the examination of the subject a just appreciation of the provision of the constitution in relation to it. That provision is as follows: congress shall have power "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

All opinions, interests, policies, and economies must be brought to the test of this clause of the constitution, in which the objects and manner of legislation are clearly expressed, and must constitute the rule of action upon the subject.

It may be proper to remark that the policy of national copyright does not necessarily enter into the discussion. It may be assumed that the constitution not only contemplated such legislation, but that such action is supposed to be consistent with and in the interest of science, and tends to its progress. Nor is it supposed that a question properly arises as to the abstract rights of the author in his writings; neither is it important to consider whether any such rights had been recognized in England or in the American States anterior to the constitution, as these rights do not constitute the object nor form the basis of that legislative action contemplated in the constitution.

The constitutional provision is primarily in the interest of science, to which the rights and interests of authors are subordinated, and with which they are not necessarily, in all respects, identical. The very terms of the instrument are a

the spirit of the clause in the constitution which gives to congress power to pass laws of copyright, recognizes the right of authors to copyright of their works as ex-

limitation on the power of congress against the recognition of such absolute right—thus, "by securing for limited times to authors exclusive right to their writings."

The precise question is, are the terms of the constitution equally applicable to international copyright, and would their application "promote the progress of science"?

The language is sufficiently comprehensive, doubtless, to include all authorship. But in construing the constitution reference should be had to the condition of affairs at the period of its adoption, the obvious intent of the framers, as gathered from contemporaneous history, and must receive such construction as will carry out the object in view.

It was, it should be observed, to constitute, in a qualified sense, a government in the interests of the people of the United States. Its framers would not, therefore, be expected to be solicitous for the protection of individual rights of those alien to its jurisdiction, nor were the circumstances of their national position such as were calculated to invite to the consideration of topics so eminently international in their operations and relations.

Besides, it must be borne in mind that the constitution of the United States antedates all legislation upon international copyright in any country; that no thought of such a law was suggested to the convention that framed that instrument. Nor are there to be found in the history of the times such sentiments and opinions upon the subject as to justify a reasonable supposition that such a proposition could have been present in the minds of those who proposed the particular provision. It may be safe, therefore, to assume that international copyright was not within the contemplation of the constitution, whatever interpretation the language may be thought to be susceptible of. To the argument as to the mendatory character of the provisions in the interests of universal authorship, it may be replied that none but citizens could properly lay claim to protection of individual rights, and that, under the constitution, these were all subordinated to the interests of science, and that whoever invokes the protection of the one must show that his demand is at least compatible with the other.

Whether the constitution, in what it provides, is to be re-

isting at all, except in so far as, subsequently to that clause and by virtue of the power it proceeds to delegate, congress shall thereafter grant them that right. garded as mandatory or permissive, confined to American or domestic authors, or extended to foreign or alien, in spirit and intent, it demands, as a primary, essential, and paramount consideration, that whatever is done in its name shall be in the interests of, and for the promotion of, the progress of science. In the presence of this paramount object, all rights of authors, publishers, booksellers, and bookmakers must needs take a secondary place in legislative consideration. Nor is it less certain that herein lies the true interest of all genuine authorship. A demand for copyright, national or international, as a measure of protection to a property right simply, necessarily tends to sink the question of science to the level of a commercial transaction, and subjects it to the odium of an indefensible monopoly. It is only when considered as a tribute to genius, the quality and beneficence of whose productions are of universal recognition in the world of letters, that science and authorship become identical. It can not be doubted that if, under undue stimulus of national copyright, the quality of literary productions should become inferior, commonplace, and baneful, congress, in the interest of science, could apply the remedy, by limiting the privilege or denying it altogether.

It has even been said that a tendency in this direction already exists; that authors who write for fame are growing fewer, and that writers who write merely for money are multiplying; that, in short, the relations between writers on one side, and publishers and the public on the other, are growing more mercenary; but this may be said to arise from the fact that the men of true genius who are really entitled to the honorable name of American authors are confounded with men who have no just claim to such a distinction. A question fairly arises and presents itself at the threshold of any proposition of copyright, whether this commercial spirit is identical with, and friendly to the progress of science. Considering the undeniable fact that a larger portion of authors are now writing for gain than formerly, and that publishers have come to estimate their writings by the profits likely to accrue from their publications, can it be inferred that from such a union of literature and commerce the highest interests of science are likely to be promoted? Under the influence of this union, can it be denied that a class of books are put

That is to say, that, as it could not well recognize a thing which it gave the power to congress to bestow, but which had not yet been bestowed by congress, upon the market which, in literary quality, bear slight resemblance to the productions of genius, and others, where the attribute of authorship could not well be discovered? and yet these all seek shelter under the law of copyright, and enjoy that exclusive privilege designed alone for genius and the votaries of science.

While, doubtless, the constitutional provision had its origin in the belief in the identity of the interests of authorship and science, it is true that the law of copyright, as it lies in the constitution, is not the protection of authors as an object —not as the reward of genius independent of science, but as an incentive to the former in the interests of the latter.

Is the question of authorship, in its relations to science, so simple and of such universal application as to be productive of equally beneficial results when subjected to the method of the constitution as a rule for the different nations and different conditions of letters therein?

Authorship, standing by itself, although the essential element, still it is not all the world of letters, and can not in any measure having at heart the interests of literature be considered as standing independent and by itself. If it be conceded to be the soul of science, it is essential that its productions should be embodied in books, and these involve the varied skill, industries, and cunning workmanship of many hands, and at last, and not the least important agency, the enterprise, capital, and address of the publisher through whom these books are to be introduced to the reading public.

These interests press upon the legislator at the very threshold of any measure of international copyright, demanding consideration and protection. The right conferred upon the foreign author, a variety of questions of labor, art, skill, and the like, enter into the practical question, and force upon consideration the chances of ruinous monopolies at the world's great book-centres, when competition and a provident share in opportunities would seem to be our necessity.

The question before us is not national copyright, but whether the monopoly of the foreigner in his work, enjoyed in his land, can, in the interests of science, fairly be claimed for him in every land where his work may be printed. The English author has the exclusive privilege secured to him as an incentive to his genius. Does it need the further stimulus

the constitution did not recognize the rights of authors in their works. Besides, argues Mr. Morrill, if the constitution had, in spirit, recognized the natural and absolute rights of an author in his works, it would never of privilege in other lands? And if so, can such privilege be considered as demanded in the interests of literature, or would the fruits of such encouragement compensate for the natural repression of the diffusion of knowledge? Assuming now that the measure cannot be commended or rightfully demanded in the interests of authors alone, nor in that of authors and publishers combined, it remains to be seen whether the facts justify the conclusion that the measure can be granted in the interests of science.

It will doubtless be conceded that international copyright would have the effect to enhance the price of books of foreign authorship in the American market, and a tendency and the probable effect to increase the price of the American copyrighted book in our own market.

While it may be conceded that the tendency of the law of copyright is to stimulate the production of literary and scientific works, it is believed to be equally true that one of its effects is to repress the popular circulation of such works. Such, it is apparent, must be its natural tendency, and such is understood to be the fact in this country and in England, especially the latter. As a general proposition, during the existence of copyright, the interests of both publisher and author are best consulted by a small edition and consequent limited circulation, as a larger profit may be realized from a small edition at high rates than the reverse. Notable instances may be given in proof of this general proposition in England and our own country. The average price of seventy-five English books, as given in the accompanying table, is $5.60, and the average price of the American reprints of the same books is only $2.40.

The same general fact may be further illustrated by comparing the prices of English books reprinted here with the prices here of American copyrighted books of a similar character. (See table.)

And a similar effect will be observed by comparing the home prices of American copyrighted books with their prices when reprinted in England.

The English prices are generally taken from the Eeglish catalogue by Sampson Low, 1835–1862. (See table.)

have attempted to secure to him a qualified and limited right in them, and so, if congress has not seen fit to grant copyright to certain aliens, the constitution

THE LOWEST PRICES OF SOME ENGLISH BOOKS REPRINTED IN AMERICA.

(THE AMERICAN PRICES ARE GENERALLY TAKEN FROM THE BIBLIOTHECA AMERICANA, 1820 TO 1866, OR AMERICAN CATALOGUE, KELLY, 1866 TO 1871.)

NAME OF AUTHOR AND TITLE OF WORK.	ENGLISH PRICE.		PRICE OF AMERICAN REPRINT.
	IN STERLING.	IN GOLD.	
Alison, Life of Marlborough	30 0	$7 50	$1 75
Aytoun, Scottish Cavaliers	7 6	1 87	1 50
Ballads and Fermilian	13 6	3 37	1 50
Browning, Mrs., Poems	30 0	7 50	1 50
Belcher's Mutineers of the Bounty	12 0	3 00	1 50
Burton's Lake Regions of Africa	31 6	8 00	3 50
Bulwer, Athens—its Rise and Fall	21 6	8 00	1 50
Caxtoniana	21 0	5 25	1 75
Novels	2 6	0 62	0 50
Lady. Budget, &c.	31 6	8 00	2 50
Braddon, Miss, Girls' Book	4 6	1 25	0 90
Lovels of Arden	31 6	8 00	0 75
Conybeare and Howson, Life of St. Paul (complete)	48 0	12 00	3 00
Collins, Poor Miss Finch	31 6	8 00	50c., 1 00
Darwin, Variation of Plants, &c.	28 0	7 00	6 00
Dixon, Free Russia	32 0	8 00	2 00
Fair France	16 0	4 00	1 50
Dickens's Works	132 0	33 00	10 50
Dilke's Greater Britain	28 0	7 00	1 00
Desert of the Exodus	28 0	7 00	3 00
Forster's Life of Landon	28 0	7 00	3 50
Life of Dickens	12 0	3 00	2 00
Guizot's Meditations	10 0	2 50	1 75
Grote's Greece, per volume	8 0	2 00	2 00
Gould's Origin of Religious Belief	15 0	3 75	2 00
Goulbourn's Sermons	6 6	1 62	1 00
Huxley's Lay Sermons	7 6	1 88	1 75
Holland's Recollections	10 6	2 62	2 00
Hemans's Poems	12 6	3 12	0 75
Hughes, Tom Brown at Oxford	....	1 75	0 50
Tom Brown's School-Days at Rugby	....	1 75	0 75
Haweis, Music and Morals	12 0	3 00	1 75
Jowett's Plato	120 0	30 00	12 00
Kinglake's Crimea	32 0	8 00	2 00
Kingsley's At Last	20 0	5 00	1 50
Ravenshoe	31 6	8 00	1 75
G. Hamlyn	6 0	1 50	1 25
Layard's Nineveh	36 0	9 00	1 75
Lever, Lord Kilgobbin	31 6	8 00	0 75
Lockhart, Fair to See	31 6	8 00	0 75
Mulock, Hannah	21 0	5 25	0 50
Girl's Book	4 6	1 25	0 90
Morley's Voltaire	14 0	3 50	....
McGregor, Rob Roy on the Jordan	12 0	3 00	2 50

cannot be said to recognize their right to such a copyright.

In answer to this circumferential reasoning it is

NAME OF AUTHOR AND TITLE OF WORK.	ENGLISH PRICE. IN STERLING.	ENGLISH PRICE. IN GOLD.	PRICE OF AMERICAN REPRINT.
Oliphant's China	21 0	5 25	3 50
Pressense, Early Years of Christianity	12 0	3 00	1 75
Russell's American Diary	21 0	5 25	1 00
Robinson's Diary	36 0	9 00	4 00
Reclus, The Earth	24 0	6 50	5 00
Schelleris, Spectrum Analysis	28 0	7 00	6 00
Speke's Africa	21 0	5 25	4 00
Sacristan's Household	6 0	1 50	0 75
Stanley's Jewish Church	24 0	6 00	5 00
Eastern Church	12 0	3 00	2 50
Sinai and Palestine	14 0	3 50	2 50
Trollope, Harry Hotspur	9 0	2 25	0 50
Can you Forgive Her?	12 0	3 00	1 50
Orley Farm	12 0	3 00	1 50
Thackeray's Novels	7 0	1 75	50 to 75c.
Tyndall, Heat	10 6	2 62	2 00
Sound	9 0	2 25	2 00
Tennyson's Works, incomplete	9 0	2 25	0 75
The Speaker's Commentary	30 0	7 50	5 00
Vámbéry's Asia	21 0	5 25	4 50
White's St. Bartholomew	16 0	4 00	2 50
Wilfred Cumbermede (George Macdonald)	31 6	8 00	1 75
Wood's Homes without Hands	21 0	5 25	4 50
Bible Animals	21 0	5 25	4 50
Whymper's Alaska	16 0	4 00	2 50
Wallace's Malay Archipelago	24 0	6 00	3 00
Warren's Ten Thousand a Year	9 0	2 25	1 50
Spencer's Psychology	18 0	4 50	1 50
Essays	16 0	4 00	2 50
Biology	34 0	8 50	5 50
Total	.....	$109 72	$176 80

From the exhibits it would seem clear that the law of copyright, as existing in England and this country, in its practical operations in the two countries, tends unmistakably to check the popular diffusion of literary production by largely increasing the price. This fact could be further illustrated by recurrence to the vast disproportion in the sale of the cheaper reprints and the copyrighted editions in both countries.

England is the great book-making and producing nation with which this country has to do, and consequently our interests would be most affected by the proposed measure; and that such measure would not promote the progress of science

perhaps only necessary to say that the whole question as to the natural rights of authors was discussed and exhausted in the two great causes célèbres of Millar v. Taylor and Donaldson v. Beckett, which together occupied the attention of the English House of Lords and of the authors and publishers of the English-speaking world for the better part of five years—from 1759 to 1764—in whose consideration sat Lords Mansfield, Yates, De Gray, Willes, and Aston, in the discussion of which Lord Camden delivered his famous argument, and to which reference has so frequeutly been made in these pages, we have seen that there is no moral difference between literary and any other property; for, and the useful arts among the American people is believed to be obvious and to admit of little doubt.

The policy of the different states of Europe as to the protection of literary property varies as to the period of time for which it is granted. In England and in this country the protection is ample. The prevailing policy among the nations seems to be to grant such protection for literary property as is deemed a proper incentive to production.

It is questionable whether any system of international copyright could be proposed which would be equally beneficial and just, owing to the different languages prevailing among them.

In view of the whole case, your committee are satisfied that no form of international copyright can fairly be urged upon congress upon reasons of general equity or of constitutional law; that the adoption of any plan for the purpose which has been laid before us would be of very doubtful advantage to American authors as a class, and would be not only an unquestionable and permanent injury to the manufacturing interests concerned in producing books, but a hindrance to the diffusion of knowledge among the people and to the cause of universal education; that no plan for the protection of foreign authors has yet been devised which can unite the support of all or nearly all who profess to be favorable to the general object in view; and that, in the opinion of your committee, any project for an international copyright will be found upon mature deliberation to be inexpedient.

although the last mentioned case of Donaldson v. Beckett may be considered as reversing the former, and of establishing the superiority of copyright to common-law right, it can hardly be maintained that, because an author gives up a fragment of his natural rights in order that the law may more completely and fully protect the remainder, he has no natural rights at all. The right of a man to the offspring of his own brain is a natural and a moral right, secured to him by the unwritten law; and if the constitution of the United States, or any other written law, attempts to abrogate natural and moral right and unwritten law—except as a punishment for crime—that written law, whatever it is, and by whomsoever enacted, is, in just so far, null and void. But it is hardly to be supposed that the constitution does any such thing.

The second portion of Mr. Morrill's argument is to the inexpediency of an international copyright, founded upon the only apparent difficulties in the matter, and which we shall proceed in this chapter to discuss, namely, the question of competition, not in the brains of authors, but in the capital and labor manufacturers of books. It is not a little remarkable that, with all the ventilation the subject has received, nothing practical appears to have ever been said upon the subject. When the time for practicalities does come, it will probably be discovered that the opposition to an international copyright with England has never come from the people of the United States. That is to say, if we are to understand by an international copyright, a measure for the benefit of authors, a measure by the provisions of which authors—the writers themselves, and not their publishers or their booksellers—can be enabled to receive payment for their own labor, and dispose of the tangible product

of their intellectual toil for value, without reference to the geographical boundaries which inclose them; the English author might travel from New York to San Francisco, from St. Paul to St. Augustine, without meeting a man, woman, or child who would disagree with him. No man—Englishman, or Gentile, or American—can enjoy a book—and who will read a book he does not enjoy—with a grudge against its author. Sergeant Talfourd gave a most satisfactory expression to this sentiment, when, in his noble speech upon the rights of authors, to which reference has been repeatedly made in these pages, in discussing the extent to which an author should receive renumeration, he exclaimed: "But if it is asked, how much an author should receive for his writings, I answer just so much as his readers are delighted to pay him!"

Again, the opposition to an international copyright between England and the United States is widely supposed to come from the publishers of the United States. It is a question of definition again. If, as has been already said, we are to understand by international copyright the rights of authors, and of the descendants of authors, without regard to clime, or sky, or country, we think it is clearly demonstrable that it does not come from the publishers. The idea that publishers are the natural enemies of authors only obtains among those authors (if such are entitled to the name at all) who cannot by any possibility find publishers. The author who finds a publisher, finds also, and that very speedily, that he is his best friend. For, as has been repeatedly pointed out, the publisher's and the author's interests are identical; the former are quite as anxious to publish a paying book as the latter can be to write one. So far

from shutting up his ears, stuffing his hands in his plethoric pockets, and turning his back upon starving authors, the publisher is waiting with his lampblack and rags; nay, he is standing on tiptoe and scanning with eager eye the whole horizon, if happily he may find an author who will take his gold in exchange for a book that his customers will buy. This picture will answer for the publisher of any nationality, and the enthusiasm with which he will welcome a paying book will never be interrupted by a question on his part, as to whether the author is an Englishman or an American. It is but justice to add that the American publisher has never expected to publish paying books without paying their authors. Allusion is only necessary to the fact that the American publishers gratuitously pay thousands of dollars yearly to English authors; they pay them not only for the privilege of publishing, but a regular percentage on the sales of their books; and (while that consideration has nothing, of course, to do with the morale) it is to be doubted if, under an international copyright, the gross amount so paid would be materially enlarged. It might even be lessened; for under an international copyright, the size of the percentage would be matter of bargain made between author and publisher, in contemplation of a joint experiment, while at present, in the absence of such a copyright, it is a matter of gratitude for a success.

It is quite possible to a say word for the American publisher. John Smith, an obscure English writer, publishes a book in England. One of his copies finds its way three thousond miles across the ocean, and an American publisher sets up from it, and reprints the book. If it pays the American publisher, in gratitude he sends Mr. Smith a sum of money, and Mr. Smith receives it in silence. He does not rush into his

newspaper with a—"Sir, allow me to extol the American publisher as the most unexampled generous man in the world. When the laws of his country not only wink at, but allow him honorably to make a profit out of my book, without asking me if I would like a penny of it—or without my demanding or even suggesting it—he cordially and freely sends me a check." Nor do Mr. Tennyson, nor Mr. Collins, nor Mr. Herbert Spencer, nor Mr. Charles Spurgeon, nor Miss Jean Ingelow, all of whom, it is believed, have received, and are daily receiving payments on the sales of American editions of their books, write letters to their newspapers to spread the fact before the world; nor are the American publishers ostentatious enough to print the receipts they receive from those authors. But look at another phase of the matter. Supposing that Mr. John Smith's book does not pay the American reprinter—supposing that nobody will read it at any price—supposing that it dies still-born, that the edition is sent to the papermaker, and the plates melted up, and the whole thing charged to profit and loss—what is it we see then? Why, Mr. Smith fairly flies into print. The newspapers wax intemperate with the indignity done a British subject. The American publisher is a robber, a thief, a highwayman. He steals unblushingly Mr. Smith's book, and Mr. Smith never hears a word of it. "A friend of mine while passing a bookstore in New York, saw a placard announcing an American edition of my book. Now, sir, &c., &c.," writes Mr. Smith to his favorite journal. Every Grub street writer in all England "knows of a similar case, sir," and the periodical paroxysms about American pirates and brigands has its day out and dies. Mr. Tennyson, and Mr. Spurgeon, and Miss Ingelow, of course, take no part; they can-

not, with justice, join in the hue-and-cry; neither can they with good taste proclaim that their American publishers paid them, because that would only be another form of declaring that their books paid American publishers, as Mr. Smith's did not (which Mr. Smith's and his clacquers know only too well. Indeed, it may be a question whether it is not that very knowledge which makes them noisy), since it is to be borne in mind that no book pays its author which does not first pay its publisher. The former's profits must of necessity come through the latter's hands. The author seldom complains of his publisher so long as he sends him checks. If he does not send him checks, it is not hard to see that it is the author's fault; and yet the moment the sales stop, the devoted publisher must take the abuse! We have yet to learn that clime or race or country operates to make any difference in these rules.

The international copyright ought to exist, and it does not exist; therefore it follows that there must be opposition to it somewhere. We have seen where the opposition does not exist. Let us see if we can discover where it does. The opposition to an international copyright between Great Britain and the United States arises from the fact that that term unfortunately does not signify, and is not another name for "the rights of authors." Unfortunately for the authors, international copyright means "the rights of publishers"—or it means rather, "the competition of international publishers;" and while there does not breathe a soul in the United States who does not want to see a scheme devised by which, when he pays for a book by an English author, that English author or his children shall receive a certain percentage of the money, the most of them are very strongly opposed to any law by which

the English publisher shall be enabled to drive the American publisher out of his own bookstore. If Frenchmen or Germans should ask for an international copyright with the United States to-morrow, nothing would be easier than for them to get it. Our publishers do not want to publish German or French books; but they do want to publish books in the English language, and they must, or starve. Everybody knows that where an Englishman pays a shilling for labor, we pay a dollar; and in no class of merchandise is there so much labor represented, and so little raw material, as in books. The simple fact is, that if an Englishman were allowed to manufacture books for the American market, no American publisher could keep his office open a week. He could buy his rags and his lampblack and his glue just as cheaply, but he could not compete with the Englishman the moment the rags became paper, the lampblack ink, and labor began to be expended upon the raw material. Even if the American could manufacture books in spite of this, he could get no books to maufacture; for authors would naturally carry their manuscripts to the publisher who would pay them best, and the one who manufactured most cheaply could easily afford to pay the largest percentage upon sales. Now this inequality must fall heavily somewhere, and unfortunately it falls upon authors. When an American publisher refuses to buy an American author's manuscript, it is not because he knows that he can help himself gratis to an English author's book upon the same subject, but because the cost of manufacturing the manuscript in book form is about one hundred and seventy-five per cent. more than it should be, and that the surplus percentage must be overcome by the author, in one way or another.

But aside from this inequality of manufacture, there

is another reason for the public policy which shuts out the competition of the English publisher. Although the United States is indebted to Great Britain for her language, it has far exceeded her in the number of readers. The numerical proportion of the inhabitants of Great Britain who buy books is remarkably small. In this country, a vast system of forced expenditure has trained up a nation of forty millions of readers, not only, but of book buyers; of readers depending for their reading not upon their neighbors or upon an adjoining library, but upon their own purses and upon the ambition which is common to every person to whom "print is open" to possess a collection of books. It is to this ripe and tempting field that English publishers seek an entrance. They have not been taxed to raise the cost of preparing and nurturing it. They have not plowed, nor watched, nor watered it, but one and all, they are none the less eager to reap the harvest. Nobody can blame them for their eagerness, but the American publishers who have been taxed, who have plowed and watched and watered, and it is but fair that the field should be theirs so long as they can supply it. It is needless to suggest that it could be theirs no longer, for the laws of supply or demand are inexorable, and regulate themselves. This argument and the policy which is borne of it, it need not be said, does not apply to authors. There is no competition in authorship, or poetry, or fiction, or science. The reading of Longfellow does not create a disinclination to read Tennyson; nor will the study of Emerson supersede the desire to study Carlyle or Herbert Spencer, or of Parsons on Contracts the reading of Addison on Contracts.

The only real difficulty in the way of international copyright, arises just here. If a method can be de-

vised whereby our forty millions of readers can pay the English authors for what they care to read, without paying foreign manufacturers for merchandise which they can get equally to their taste at home, and if they can continue, as they try to do now, to pay only those English authors whose books they read—that measure will be eagerly seized upon and adopted by the people of these United States.[1]

If an English author wishes to have his book published in the United States, why does he not bring it to a United States publisher just as a native author does? It is hardly a supposable case that an American publisher would refuse a book because its author was an Englishman. The one reason, perhaps, why the English author does not come to the American publisher, is because by his own laws—by his own British statutes—a prior publication in this country deprives him of his copyright at home.[2] If this be so, then the reason why English authors cannot have a field for the sale of their literary property in the United States, is simply because their own laws refuse it to them, and it is a little hard that our long-suffering people should be characterized as "thieves" and "pirates" and "highway robbers," because short-sighted English laws have deprived their own subjects from reaping international profits for their works.

It is possible to suggest a very simple plan, whereby, so far as we are concerned, we can give the English author a copyright in his own composition among us, without forcing upon our publishers the burden of a grievous and impossible competition, and without

[1] The present tariff on books does not appear to offer any relief to the inequality which has been demonstrated.

[2] Boucicault v. Delafield, 1 H. & M. 597; 9 L. T. N. S. 709; 33 L. J. ch. 38.

driving them into bankruptcy. Our present copyright law,[1] enacts[2] that "Any citizen of the United States who shall be the author," &c. Now by simply changing the word "citizen" to "person" the result would be accomplished, and any English, French, or German author could send his manuscript over and obtain a copyright. In such case the title-page of the proposed book could be registered as it is now, and the author's rights be secured; while by a simple amendment of the section[3] which requires the deposit of two copies of the best edition of the book within ten days after publication, by providing that such deposit shall be accompanied in every case with the author's or publisher's affidavit that the edition has been wholly manufactured in the United States, the American publisher is protected, and can have no cause of complaint. But the only reason why such a simple concession on our part could not become to the British author the real international copyright of his dreams, is because the laws of his own country would not allow him to accept its benefits, except at the price of his copyright at home. It is, to say the least, insincere for Englishmen to charge the United States with standing in the way of a policy to which the only real barrier is opposed by themselves. The above amendments would certainly be to the interest of our publishers, as giving them the opportunity of publishing books for the authors of the world, while a similar provision in Great Britain would be greatly to the interest of our authors, the practical effect being to make the two countries one for the purpose of authorship, while the actual manual man-

[1] U. S. Rev. Stat. Revision of 1873–4, sec. 4948, *et seq.*
[2] Sec. 4952.
[3] 4959.

ufacture for the English market should be performed by English labor, and for the American market by American labor. This would be a realization of international copyright, that is international Authors' Rights, and—until some now utterly unforeseen bond of amity between English and American publishers is cemented—is probably the only realization possible. The only opposition to this realizaion as we have endeavored to demonstrate, is the condition of the British laws themselves. A reversal by the English courts of the ruling in Boucicault v. Delafield [1] will be, so far as Englishmen are concerned, the first great step towards the international rights of authors. So far as American authors are concerned, under the ruling in Low *v.* Routledge,[2] and Low *v.* Ward,[3] as has been elsewhere demonstrated,[4] they can,

[1] 1 H. & M. 597; 9 L. T. N. S. 709; 33 L. J. 38. "If he had first represented his drama here," said the court, "he would have been entitled to the provisions of the Dramatic Copyright Act. Then 7 & 8 Victoria was passed, enabling her majesty to make arrangements conferring on other nations the privileges accorded to all people who first publish their works here. If the plaintiff had this sort of double right, it was the very thing which the 7 & 8 Victoria was intended to extinguish. The statute says in effect (sec. 19), that 'if any person, British subject or not, chooses to deprive this country of the advantage of the first representation of his work, then he may get the benefit of copyright, if he can, under the arrangement which may have been come to pursuant to 7 & 8 Victoria, between this country and the country which he so favors with his representation; but if he chooses to publise his performance in a country which has not entered into any treaty, or made any such arrangement with regard to copyright, then this country has nothing more to say to him. He must be taken to have elected under which of the two statutes with respect to copyright he wishes to come, by performing his work in one country instead of the other, and he is thereby excluded from the advantage of publishing in the other.'"

[2] Ch. 3 H. L. 200.

[3] L. R. 6 Eq. 418.

[4] See *post*, vol. ii. 204.

upon the publication of their book, obtain either an English or a French copyright, or both, with very little effort, by merely residing for a few days in the dominion of Canada.

Mr. Morrill argued that the constitution bestows the power of enacting copyright laws upon congress, in order "to promote the progress of science," and how, he asks, will an international copyright law promote the progress of science? If an English author is already incited to mental labor by the copyright laws of his own country, how will an international copyright law operate as a further incitement?

There does not appear to be any reason why the international law should not operate as a further incitement to the English, or, it might be added, to the American author.

Indeed, not only is a large area of incalculable importance in furnishing the motive for literary labor, but in the case of certain works, the value of which to the cause of science at least will not be questioned, an international circulation alone will justify production. For example, such a work as Audubon's "Birds of America," originally published at the price of a thousand dollars a copy (and perhaps a score of others might be named), could never derive any support from one country alone. True, it will be urged that works of this magnitude are as fully protected as can be desired, from the fact of their costly and elaborate execution, which it would not pay to pirate. "Neither Europe nor America could furnish purchasers enough to warrant Mr. Audubon's publication; but Europe and America did, each continent taking about eighty copies," says a writer, quoted by the late Mr. John Camden Hotten in a letter upon the subject of international copyright. But it would

be a poor consolation to an author, who has put the labor of his lifetime, or the publisher, who has put his whole capital into an immense work, to know that his protection therein depends only upon whether or not he has a rival who is rich enough to afford to steal his venture.

"That better and more important works will be published for a large community than for a comparatively small one," Mr. Hotten proceeds to say, "is as certain as that metropolitan journalism is, and ever will be, superior to that of a small provincial town. What books of equal importance might have been produced if their anthors had been able to secure the advantages which accident secured to Audubon, it is impossible to say, but it is easy enough to suggest some. Who can doubt, for example, that a copyright convention with the United States, by which the two countries would become one market for authors, would be followed by the publication of a really great biographical dictionary in the English language, a thing which no publisher has attempted without afterward abandoning his scheme in bitter repentance? Again, what scholar has not felt the want of a great comprehensive catalogue of English publications, comprising not only all that are in the British Museum, but as far as possible, all that are not there? Such a work would be easy enough to project; and by the employment of many hands, under one presiding mind, not very difficult to execute. The title, not only of every book existing in any collection throughout the world, but of every book known to have existed, ought to be included in such a catologue, with a note indicating where a copy—if any were known—could be seen. . . . But what publisher in his senses, would venture on such an undertaking while his market is

limited to one half what it might be, if England and America would join in the good work of encouraging literary enterprise ?"

And, apart from any mere interest of author or publisher, but in general, that an international copyright would have an undoubted effect in the encouragement and elevation of literature as a whole, as a science and an art, seems hardly to be denied. Nobody can blame an author, who writes for his daily bread, for pandering to the tastes of the vulgar and of the masses ; but there might be cultivated readers enough in both England and America to warrant an author in doing his best, and writing, not only for the best market, but for the best readers.

But aside from all this, and admitting for the sake of the discussion, that an international copyright could not be a further incitement to the English (and it might be added, the American) author, then, in that case, Mr. Morrill's argument, if it proves anything proves too much, since the next question must be, do copyright laws make authors ? Can a law of copyright make an author out of one who has no genius or talent or ability for authorship ? Which brings us back to what was said before, and what, perhaps, is all that there is to be said on the subject—namely, that if there is no reason for a law of international copyright, then there is no reason for any law of copyright at all.

But whether there is or ought to be an international and universal copyright or not, it is a fact that an author's universal right to the result of his own labors, wherever he is and to whatever nationality he claims allegiance, is fully recognized and admitted to-day, both in England and America. And this appears to be abundantly proved, from the consideration that the courts of both countries have done their utmost to

give to alien authors every privilege and opportunity possible, in the absence of an international statute, and to strain every possible point in their favor.

Two American cases which show this generous and liberal spirit will be considered further on in their appropriate place.[1] And in England the cases of Low v. Routledge,[2] which was the case of Miss Cummings the authoress, of the city of New York, and her novel of "Haunted Hearts," and of Low v. Ward,[3] which was the case of Dr. Oliver Wendell Holmes and his novel of "The Guardian Angel," by virtue of which a citizen of the United States can obtain copyright in England for his work, by simply crossing our northern frontier and passing a few days in Canada, indicate the same liberality and sense of justice.[4] Besides which it appears as if an

[1] *Post*, p. 298.

[2] L. R. 3 H. L. Cas. 100.

[3] L. R. 6 Eq. 418.

[4] Following is the present act respecting copyrights in force in the Dominion of Canada:

Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Minister of Agriculture shall cause to be kept in his office books to be called the "Registers of Copyrights," in which proprietors of literary, scientific, and artistic works or compositions, may have the same registered in accordance with the provisions of this act.

2. The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as may appear to him necessary and expedient for the purposes of this act; such regulations and forms being circulated in print for the use of the public shall be deemed to be correct for the purposes of this act, and all documents, executed and accepted by the said Minister of Agriculture, shall be held valid so far as relates to all official proceedings under this act.

3. If any person prints, or publishes, or causes to be printed or published, any manuscript whatever, the said manuscript having not yet been printed in Canada or elsewhere,

American author, by merely depositing his volume in the requisite library of Paris, could obtain a copyright in France (which is the most liberal nation in the

without the consent of the author or legal proprietor first obtained, such person shall be liable to the author or proprietor for all damages occasioned by such publication, to be recovered in any court of competent jurisdiction.

4. Any person domiciled in Canada or in any part of the British possessions, or being a citizen of any country having an international copyright treaty with the United Kingdom, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves, or causes to be engraved, etched, or made from his own design, any print or engraving, and the legal representatives of such person, shall have the sole right and liberty of printing, reprinting, publishing, reproducing, and vending such literary, scientific, or artistic works or compositions, in whole or in part, and of allowing translations to be printed or reprinted and sold, of such literary works from one language into other languages, for the term of twenty-eight years, from the time of recording the copyright thereof in the manner hereinafter directed.

(2.) The condition for obtaining such copyright shall be that the said literary, scientific, or artistic works be printed and published or reprinted and republished in Canada, or in the case of works of art, that it be produced or reproduced in Canada, whether they be so published or produced for the first time, or contemporaneously with or subsequently to publication or production elsewhere. Provided that in no case the exclusive privilege in Canada shall continue to exist after it has expired anywhere else.

(3.) No immoral, or licentious or irreligious, or treasonable, or seditious literary, scientific, or artistic work shall be the legitimate subject of such registration or copyright.

5. If at the expiration of the aforesaid term of twenty-eight years, such author, or any of the authors, when the work has been originally composed and made by more than one person, be still living, or being dead, has left a widow, or a child, or children living, the same exclusive right shall be continued to such author, or if dead, then to such widow and child or children (as the case may be), for the further term of fourteen years; but in such case, within one year after the expiration of the first term, the title of the work secured shall be a

world to authors, making no distinction between its own citizens and foreigners), which copyright by virtue of treaties between France and England, making

second time recorded, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respect to such renewed copyright.

6. In all cases of renewal of copyright under this act, the author or proprietor shall, within two months from the date of such renewal, cause a copy of the record thereof to be published once in "The Canada Gazette."

7. No person shall be entitled to the benefit of this act, unless he has deposited in the office of the Minister of Agriculture two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving, and in case of paintings, drawings, statuary, and sculpture, unless he has furnished a written description of such works of art, and the Minister of Agriculture shall cause the copyright of the same to be recorded forthwith in a book to be kept for that purpose, in the manner adopted by the Minister of Agriculture, or prescribed by the rules and forms which may be made, from time to time, as hereinbefore provided.

8. The Minister of Agriculture shall cause one of the two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving aforesaid, to be deposited in the Library of the Parliament of Canada.

9. No person shall be entitled to the benefit of this act, unless he gives information of the copyright being secured, by causing to be inserted in the several copies of every edition published during the term secured, on the title-page, or the page immediately following, if it be a book, or if a map, chart, musical composition, print, cut, engraving, or photograph, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, engravings, or photographs, upon the title-page or frontispiece thereof, the following words, that is to say: "Entered according to Act of Parliament of Canada, in the year by A. B., in the office of the Minister of Agriculture." But as regards paintings, drawings, statuary, and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship.

10. Pending the publication or republication in Canada of a literary, scientific or artistic work, the author, or his legal representatives or assigns, may obtain an interim copyright by depositing in the office of the minister of agriculture a copy

what is copyright in one of them copyright in the other, would be a valid one in England—so true is it that it is the tendency of all law to gravitate towards

of the title, or a designation of such work intended for publication or republication in Canada, the said title or designation to be registered in an interim copyright register in the said office, to secure to the author aforesaid, or his legal representatives or assigns the exclusive rights recognized by this act, previous to publication or republication in Canada; the said interim registration, however, not to endure for more than one month from the date of the original publication elsewhere, within which period the work shall be printed or reprinted and published in Canada.

(2.) In all cases of interim registration under this act, the author or proprietor shall cause notice of such registration to be inserted once in the *Canada Gazette*.

3. A literary work, intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be the subject of registration within the meaning of this act, while it is so preliminarily published, provided that the title of the manuscript and a short analysis of the work are deposited in the office of the Minister of Agriculture, and that every separate article so published is preceded by the words "Registered in accordance with the copyright act of 1875;" but the work when published in book or pamphlet form, shall be subject, besides, to the other requirements of this act.

(4.) The importation of newspapers and magazines published in foreign countries, and containing, together with foreign original matter, portions of British copyright works republished with the consent of the author or his assigns or under the law of the country where such copyright exists shall not be prohibited.

11. If any other person, after the interim registration of the title of any book according to this act, within the term herein limited, or after the copyright is secured and for the term or terms of its duration, prints, publishes, or reprints, or republishes, or imports, or causes to be so printed, published or imported, any copy or any transalation of such book without the consent of the person legally entitled to the copyright thereof, first had and obtained by assignment, or knowing the same to be so printed or imported, publishes, sells, or exposes for sale or causes to be published, sold or exposed for sale any copy of such book without such consent, such offender shall

justice and right, whatever statutes legislators enact, or whatever treaties nations make or neglect to make.[1] Mr. Morrill's exhibits to prove the greater comparative

forfeit every copy of such book to the person legally entitled to the copyright thereof; and shall forfeit and pay for every such copy which may be found in his possession, either printed or printing, published, imported or exposed for sale, contrary to the intent of this act such sum, not being less than ten cents nor more than one dollar, as the court shall determine; of which penalty one moiety shall be to the use of Her Majesty, and the other to the legal owner of such copyright, and such penalty may be recovered in any court of competent jurisdiction.

12. If any person, after the recording of any painting, drawing, statute or other work of art, within the term or terms limited by this act, reproduces in any manner or causes to be reproduced, made or sold, in whole or in part, copies of the said works of art, without the consent of the proprietor or proprietors, such offender or offenders shall forfeit the plate or plates on which such reproduction has been made, and also every sheet thereof so copied, printed or photographed to the proprietor or proprietors of the copyright thereof, and shall further forfeit for every sheet of the same reproduction so published or exposed for sale contrary to the true intent and

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[1] There have not been wanting gentlemen, upon both sides of the water, who, impatient of the law's delays, have endeavored, by ingenuity and mother wit, to anticipate the coming treaty of international copyright, and to secure a protection for themselves, and for their works on the opposite shore, without it.

One method suggested, was for the English author to publish his work in the United States a little prior to copyrighting it in England, thereby, as it was supposed, entitling himself to a copyright in both. Another, equally ingenious, was for the English author to obtain an American confederate to write an introduction to his work, or to add a few lines here and there to its text. And we are told that T. W. Robertson, a well-known London dramatist, did accordingly induce Mr. Charles F. Browne (better known as Artemas Ward) to write a few sentences in one of his plays, which play was thereupon registered in the proper office in the United States, as the joint work of Charles F. Browne and of T. W. Robertson.

But both of these "dodges" were exceedingly short-lived. The first, or "prior" publication dodge had been disposed of

cheapness, to the public, of American reprints which pay no copyright, to the English copies which have —could only prove—what nobody would be disposed

meaning of this act such sum, not being less than ten cents nor more than one dollar as the court shall determine; and one moiety of such forfeiture shall go to the proprietor or proprietors and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any court of competent jurisdiction.

13. If any person after the recording of any print, cut or engraving, map, chart, musical composition or photograph, according to the provisions of this act, within the term or terms limited by this act, engraves, etches or works, sells or copies, or causes to be engraved, etched, or copied, made or sold, either in the whole or by varying, adding to or diminishing the main design, with intent to evade the law, or prints, or reprints or imports for sale, or causes to be so printed or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any part thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained as aforesaid, or knowing the same to be so printed or imported without such consent, publishes sells or exposes for sale, or in any manner disposes of any such map, chart,

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even before it was conceived, by the leading English case of Boucicault v. Delafield (1 H. & M. 597; 9 L. T. N. S. 709; 33 L. J. 38 Ch.), in which case the plaintiff prayed for an injunction to restrain the defendant from producing a drama (the "Colleen Bawn"), written by him in the United States, and represented by him in New York, prior to its being represented in England. The vice-chancellor refused the injunction and dismissed the bill, being of opinion that the words of the English act (7 & 8 Victoria, c. 12, sec. 10) took away whatever rights the plaintiff might otherwise have had.

The second, or "joint authorship dodge," has never, to our knowledge, come before a court for its disposition. But where a similar artifice was attempted, to subserve a different purpose, the specious claim of "joint authorship" was ventilated in Levi v. Rutey (L. R. 6 c., p. 523). Said the court: "If two persons undertake jointly to write a play, agreeing in the general outline and design, and sharing the labor of working it out, each would be contributing to the whole production, and they might be said to be joint authors of it. But to constitute joint authorship, there must be joint design."

to deny—that it was is cheaper to take than to buy. Whatever opposition to international copyright exists, in the United States, at least, is based upon sincerer grounds.

musical composition, engraving, cut, photograph or print, without such consent, as aforesaid, such offender or offenders shall forfeit the plate or plates on which such map, chart. musical composition, engraving, cut, photograph or print has been copied, and also every sheet thereof, so copied or printed as aforesaid, to the proprietor or proprietors of the copyright thereof, and shall further forfeit for every sheet of such map, musical composition, print, cut, or engraving which may be found in his or their possession, printed or published or exposed for sale, contrary to the true intent and meaning of this act, such sum, not being less than ten cents nor more than one dollar, as the court shall determine; and one moiety of such forfeiture shall go to the proprietor or proprietors, and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any court of competent jurisdiction.

14. Nothing herein contained, shall prejudice the right of any person to represent any scene or object, notwithstanding that there may be copyright in some other representation of such scene or object.

15. Works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada, under any Canadian or provincial act, shall, upon being printed and published, or reprinted and republished in Canada, be entitled to copyright under this act; but nothing in this act shall be held to prohibit the importation from the United Kingdom of copies of such works legally printed there.

(2.) In the case of the reprinting of any such copyright

And that decision goes on distinctly to hold that where one who makes "mere additions to a complete piece," which do not "in themselves amount to a dramatic piece," the maker of the "mere additions" is in no sense a "joint author" who can appeal to the protection of statutes of copyright.

Levi v. Rutley, indeed, had nothing to do with a question of international copyright. But the principle is undoubtedly an equitable one, and if the little game of Mr. Robertson and Mr. Browne had ever happened to come before a court, we cannot doubt that it would have received the same summary disposition.

As questions concerning literary property and copyright statutes come with more frequency before the courts, the impossibility of treating them

work subsequent to its publication in the United Kingdom any person who may have, previous to the date of entry of such work upon the registers of copyright, imported any foreign reprints shall have the privilege of disposing of such reprints by sale or otherwise, the burden of proof, however, in such a case will lie with such person to establish the extent and regularity of the transaction.

16. Whenever the author of a literary, scientific or artistic work, or composition which may be the subject of copyright, has executed the same for another person or has sold the same to another person for due consideration, such author shall not be entitled to obtain or to retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege, unless a reserve of the said privilege is specially made by the author or artist in a deed duly executed.

17. If any person not having legally acquired the copyright of a literary, scientific, or artistic work, inserts in any copy thereof printed, produced, reproduced, or imported, or impresses on any such copy, that the same hath been entered according to this act, or words purporting to assert the existence of a Canadian copyright in relation thereto, every person so offending, shall incur a penalty not exceeding three hundred dollars (one moiety whereof shall be paid to the person who sues for the same, and the other moiety to the use of Her Majesty), to be recovered in any court of competent jurisdiction.

(2.) If any person causes any work to be inserted in the register of interim copyright, and fails to print and publish, or reprint and republish the same within the time prescribed, he shall incur a penalty not exceeding one hundred dollars (one moiety whereof shall be paid to the person who sueth for the same, and the other moiety to the use of Her Majesty), to be recovered in any court of competent jurisdiction.

18. The right of an author of a literary, scientific, or artistic work, to obtain a copyright, and the copyright when obtained shall be assignable in law, either as to the whole interest or any part thereof, by an instrument in writing made in duplicate and to be recorded in the office of the minister of agriculture, on production of both duplicates and payment

as questions concerning mere chattels or chattel interests, grows more and more apparent. To such treatment, indeed, as we have seen, they are entitled. The

of the fee hereinafter provided. One of the duplicates shall be retained in the office of the minister of agriculture, and the other returned, with certificate of registration, to the party depositing it.

19. In case of any person making application to register as his own, the copyright of a literary, scientific, or artistic work already registered in another person's name, or in case of simultaneous conflicting applications, or of an application made, by any person other than the person entered as proprietor of a registered copyright, to cancel the said copyright, the party so applying shall be notified that the question is to be settled before a court of competent jurisdiction, and no further proceedings shall be had concerning the subject before a judgment is produced maintaining, cancelling, or otherwise settling the matter; and this registration or cancellation or adjustment of the said right shall then be made by the minister of agriculture in accordance with such decision.

20. Clerical errors happening in the framing or copying of any instrument drawn in the office of the minister of agriculture, shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the minister of agriculture.

21. All copies or extracts certified, from the office of the minister of agriculture shall be received in evidence, without further proof and without production of the originals.

22. Should a work copyrighted in Canada become out of print, a complaint may be lodged by any person with the minister of agriculture, who, on the fact being ascertained to his satisfaction, shall notify the copyright owner of the complaint and of the fact, and if, within a reasonable time, no remedy is applied by such owner, the minister of agriculture may grant a license to any person to publish a new edition or to import the work, specifying the number of copies, and the royalty to be paid on each to the copyright owner.

23. The application for the registration of an interim copyright, of a temporary copyright, and of a copyright, may be made in the name of the author or of his legal representative, by any person purporting to be the agent of the said author, and any fraudulent assumption of such authority shall be a misdemeanor, and shall be punished by fine and imprison-

laws of personal property, so far as applicable, must be applied in favor of literary property; whatever difference in its case the law is compelled to make, it makes

ment accordingly, and any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable before any court of competent jurisdiction.

24. If any person shall willfully make or cause to be made any false entry in the registry books of the minister of agriculture, or shall willfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of an entry in the said books, he shall be guilty of a misdemeanor, and shall be punished accordingly.

25. If a book be published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof either on behalf of the unnamed author, or on behalf of such first publisher, as the case may be.

26. It shall not be requisite to deliver any printed copy of the second or of any subsequent edition of any book or books, unless the same shall contain very important alterations or additions.

27. No action or prosecution for the recovery of any penalty under this act, shall be commenced more than two years after the cause of action arose.

The following fees shall be payable to the minister of agriculture before an application for any of the purposes hereinafter mentioned shall be entertained, that is to say:

On registering a copyright . . .	§1.00
On registering an interim copyright .	0.50
On registering a temporary copyright .	0.50
On recording an assignment . . .	1.00
On certified copy of registration . .	0.50
On registering any decision of a court of justice, for every folio	0.50

On office copies of documents not above mentioned, the following charges shall be made:

For every single or first folio certified copy,	$0.50
For every subsequent hundred words (fractions from and under fifty not being counted, and over fifty being counted for one hundred)	0.25

(2.) The said fees shall be in full of all services performed under this act by the minister of agriculture or by any person employed by him in pursuance of this act.

(3.) All fees received under this act shall be paid over to the

over and above; in excess, and not in limitation, of the rights of ordinary personal property. In closing this chapter upon copyright property, two features remain to be particularly noticed, wherein literary or copyright property claims rights adhering in no other commodity which passes between man and man. The alienator of ordinary goods and chattels upon parting with their possession, parts also with every claim to or control over them. An author, however, upon parting with his literary property, has still two rights remaining. These two rights may be stated to be: his right to, I, perpetuate, and, II, to conserve his own production after he has parted with it for value.

I. If A. sells B. a house, it is B.'s option, upon becoming its purchaser, to treat it as he pleases. He may add to or curtail it of wings and stories, may raise or depress it, and alter its internal or external

receiver-general and form part of the consolidated revenue fund of Canada. No fees shall be made the subject of exemption in favor of any person; and no fee, exacted by this act, once paid, shall be returned to the person who paid it.

28. "The Copyright Act of 1868," being the act thirty-first Victoria, chapter fifty-four, and all other acts or parts of acts, inconsistent with the provisions of this act, are hereby repealed, subject to the provisions of the next following section.

29. All copyrights heretofore acquired under the acts or parts of acts repealed, shall in respect of the unexpired terms thereof, continue unimpaired, and shall have the same force and effect as regards the province or provinces to which they now extend, and shall be assignable and renewable, and all penalties and forfeitures incurred and to be incurred under the same may be sued for and enforced, and all prosecutions commenced before the passing of this act for any such penalties or forfeitures already incurred may be continued and completed as if such acts were not repealed.

30. In citing this act it shall be sufficient to call it "The Copyright Act of 1875."

arrangements at will, by tearing out or inserting doors, windows, towers, or chimneys, or may paint or plaster it anew until it shall be utterly unrecognizable as the house of its former proprietor; or he is at perfect liberty, if he so desire, to pull it down altogether, or remove it from the site upon which it stood, and scatter the material of which it was composed wherever he may choose. All this is understood as being among the entire and unquestioned rights to which he succeeded upon becoming possessor of the property. But with literary property it is quite different. If an author sell his work to a publisher, it is understood, in the absence of an express contract to the contrary, that he sells it, and the publisher purchases it, for the purpose of perpetuation by means of publication, and the publisher may not, upon becoming the owner, either suppress or destroy the work. If one desire to purchase a work in order to withhold it from publication, he must so express his intention, and the author must so clearly understand the object and intention of the contract which he makes. ". . . les éditeurs," said a French court, in a recent case,[1] " ne peuvent se considérer comme maitres absolus de l'œuvre dont ils se sont rendus adjudicataires [*i. e.*, who are adjudicated purchasers] et libres de l'anéanter en en supprimant ou en en interrompant la publication." The purchaser of literary property will be supposed to purchase it for the sake, and with the intention of publishing it; and we are of opinion that a remedy would lie, if not in equity—which, as we shall see,[2] is chary of interference in the case of contracts between authors and publishers—at least at law, wherein an author might

[1] Tribunal civil de la Seine. 1^ere^ chambre. Présidence de M. Chappin, Audiences des 5 et 12 Janvier, 1875.

[2] *Post*, 629, 631.

have his action for damages against the publisher for the suppression of his work.

II. The second right which the owner of literary property, if he be its author, has, is to conserve his own work. It is to be understood in this case, as in the former, that the right only arises where the vendor of the literary property is its author, except that, if he be such a legal representative of the author as may be fairly considered as interested in the preservation of the author's literary reputation and good name, or one who has been expressly charged by the author with the preservation thereof (as, for instance, a "literary executor" might be), the right would also, according to the French case,[1] exist. As between mere owners, buyers, and purchasers of literary property, neither of whom is its author, no question peculiar to the rights of authors would, of course, arise. This author's right to conserve consists, after he has sold his composition to a publisher, or even after he has dedicated it to the public, in his privilege of watching over the text of his work, by keeping it pure and free from interpolation or corruption.

His work might, under certain circumstances, as we have seen, be annotated, edited, or even abridged, but from the text of the work itself, for which he alone is responsible, by which his reputation as an author is to be established, and by which he is to be judged by his contemporaries and by posterity, he has therefore a right to ward off the intrusion of foreign and interpolated matter, and, presumably, to correct such errors of the press as may have crept into it; whether he has the same right to prevent expurgation

[1] Tribunal civil de la Seine. 1ere chambre, audiences des 5 et 12 Janvier, 1875.

[1] *Ante*, vol. 1, p. 306, *et seq.*

as he has to prevent interpolation, does not seem to be as clear, but it would probably depend much upon whether the work was innocent in its nature, and therefore entitled to the protection of the law.

Although we find the first expression of this peculiar phase of the right in the decision of a French court,[1] as we shall have repeated occasion to notice, the principle involved has always been known to the common law, which has invariably recognized an author's right to the enjoyment of the literary reputation arising from his written works, uninterrupted by any tampering with the text of the works themselves. Not only have courts never hesitated to enjoin the use of an author's name attached to works which he did not himself compose, or for which he was not entirely responsible,[2] but an author may maintain an action for injury to his reputation against the publisher of an inaccurate edition of his works falsely purporting to be executed by him, even though the publisher be the owner of the copyright.[3] "Such a case," said Lord Tenterden,[4] "resembles cases in which a person, having a reputation for the manufacture of a particular commodity, but not protected by a patent, brings an action against another for selling an inferior article in his name.[5] The cases are not exactly alike; there the sale of the commodity is affected, here the character of the author, but they bear a close analogy." In summing up, his lordship held, that it was a question

[1] Tribunal civil de la Seine. 1ere chambre. Présidence de M. Choppin. Audiences des 5 et 12 Janvier, 1875, *post*, p. 99.

[2] See *post*, p. 396, citing Lord Byron, Johnston and Harte v. De Witt.

[3] Archbold v. Sweet, M. & Rob. 162.

[4] Id.

[5] And see Blofield v. Payne, 4 B. & Ald. 410, where there was no proof of the inferiority of the wares.

for the jury whether the edition, in the form in which it is put forth, would be understood by purchasers to be by the plaintiff (the author); if purchasers who paid reasonable attention to its contents, would not understand it, the verdict must be for him. And not only has the author himself this right, but he may delegate others, who, after his death, shall continue to exercise this conservation. Said the French court, in the case to which allusion has been made: "Il est incontestable qu'en aliénant son droit de propriété littéraire, un auteur n'abdique pas le droit de veiller à ce que l'œuvre concue par lui soit fidèlement reproduite; il lui est donc loisible de désigner une personne qui, aprés son décès, exerce à sa place cette indispensable surveillance; qu'on ne saurait s'en rapporter pour la conservation du texte au travail matériel d'un correcteur ou mème à l'intelligence de l'éditeur." That is to say, that it is beyond question, that, when he alienates his literary property, an author does not part with the right to watch over and control his own text, and to see that his work be faithfully reproduced; that he is, moreover, permitted to designate a person who, after his decease, shall still exercise, in his place, this indispensable surveillance, in order that the preservation of his text in its purity shall not be left to the manual labor of a mere corrector, or even to the intelligence of a publisher or an editor.[1]

The case from which this ruling is extracted was one which involved, among other matters, the right of M. Michelet, a deceased French author, to appoint his widow his "literary executor" (to use a familiar term), and conservator of the text of his writings. As to

[1] The word "editeur" may be translated either "publisher" or "editor," though generally used as signifying what we understand by a "publisher."

that right, the court was clear that the late M. Michelet had such right, and that the power which he thus placed in his wife's hands was one in the nature of a mandate or personal charge such as he might have given to any third person, and not such a power or property as would descend to her heirs: "Lorsque, par testament, le de cujus a chargé sa veuve de la conservation de ses œuvres littéraires il lui a conféré un droit personnel non transmissible à ses héritiers, ni à un tiers delégué par elle de son vivant. Un semblable droit, qui n'est pas sujet á une évaluation en argent, n'a aucun caractère du droit de propriété ; ce n'est en réalité qu'un mandat qui a pu étre conferé é sa femme par l'écrivain, comme il aurait pu l'étre á un étranger."[1]

[1] Tribunal civil de la seine. 1ere chambre. Présidence de M. Choppin. Audiences des 5 et 12 Janvier, 1875. M. Poullain-Dumesnil, ingénieur, Mme. Baudoin et Mlle. Camille Poullian-Dumesnil, mineure, représentée par son père, tous trois petits-enfants de M. Michelet critiquaient la clause que voulait faire insérer Mme. veuve Michelet dans le cahier des charges dressé pour parvenia à la vente du droit de publier les œuvres de M. Michelet. Cette clause élait ainsi conçue: "Le droit exclusif de publication, qui constitue la propriété littéraire, ne comportant pas le droit de modifier en quoi que ce soit le texte de l'auteur, les adjudicataires devront se conformer, pour la publication, aux dernières éditions publiées par feu Michelet. La veuve Michelet aura seule, aux termes du § 4 de l'article 3 du testament de Michelet, le droit de surveilier les éditions qui se feront des œuvres de Michelet, son mari, de revoir les épreuves et de veiller à ce que tous les ouvrages soient en cours constant de publication."

M. Poullian-Dumesnil et consorts proposaient de remplacer la clause proposée par Mme. veuve Michelet, par la suivante: "L'adjudicataire ne pourra joindre à la publication des œuvres de Michelet aucune préface, aucune note, aucune notice; il devra se conformer, pour la publication, aux dernières éditions publiées par Michelet."

Le tribunal a rendu un judgement qui offre beaucoup d'intérêt au point de vue du droit de conservation des œuvres.

Not only the pen of the author, but the pencil of the painter, the knife of the engraver, the spatula of the modeler, the chisel of the sculptor, or the

litéraires que l'auteur peut conférer, après sa mort, à un tiers qui n'est pas héritier.

En voîci le texte:

Le Tribunal.

En ce que touche la contestation élevée contre l'une des clauses insérées par la veuve Michelet, au cahier des charges dressé pour parvenir à la vente des œuvres de son mari:

Attendu que les consorts Poullain-Dumesnil critiquent dans toutes ses parties la clause suivante: "Le droit exclusif de publication, que constitue la propriété littéraire, ne comportant pas le droit de modifier en quoi que ce soit le texte de l'auteur, les adjudicataires devront se conformer, pour la publication, aux dernières éditions publiées par feu Michelet. La veuve Michelet aura seule, aux terms du paragraphe 4 de particle 3 du testament de Michelet, le droit de surveiller les éditions qui se feront des œuvres de Michelet, son mari, de revoir les épreuves et de veiller à ce que tous les ouvrages soient en cours constant de publication."

Attendu, en ce qui concerne le premier paragraphe de ladite clause, que la prétention des demandeurs d'imposer aux adjudicataires, non-seulement l'obligation de se conformer aux dernières édition publiées par feu Michelet, mais encore la prohibition d'insérer dans les ouvrages aucune préface nouvelle, aucune note et aucune notice, serait de nature à nuire tout à la fois au succès de la vente dont s'agit et à la mémoire mème de Michelet; qu'en effet, les éditeurs des œuvres d'un auteur mort peuvent avoir intérèt à faire accompagner la reproduction de ses œuvres, soit de préfaces, soit de notes explicatives, soit de notices intéressantes sur la vie et sur les différents ouvrages de l'auteur;

Attendu que la crainte des demandeurs de voir la veude Michelet ajouter aux œuvres de son mari des productions personnelles qu'elle obligerait les adjudicataires à insérer dans les éditions nouvelles est chimérique, les acquéreurs d'une propriété littéraire ayant intéret à livrer au public l'œuvre mème qu'ils ont acquise, et à ne pas violer la condition essentielle de leur contrat, en faisant des additions ou des suppressions susceptibles d'altérer la forme ou la valeur de œuvre;

Attendu, en ce qui concerne le paragraphe reclatif au droit de surviellance des éditions, qu'il est incontestable qu'en aliénant son droit de propriété littéraire, un auteur n'abdique pas

camera of the photographer, may create matter which will be property entitled to the protection of laws of copyright, and in whose favor every principle which

le droit de veiller à ce que l'œuvre concue par lui soit fidelement reproduite; qu'il lui est donc loisible de désigner une personne qui, après son décès, exerce à sa place cette indispensable surveillance; qu'on ne saurait s'en rapporter, pour la conservation du texte, au travail matériel d'un correcteur, ou mème à l'intelligence de l'éditeur;

Attendu que si Michelet n'a pas expressément chargé sa femme de surveiller les éditions qui devraient se faire de ses œuvres après sa mort, il résulte de l'ensemble de son testament, et particulièrement des articles 3 et 7, que c'est à elle qu'il s'en est remis, à l'exclusion de tous autres, et notamment de ses petits-enfants, pour la conservation de ses œuvres littéraires, et la surveillance à exercer sur la publication; qu'ainsi il rappelle que sa femme à contribué à sa fortune, nonseulement par sa vie économique, mais encore par une collaboration active et continuelle à ses œuvres; qu'il regarde donc comme juste que sa femme conserve sur tous ses ouvrages, outre les droits personnels que lui attribue la loi, tous ceux qu'elle peut tenir de sa volonté, et qu'il lui confère dans les limites les plus étendues; qu'il invite ses petits-enfants, plus que tous autres, à respecter cette volonté; qu'il annonce qu'il à publié tous ses manuscrits, et qu'il ne laissera que les matériaux qui ont préparé ses ouvrages; qu'il recommande à ses petits-enfants d'épargner à sa femme la formalité des scellés; que, pour le cas ou ses papiers devraient sortir des mains de sa femme, il recommande expressément à ses exécuteurs testamentaires de les brûler;

Attendu qu'en présence de semblables dispositions, il est impossible de méconnaitre qu'en ce qui regarde ses œuvres littéraires, Michelet considère sa femme comme un autre luimème; que c'est donc à juste titre qu'elle réclame pour elle personnellement le droit de veillerà l'exacte et fidèle reproduction des œuvres de son mari;

Attendu que c'est à tort que les consorts Poullain-Dumesnil se préoccupent de la réclamation qui pourrait ètre faite de l'exercice de ce droit de surveillance, soit par les héritiers de la veuve Michelet après sa mort, soit-par un tiers auquel elle le déléguerait de son vivant, ce droit lui étant tout personnel et par sa nature spéciale, et à raison des conditions dans lesquelles le Tribunal reconnait qu'il lui à été conféré par son mari;

we have seen, or shall find, invoked in favor of literary property, will obtain and govern. It is the original work of the artist, in every case, which will be pro-

Que c'est à tort également qu'ils prétendent, d'une part, que la condition proposée par la veuve Michelet trancherait la question réservée par le jugement qui a ordonné la vente et renvoyé à la liquidation, à savoir si les droits de la dame Michelet sur la propriété littéraire, en vertu de la loi de 1866, ne se trouvent pas confondus avec ceux qui lui sont acquis en qualité de légataire universelle, conformément à l'article 1098 du Code civil, et, d'autre part, que le droit qui en découle pour la dame Michelet porterait atteinte à la réserve; qu'en effet un semblable droit, qui n'est pas sujet à une évaluation en argent, n'a aucun des caractères du droit de propriété; qu'il ne constitue en réalité qu'un mandat que Michelet a pu valablement confier à sa femme comme il aurait pu le confier à un étranger;

Attendu enfin que, ainsi qu'il a été dit plus haut, la responsabilité des acquéreurs offre une sérieuse garantie contre l'abus que la veuve Michelet pourrait faire de son droit de surveillance; que cette responsabilité est proclamée par la veuve Michelet elle-mème, dans le premier paragraphe de la clause dont s'agit, lequel interdit aux adjudicataires de modifier le texte de l'auteur;

Attendu, en ce qui concerne le dernier paragraphe de la clause contestée, que si, en raison méme de la nature spéciale de la propriété littéraire, les éditeurs ne peuvent se considérer comme maitres absolus de l'œuvre dont ils se sont rendus adjudicataires, et libres de l'anéantir en en supprimant ou en en interrompant la publication, la rédaction proposée par la veuve Michelet crérrait une gène réelle pour ces éditeurs, en les exposant à une surveillance incessante et minutieuse; qu'il convient, tout en maintenant le principe qu'a voulu poser la veuve Michelet, d'en rendre l'application plus facile et plus pratique; qu'il y a donc lieu de remplacer le dernier paragraphe par une clause qui permette seulement aux veuve et héritiers Michelet de reprendre la libre disposition de la propriété littéraire aliénée, dans le cas ou les éditeurs refuseraient, après un certain délai, de procéder à l'impression d'une édition nouvelle;

En ce qui touche les volumes existant chez le brocheur:

Attendu que les parties sont d'accord pour reconnaitre qu'il y a lieu d'obiger les adjudicataires à prendre ces volumes comme accessoires de chacun des ouvrages auxquels ils se rapportent;

tected, and although every one of the above indicated processes may reproduce an original work, each in the way and by the method peculiar to itself, they may all

Par ces motifs,

Reçoit Quicherat et Celliez intervenant dans la cause en leur qualité d'exécuteurs testamentaires de feu Michelet;

Dit qu'il n'y a lieu de remplacer la clause insérée par la veuve Michelet au cahier des charges par celle proposée par les consorts Poullain-Dumesnil;

Dit que le premier paragraphe de la clause insérée par la veuve Michelet sera maintenu;

Dit que le second paragraphe sera rédigé en ces termes: "La dame veuve Michelet aura seule, conformément aux dispositions du testament de M. Michelet, le droit de surveiller les éditions qui se feront des œuvres de M. Michelet, son mari, et de revoir les épreuves;"

Dit que le troisième paragraphe sera supprimé et remplacé par le paragraphe suivant: "Dans le cas ou les adjudicataires refuseraient, dans les six mois qui suivront l'épuisement d'une édition des ouvrages par eux acquis, de procéder à l'impression d'une édition nouvelle, les veuve et héritters de Michelet en reprendraient la libre disposition";

Dit que les adjudicataires seront tenus de prendre comme accessoires de la propriété de chaque ouvrage, les exemplaires et feuilles existant chez le brocheur; que ces exemplaires et feuilles seront, en conséquence, compris dans la vente ordonnée, savoir: dans le premier lot, environ onze cents exemplaires de: "les Femmes sous la Révolution;" environ sept cents exemplaires en feuilles de: la Femme; environ cinq cents exemplaires en feuilles de: l'Amour, à cinquante centimes l'exemplaires, à payer par l'judicataire en sus de son prix; daus le troisième lot, environ huit cent cinquante exemplaires de l'Histoire de France, Louis XIV (tome IV); environ deux cent cinquante exemplaires de l'Histoire de France, Louis XV et Louis XVI (tome XVIII); environ cent vingt-cinq exemplaires de l'Histoire de France (tome VII); environ cent quatre-vingts exemplaires de l'Histoire moderne, à un franc le volume, à payer par l'adjudicataire en sus de son prix; dans le cinquième lot, environ soixante exemplaires en feuilles de: la Mer, à cinquante centimés l'exemplaire, à payer par l'adjudicataire en sus de son prix;

Dit que le compte du brocheur sera réglé de façon à comprendre dans la liquidation les sommes qu'il a pu recevoir des libraires en livrant des feuilles ou exemplaires;

be infringers and trespassers. He who first produces an artistic work by any of the above methods, is its author; and the photograph of an artist's work might be a piracy of it.[1]

The copyright will in no case protect the process by which the artistic work is produced.[2] The name of the copyright proprietor, and the date from which the protection begins, must appear in the form of a notice upon every multiplied copy of the artistic work, for the information of the public,[3] and if the proprietor's name change, a change must be made in the notice;[4] and the nationality of the artist, like that of the author, will entitle or disentitle him to protection under his copyright, according to precisely the same rules and conditions.[5] The artistic work must, however, have a title by which it may be designated; and it is probable that all the rules as to titles hereafter laid down,[6] will apply to the artistic as well as to the literary work. Thus, in a recent case,[7] it was held that the entry of the name, "Ordered on Foreign Service," was not a sufficient description of a picture of a young officer in a railway carriage, taking leave of a lady; nor

1 Ordonne l'emploi des dépens de l'incident en frais de vente, avec distraction aux avoués.

[1] But see the contrary ruling in Graves's case, 20 L. T. N. S., 877, L. R., 4 Q. B., 715, which held that a photograph of an engraving of a picture was not a piracy. In that particular case it may not have been, but if the court in that case is to be understood as ruling that a wrongful multiplication of a protected picture by process of photography is not a piracy, we must dissent from his reasoning.

[2] See *post*, p. 696.

[3] Thompson v. Symonds, 5 T. R., 45.

[4] Id.

[5] Page v. Townshend, 5 Dim., 395.

[6]

[7] Ex parte Beal, 9 B. & S., 395; L. R., 3 Q. B., 387; 18 L. T. N. S., 285; 37 L. J., 161 Q. B.

the entry of the names, "My First Sermon," and "My Second Sermon," a sufficient description of a picture and a photograph of a child looking with eyes wide open at its first sermon, and fast asleep at its second. The description must be "such as shall ear-mark the subject."[1] There might be a similar difficulty arising from the designation of a picture of a dog, under the title, "A Distinguished Member of the Humane Society"; or of a bullfinch and a couple of squirrels, described as "A Piper and a Pair of Nutcrackers." The question is, "Does what is given 'ear-mark' the picture."[2] Musical productions may be both literary and artistic, and in either aspect or in both aspects are entitled to the protection of laws of copyright.[3]

The final question which arises in consideration of copyright property and copyright laws is, whether the right of an originator of intellectual property (literary or artistic) to its control, includes the right to withdraw it from publication at his own pleasure, or after his ownership under the statute shall have expired. This is one point upon which statutes of copyright have been silent. It has been remarked,[4] that just as the owner of lands and houses pays to the state a certain percentage of their value, as his contribution to the wealth and power of the government whose protection he enjoys, so is it but fitting that after the author shall have enriched himself from the store of his own culture and thought, that culture and thought should pass into the general fund of the culture of the commonwealth, and enrich the stores of art and learning of his mother-land, to which, as the Greek poet said,

[1] Id.; per Blackburn, J.
[2] Shortt, p. 122.
[3] Id. p. 114, *post*, pp. 698–707.
[4] *Ante*, vol. 1, p. 17.

he owes the whole honor of his rearing." But unfortunately, the practical fact is, that these works, instead of becoming the property of the public, do actually become the property of the publisher, who, possessing the plates of the work, and a sort of "good-will," relieved of the burden of paying a copyright, will continue to supply the people with new editions. From these facts there has arisen a consideration as to what has been, not inaptly, termed "the rights of readers." This question has been so ably canvassed by the late Mr. Hotten,[1] an English publisher, that we take the liberty of presenting here some of his reflections upon the subject.

"In any attempt," said Mr. Hotten, "to improve and consolidate our copyright law, both the rights of the public and the rights of authors should be duly considered. The arguments of the extreme advocates of author's rights, who would protect even the Saxon Chronicles from the hand of the 'unauthorized' publisher, if a legal representative of their authors could be found, are at least intelligible. But while most persons are agreed that the public are the reversioners of literary property, it is absurd to neglect to take precautions for securing to them the benefit of all unexpired copyrights."

"What motive," he asks, "has the legislature in conferring, to the detriment of the public, a monopoly, for which no equivalent has been given, upon some publisher's grand-children? A better, or at least a more popular plea might be found by asking whether, even supposing that a book is no longer of market value, and that it is only one early work of a voluminous author, it would be just to allow it to be printed

[1] In his "Literary Copyright: Seven Letters to Lord Stanhope." London, 1871.

under his eyes without his consent? The answer is that in any case the law will permit this to be done. It is only a question of time, and indeed, in the case supposed presumptively, a question of a very short time. There is the case of Mr. Tennyson. He, as is well known, has declined to reprint a very considerable numbers of those poems which first made his name known to the world. Many of those suppressed poems are in the judgment of his readers in themselves very beautiful, and it need not be said that in point of good morals they are unexceptionable. But to the more refined taste of the author in his later years these, no doubt, appear unworthy of his genius. Anyway, he declines to republish them, and this being the case they can now practically only be read in the library of the British museum, where at all events no respect for the author's feelings prevents their being placed at the service of readers, and where a request from the author for their suppression would certainly not be entertained. Now, granting the propriety of permitting the author to withhold at least from public sale these earlier productions of his genius, to what extent would he be injured as far as these early poems are concerned, if the present lifetime period of copyright were withdrawn and the minimum term only left—that is, a definite forty-two years. Mr. Tennyson would, no doubt, prefer to suppress these poems forever. But seven years after his death they will undoubtedly be re-published. No respect for his wishes will prevent, or ought to prevent that; at least such is the deliberate opinion of the legislature. It is as certain as anything in this world can be that every line which he has made public will eventually be included in complete editions of his works, and issued in far greater numbers than have ever yet been published. Such is the case with Pope,

with Byron, with Shelley, in short with all great poets; and such will necessarily be the case with Tennyson. Nor is the desire on the part of the public to have everything mature or immature which a great poet has written either unnatural or without justification.[1] Grant the immaturity of Shelley's 'Queen Mab,' of Southey's 'Wat Tyler:'[2] grant the offense which these works may cause to persons whose political or religious feelings are opposed to the views they express: the fact that these poems were written by those great writers is at least one of biographical interest. A student of the life of Shelley or of Southey would at all events not be benefited by being kept in the dark about their existence, or denied an opportunity of reading them without a visit to the British museum and a diligent search in the catalogues of that vast collection. Nay even the very immaturity of early works of genius is a subject of interest, and is frequently not the least instructive fact in the story of a life. Would the world be a gainer if no specimens but those of the later manner of Raffaelle had descended to posterity? Or, to keep more closely to my subject, if Lord Macaulay had been allowed to take back from the public that famous essay on Milton, which the world still admires, though the author long afterwards expressed himself ashamed of its too ornate and exuberant style, would it not be a case to be deplored? And so with Mr. Tennyson. His 'Confessions of a Sensitive Mind' may not be now to his taste, but the mystic beauty of its lines will probably ensure it a life as long as any of those poems which their author cherishes more fondly. The world will prize that remarkable little poem, not only because it is intrinsical-

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ly valuable, but also because he wrote it, and because it represented at least a stage in the development of his genius, which has its special value and interest to a student of his works.

"But it may be asked, is an author to have no power of recall? Is a thing once published to be gone from his control forever? Is he not even to be allowed to repent of the publication of some work which may appear to him, in his later judgment, absolutely mischievous? I answer that the legislatures of all countries, after almost endless discussion, both within and without their walls, have all refused such a power. It is, as I have said, only a question of time. A brief delay is allowed; that is all. The fact that the power is limited in any way is sufficient to prove that the principle on which such questions are based, is not recognized: and the reasons are obvious. They are the same reasons which operate against all suppression of thought not contrary to public law. Subject to a certain copyright, deemed sufficient to encourage genius and learning, a published book is the heritage of the public, and cannot be taken from them by the author himself. An author's self-love, or vanity, or prejudice, may lead him to wish he had never put forth his work; but the public have no interest in the gratification of those feelings. Even an honest conviction that his book contains lines which—

'Dying he may wish to blot,'

affords no ground for permitting him to blot what may have uses which he does not perceive or does not value. The later view may be the incorrect, the earlier the correct one. If old heads are wiser then young, on the other hand young hearts are frequently better than old. Bigotry and intolerance, as well as wisdom

and prudence, may suggest suppressions. Wise and precious utterances have ere now been publicly recanted, while their authors have done voluntary penance. Cowley and Waller were not necessarily wiser or better men when they penned compliments to a king than when they composed panegyrics on the Lord Protector. I presume that but few would contend that it would be a gain to the world to permit any eminent 'pervert,' as we say, at these times, to suppress and destroy all traces of his earlier writings, all public evidence of his ever having entertained any other views than his later ones, on the ground that ripe experience is always better than early and less matured opinions. Our legislature wisely permits the world to be the judge of these things; and will, at least, after the expiration of the copyright term, allow the free issue of any work which it has not thought fit to restrain the author from publishing. But it will be said that something is due to the author's feelings, and this is, no doubt, true; but how often do we see similar considerations overruled for the sake of passing a law, the general tendency of which is good, but which would not be possible without some such sacrifice. The supposed hardships would at least be rare, and where they occurred would not be without compensating advantages. It would often, perhaps, puzzle a casuist to say whether a man who had once put forth views of which he afterwards repented, or published works of which he was subsequently on æsthetic grounds ashamed, would be most benefited by having them reproduced and commented on while he still lived, or by having them re-published soon after his death, when he would no longer be able to explain the circumstances of its publication, or defend it from the attacks—foreseen and unforeseen—of

enemies; attacks more painful, perhaps, to those to whom his memory is dear, than ever they could have been to their author if living."

"Perhaps one of the strongest cases against what is called 'an unauthorized' publication of public speeches, was that which arose on the publication of Lord Macaulay's speeches by Mr. Henry Vizetelly. Certainly no case excited more general sympathy for the author, whose rights were alleged to have been invaded. Lord Macaulay himself denounced Mr. Vizetelly's proceedings in an angry and eloquent address to the reader of his own edition of the speeches subsequently printed, and the 'Edinburgh Review' of October, 1854, devoted to the subject a powerful article, in which, probably, every argument that could be used in defense of public speakers' rights was exhausted. As instances of this kind are frequently arising, it may be worth while to devote some attention to this famous case, and for this purpose I probably cannot do better than examine the principal arguments of the Edinburgh reviewer in the article referred to.

"It appears that Lord Macaulay—then Mr. Macaulay—had determined, for reasons which are unexplained, not to give to the public any collection of his speeches. He had, in fact, publicly expressed that determination. It is to this circumstance that the reviewer alludes in the opening sentence of his article, which is in the form of a review of the authorized edition. 'If,' he says, 'the reader is one who can be reconciled by happy issues to an act of wrong-doing, he may perhaps look indulgently on the unauthorized publication of Mr. Macaulay's speeches, since it has compelled that gentleman, much against his will, to issue this remarkable volume. Any way, therefore, it

appears that a remarkable volume would have been lost to the world, or probably, at least, to some generations, but for Mr. Vizetelly's act. It may be remarked that our statute law contains one example at least, of the legislature setting its face against the suppression of important works once made public, even though such works are protected by copyright. Still more strongly, therefore, would this principle apply to the suppression of speeches which are excepted from the benefits of copyright; for that exception could not possibly have any object but that of giving to such productions a publicity so completely unrestricted that it should be out of the power even of the public speaker himself to defeat or even to control it in any way. But what the author in this case desired to impose was avowedly not—so to speak—a fiscal, but a prohibitory burden on the circulation of his speeches. He made no claim to the profits of authorship, and though Mr. Vizetelly was accused of acting for gain, preferred no complaint against that gentleman for depriving him of the reward of his intellectual exertion. Avowedly all that Lord Macaulay desired was, that neither he nor anybody else should be permitted to issue those speeches in a form which would render them generally accessible to the public, and it was this claim which the reviewer undertook to defend.

"Lord Macaulay's reasons, as I have said, have not been wholly explained; but it is not difficult to conceive that there were many things in the speeches of the young and comparatively unknown orator of 1832, which were not to the taste of the Whig statesman of 1853, whose increased responsibilities, not to speak of the natural caution of later years, would prompt him to wish that these utterances might remain buried in the comparative obscurity of files of the public papers.

or in the voluminous and unwieldy collection of Hansard. Now it may certainly be affirmed that although these feelings and motives are natural enough, and are probably very common among public men, they are feelings and motives in which they have no right to be indulged, as being contrary to the public interest, which requires that speeches of this kind should neither be suppressed nor tampered with. As a fact, indeed, Lord Macaulay did not in his own edition suppress what may be presumed to have been, in his eyes, the most objectionable of those speeches. He left, for example, his famous oration upon Earl Grey's reform bill, in which opinions were advanced, and principles defended, that were substantially identical with some of those for which Chartist orators were subsequently successfully indicted as disturbers of the peace and utterers of seditious doctrines.

"But it must be remembered that this was not done until the 'unauthorized' edition had directed the attention of the public to the subject; and that even then, his lordship's step was taken with great and avowed reluctance. The same remark applies to his declaration that where, as was admitted in his own edition, he had very much altered his speeches from any and every contemporary report of shorthand writers, still 'the substance was faithfully given.' As regards the 'remaining speeches,' also, he observed, 'I have not made alterations for the purpose of saving my reputation, either for consistency or for foresight. I have not softened down the strong terms in which I formerly expressed opinions which time and thought may have modified; nor have I retouched my predictions in order to make them correspond with subsequent events. Had I represented myself as speaking in 1831, in 1840, or in 1845, as I should

speak in 1853, I should have deprived my book of its chief value.'

"In all this there is no ground for doubting the author's sincerity, but it may still be argued that granting to public speakers exclusive right to issue their own speeches, while they are empowered in this way to edit and improve them in accordance with their later judgment, involves a dangerous principle. It requires but little knowledge of human nature in such cases to be aware that a reviser and corrector may be unsuspicious of his own bias, or of the degree in which—while even believing himself anxious merely to substitute a better word, or improve the turn of a sentence—he is in fact falsifying what may be an historical document.

"It will be readily understood that I am not disputing the value of authorized editions of speeches when their authors choose to put them forth. In point of literary qualities, Lord Macaulay's volumes were, beyond question, greatly preferable to Mr. Vizetelly's. They were, in the first place, more complete. In many respects they were probably more correct. Certainly they were free from some very gross blunders, which, however, were chiefly copied by Mr. Vizetelly's editor from Hansard's Debates, the recognized authority for quotations, even within the walls of parliament. That a corrected and improved edition of this kind should be allowed to circulate side by side with a reprint of contemporary reports (if any such should exist) is undoubtedly an advantage; but it is another thing to forbid every version but that which the author, correcting and improving from memory after a lapse of years, should think fit to put forth. Every bookseller is, indeed, aware that although authors' editions are, as a rule, most in request, a separate and distinct demand exists for speeches not issued under

the author's sanction, and particularly where those speeches extend over a life-time. It is certainly so in the case of Lord Macaulay's speeches, and it is equally certain that but for the publication of which his lordship so eloquently complained, this demand could not have been satisfied, except by reference to publications which are practically out of the reach of the majority of readers.

"The perversity with which men will occasionally reason on questions of this kind, is nowhere better exemplified than in the reviewer's remarks on Mr. Vizetelly's rather chivalrous disclaimer of 'mercenary aims.' The term 'mercenary' has acquired by association an offensive significance, but there is certainly nothing in its derivative meaning which should induce a publisher who does not lay claim to anything more than the character of an honest trader, to shrink from adopting it. That a publisher of books should reap a sufficient reward for the labor, risk, and outlay of his undertaking, is a proposition simple enough; and that he will make no more than this on an average in the case of publications not protected by copyright will be understood by all who have the least knowledge of political economy. In fact, in such cases he is compelled, by the unrestricted competition to which he is, or at any moment may be, subjected, to exact from the public no more. The holder of a protected monopoly, in short, may charge a price altogether independent of the cost of production; but the publisher, who has no such protection, can only be safe while giving the public books so cheap that it will practically be worth no one's while to compete with him. Thus we continually find books of which the copyright term has expired, issued in new editions at little more than the cost of print, paper, and binding. This is the

answer to those writers who in such cases sometimes reproach a publisher, as Mr. Tegg was reproached by the late Mr. Justice Talfourd, with having 'no relation to literature but that of the depositary of its winnings.' The profits of a publisher of uncopyrighted works are really made out of nothing but his own industry and capital. It is true that this industry and capital would have nothing to exercise themselves on if no books had been written. But we are now considering, not the literary, but the market worth of a production. Neither the wisdom of Bacon, nor the creative power of Shakespeare, however much they may redound to the glory of our country, can now be counted as a constituent of value—that is, of saleable value in a new edition of their works—for the simple reason that those literary qualities, not being any longer property, have no value in the market sense, and therefore afford no ground for enhancing the price of a book. Any one who is capable of understanding these truths may appreciate the Edinburgh reviewer's comparison of Mr. Vizetelly to a man who, taking it into his head that you are suffering a piece of ground to be wasted which might be profitably converted into pasture or arable, says, 'I see, neighbor, you do not make what you might out of that plot; I will take it out of your hands and make it yield something worth having. But don't suppose, I beseech you, that I design any profit by it. I am purely concerned for the public and you. Appoint some one with whom I may reckon for the profits.'

"The answer to this is, of course, that a piece of land is a property which it is admitted by the reviewer that public speeches are not. In offering, as Mr. Vizetelly appears to have done, 'to name some party to whom he might account for the profits of the

sale,' he certainly gave encouragement to notions of this kind; but an Edinburgh reviewer ought to have been aware that a thing which any one may have for nothing, can be worth nothing in a pecuniary sense, and that therefore if there were any profits in the matter, they could not be properly assigned to any cause but the publisher's labor and outlay.

"But the reviewer is of opinion that there was another reason for which 'Mr. Macaulay had a right to be indignant at the publication.' This, it appears, was 'the obvious want of editorial supervision.' But it is admitted that the publisher had applied to Mr. Macaulay for assistance in this matter, and had been met by a refusal to have anything to do with the publication of speeches which the author desired to withhold, as far as in his power, from the public. It seemed, therefore, somewhat hard to complain afterwards that the speeches were given with all the imperfections, including merely verbal errors of the shorthand writers. Lord Macaulay was himself emphatic in his censure of the publisher on this point. Some of the blunders were, he declared, to the last degree ludicrous, and in one or two other instances scarcely less so. His lordship was particularly severe on the unauthorized publisher for making him say that 'the principle of limitation is found among the pandects of the Benares.' I am afraid that there are a good many young men, possibly quite capable of pulling stroke oar in a university match, who yet might pass over such a passage without being struck with any absurdity. But it was of course, easy for a man of Lord Macaulay's power and knowledge to make fun of an editor who allowed such expressions to pass, and to ask triumphantly whether this man believed that he ever uttered these words, or that the house of commons listened patiently to them. The reviewer selects

other passages, and asks, 'Who can believe that Mr Macaulay deliberately or extemporaneously ever gave expression to such sentences?' That I may not be charged with understating the case of the defenders of Lord Macaulay, I will, as to a supplementary charge to this one of imperfect editing, here quote the reviewer's own words, as follows:

"'There is another point in which the lack of proper editing has inflicted a grievous wrong. We refer to the absence of all discrimination in the selection and rejection of materials. After the manner of those biographers who sweep out the writing desks of the objects of their cruel admiration, and in their zeal for the public or the bookseller, will hardly leave a check or a card of invitation inviolate, we here find almost every scrap that has been reported—anyhow, anywhere—in provincial papers as well as the metropolitan, however imperfect or mutilated—remorselessly seized upon, and gross injustice, as might be expected, has been done. One speech, which we ourselves heard in Edinburgh and of which we retain a very vivid remembrance, namely, that delivered at the memorable election of 1847, must, have been deplorably reported. Though full of powerful passages, which will ever live in our memory, we cannot discover a trace of them in this wretched daguerreotype. If Mr. Vizetelly would publish the speeches of Mr. Macaulay, it was due to the eminence of the speaker, and the merit of the speeches, to procure the very best editing. The task should have been confided to one of judgment and taste, accuracy and patience, with a charge to select only what was sufficiently well reported to be retained, and to subject to the most minute collation all the different reports of the same speeches.'"

"If the published reports were so unsatisfactory, they were still the only reports that could be obtained.

If the inaccuracies were a fact, they showed only the necessity of an author's edition. But this the author had publicly declared that he would never give to the world. Unless, therefore, it is to be argued that the public have an interest in the suppression of such matter, it is hard to see how Mr. Vizetelly could be blamed for giving the speeches with all their imperfections on their heads. Nor is this answer much affected by the reviewer's notion that the unauthorized editor, instead of taking any single report, should have constructed according to his own taste and judgment a kind of patchwork composition from various versions. Still less am I inclined to agree with him that this model editor would have been bound to exercise 'discrimination in the selection and rejection of material,' or should have permitted only what was in his opinion sufficiently well reported to be retained. How an editor, who had not enjoyed the reviewer's advantage of being present at the delivery of the speeches (indeed, more than his advantage, for he must have been present at the delivery of all), or how such an editor, even under these circumstances, if he were less fortunate in the matter of memory, or let us say more diffident about trusting to that treacherous faculty with regard to mere words spoken in the heat of an election meeting years before—how such an editor, I say, could be expected to fulfill such duties as these, does not appear. I confess that I, for one, if I had purchased a copy of his book, should have been little inclined to thank him for his pains, and would certainly have preferred to have all the speeches as they were to be found in some one or other of the only authorities which the author permitted to exist.

"But the reviewer to some degree anticipates the argument of the inadvisability of entrusting an editor with such discretionary powers. The plea that 'it

was not in the power of an editor who professed to give the reported speeches to reject any,' he regards as absurd, because in fact many were omitted. These omissions, however, were probably accidental. The difficulty of obtaining copies of reports, some of which only existed in files of country newspapers—their very existence being perhaps unknown to the editor—was apparently the sole cause of them. Still, so far as they went, they were undoubtedly valid objections to Mr. Vizetelly's publication; but the affair was rather one between him and the public, or between him and the purchaser of his book, than between the publisher and Lord Macaulay, who had refused any aid in rendering the publication either complete or accurate. Certainly they only affected in the slightest degree the moral aspect of the case, namely, the right of a publisher to issue without the author's consent, and even in defiance of his wishes, a collection of his public speeches. The same may be said of the reviewer's complaint, that reported speeches of all great speakers, especially among those they have delivered before country audiences, are far less those of the speaker than those of the reporters, and that many of those given in Mr. Vizetelly's volume were 'evidently mere summaries of what was said, and not always correct summaries.' 'It would be as fair,' remarks the writer I am quoting, 'to publish the "argument" of some book of an epic poem for the book itself, as give some of the meagre condensations of speeches contained in these volumes for the very speeches themselves.' Is not an obvious answer to this, that imperfect as they were, these versions were the best that could be got, and that even a summary by a country reporter of a speech by a great statesman, might be conceived to be preferable to nothing at all. The speeches 'in the Senate of Liliput,'

which Dr. Johnson and others furnished to 'The Gentleman's Magazine,' were probably in many cases mere faint adumbrations of the speeches actually delivered in the House of Commons; but it is frequently through these sources only that a notion has descended to our time of famous orations of Walpole, Chatham, Burke, and Fox.

"The fact that the reviewer of Macaulay's speeches in the *Edinburgh* is, as far as I am aware, the only writer of position who has put forth a plea for extending the law of copyright to public speeches, will, I hope, justify me in devoting some further space to the examination of his arguments. A notion that the public have an interest in this question which deserves consideration does indeed appear to have haunted his mind. Something he is willing to concede to this consideration; but he claims to limit the public rights in a manner which appears to be arbitrary and unsound. The liberty of daily journals to give reports of speeches as part of the news of the day he does not contest. Even Hansard he would allow; and indeed the absurdity of a member of Parliament being permitted to refuse to allow any record of his parliamentary utterances to appear either in the pages of Hansard or in the public journals, must be sufficiently obvious. More than that, he does not even insinuate that a parliamentary speaker should be allowed to compel either of such authorities to adopt his revised speech, or even his next day's view of what he said, or intended to say, or wished he had said, in preference to the version of their own reporters. If he had, his reader's attention would have been inevitably at once directed to the weakness of his plea; for though every reader is not capable of understanding an appeal to abstract principles, all are able to appreciate a threatened deprivation of something that is

useful, to which they have long been accustomed. The reviewer's prudence on these points is therefore incontestable. But he argues that though Hansard and the *Times* may be endured, a reprint in any other form ought to be repressed if the public speaker so willed it. The difference between these things, however, is not very easy to perceive. The reviewer attempts to make a distinction from the fact that newspaper and like reports are given on the authority of the organs in which they appear, whereas reprints bear the name of the author. But as in the case of Macaulay's speeches, every one knew, or from the very title-page of the volume might know, and indeed was sure to be told, that Mr. Vizetelly's book had no other authority than the *Times* or Hansard, the re-publication was virtually the same thing as publication in those organs. The reviewer's notion that the public ought to be permitted to read the next morning in the *Times*, but must never afterwards be permitted to read except in a paper, is certainly founded on no intelligible principle. Besides, is not a volume of Hansard both a portable and a permanent record in which any man might read unauthorized versions of speeches if he was only rich enough to buy the series; and the index of that publication as much affixes the speeches to the author's name as Mr. Vizetelly's title-page. But perhaps the oddest of all the reviewer's notions is that the unauthorized publishers should be strictly confined to newspapers and such collections as Hansard, because those publications are of an essentially unwieldy and inconvenient character. Surely the right to publish with or without the author's consent ought to include the right to publish in a form convenient to the reader.

"As to newspapers, the reviewer thinks reports there tolerable, because associated with that 'infinite

chaos of intelligence which the public is concerned to know merely as news;' because, being there, as he also expresses it, 'mixed up with an infinite jumble of chaotic information—births, deaths, and marriages, police reports, advertisements, trials, sketches of sermons, and dreadful accidents—more attractive than all of them—they go the way of all paper.' And so with the matter of Hansard. This he regards as a case for exception, because it is 'a vast repertory,'—so vast that few can purchase it,—'where all sorts of speeches of all dimensions, from two lines to twenty columns, of every conceivable quality and on all subjects, from a Turnpike Act to Parliamentary Reform, are huddled together;—and where (as he rather clumsily expresses it) thin grains of eloquence faintly streaked infinite platitudes, and grains of golden ore lie entombed in whole continents of rubbish.' The absurdity of this proposition, that publication should be permitted only on the condition that the thing published should 'faintly streak infinite platitudes,' and 'lie entombed in whole continents of rubbish,' must, I think, be pretty obvious to any reader in his senses. This notion, that it can be at the same time an object both to give and to withhold—to make known and yet not to make known—can perhaps only be paralleled by the story of the foreign countess in very reduced circumstances, who, having to sell water-cresses in the street, selected a lonely quarter of the town and cried her merchandise in a low tone of voice, while muttering between whiles, 'I hope to goodness nobody hears me.' These things are, as the reviewer admits, historical documents. They are, in fact, something more,—they concern the interests of the generation in which they are spoken; they are matter which the public have a right to access to, not grudgingly but freely. If ever pretensions to copyright in them such

as this writer has put forth, or a claim to any further right for the speaker than that of issuing his own authorized edition for any one to prefer if he chooses, should be subjected to the searching criticism of a parliamentary debate, it may safely be prophesied that the fallacies of the reviewer on this point will be quickly disposed of. But even granting that such speeches are merely documents of history, it may still be reasonably asked why historical documents, if they are to be permitted to exist at all, independently of the will of any person, should be only permitted in an inaccessible form.

"The inconveniences which may result from according to public speakers any approach to a right to suppress or tamper with speeches, are obvious enough; but we are not left to infer this form any prior considerations. As I have said, Lord Macaulay, in the extensive alterations which he introduced into the reporter's versions of his speeches, disavowed emphatically any intention at least to falsify historical documents. But he does not conceal from his readers that he would much have preferred, and this for reasons having reference merely to private feelings, to suppress at least some portions of these addresses. 'It was (he declares) especially painful to me to find myself under the necessity of recalling to my own recollection, and to the recollection of others, the keen encounters which took place between the late Sir Robert Peel and myself,' and he adds, 'I lamented his untimely death as both a private and public calamity, and I earnestly wish that the sharp words which have sometimes been exchanged between us might be forgotten.'

"Feelings of this kind undoubtedly do honor to the heart of a public man; but the public has certainly no interest in the suppression of such matter, and on

the whole it may be doubted whether any good purpose is really served by suppressing such episodes in a period of our history even temporarily. The encounters in Parliament and elsewhere between two such men as Macaulay and Peel are facts of interest to all Englishmen. What allowance should be made for them, what respect for the memory of the dead may demand when we look back upon them, will certainly not be denied by history, or even by the sentiment of the time in which we live. What I contend for is, that they ought not to be suppressed, and that no man should have even a partial right to place artificial obstacles in the way of such facts becoming known. This is a principle at least well-known to our law. Lord Eldon, for example, in the case of Gee v. Pritchard, 'repudiated, and that most distinctly, any notion of interference by the Court of Chancery with a publication simply because it might wound feelings;' and, as Mr. Phillips remarks,[1] 'it seems abundantly clear, from all the reported decisions that, except upon the ground of property, or of breach of contract or trust, an English Court of law or equity will not give relief in the case of an unauthorized publication.' The reason of this is, of course, that private feelings, however commendable in individuals, ought not to be permitted to interfere with public rights. With so many motives for suppression and modification of bygone speeches, as every active statesman must experience in later years, it is indeed intelligible enough why so few of such publications are issued. It might even be argued that the author of such speeches is himself the worst person to be permitted to revise them, for the reason that the motives for tampering with their historical truth and accuracy are presumptively stronger in him than in any other person."

[1] Law of Copyright, p. 36.

CHAPTER II.

OF THE STATUTES OF COPYRIGHT.

222. The first English Statute of Copyright—to whose enactment we have thus traced the history of Literary Property—recited in its preamble that "printers, booksellers, and other persons," frequently took "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 and proprietors of such books and writings, to their very great detriment, and, too often, to the ruin of them and their families. Wherefore: "to prevent such wrong-doing, and for the encouragement of learned men to compose and write useful books, the statute enacted that from and after the tenth day of April, 1710, the author of any book or books already printed, who hath not transferred to any other the copy or copies[1] of such book or books in order to print or reprint the same; shall have sole right and liberty of printing

[1] By the word "copy" in this statute and in the early cases on the subject, is meant what we now call a "copyright." "I used the word 'copy' in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing of somewhat intellectual communicated by letters."—Lord Mansfield, in Millar v. Taylor, 4 Burr. 2396. "The copy of a book," said Aston, J. (Id. 2346), "seems to have been not familiarly only, but legally, used as a technical expression of the author's sole right of printing and publishing that work." See also per Willes, J., Id. 2311.

such book 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 assignees, shall 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 the act inflicted a penalty on those who should, within the time specified in the act, print, reprint, or import, or cause to be printed, &c., "without the consent of the proprietor or proprietors thereof first had and obtained in writing," or should sell, publish, or expose to sale any book or books so printed, &c., without consent, the penalty being a forfeiture of the book or books to the proprietor of the copy, and one penny for every sheet found in the offender's possession, one moiety to go to the sovereign, and the other to any person suing for it.[1]

The benefit of the preceding enactment was, however, extended only to those books published after the passing of the act, whose proprietor's title was entered in the register book of the Stationers' Company in the manner usual before the act.[2]

The act furthermore empowered every person who considered the price of a book too high, to bring the matter before the archbishop of Canterbury, the lord chancellor or lord keeper, the bishop of London, the chief judge of the king's bench, the chief judge of the common pleas, the chief baron of the exchequer, the vice-chancellors of the two English universities, the lord president of the sessions, the lord justice general,

[1] Sec. 1.
[2] Sec. 2.

or the rector of the college of Edinburgh; one or more of whom might examine into the cause of complaint and settle the price of the book as seemed just, and make the bookseller or printer pay all the costs of the person making the complaint.

Provision was made that nine copies of every book should be given to different libraries, and the rights of the universities were saved.[1] With respect to books in other languages, the act[2] provided that nothing

[1] The public libraries, entitled to the receipt of a copy each, upon demand, were the King's Library (now the British Museum), the Bodleian, Oxford; the University, Cambridge; the Library of the London Clergy (otherwise Sion Library), London. In Scotland the libraries of the Universties of Edinburgh, Glasgow, St. Andrews, and Aberdeen, with that of the Faculty of Advocates.

To these were added, by a subsequent act, in 1791, two Irish libraries, viz.: Trinity College, Dublin, and the Society of the King's Inns, in that city.

The delivery of nine copies of every new book was a heavy sacrifice, and booksellers were indefatigable in their efforts to evade it; delivering at one time only a single volume, and at others venturing to omit the ungracious duty altogether. Hence a necessity for new acts of parliament, more particularly those of 1775 and 1791. Still these acts were not sufficiently positive; and it having been decided in 1798 (in the case of Beckford v. Hood), that publishers were not prevented by such irregularities, from obtaining damages for pirated editions, they became more and more remiss in their deliveries. At last, in 1811, the university of Cambridge having determined to bring the question to an issue, brought an action for the non-delivery of Fox's History, and obtained a verdict. The booksellers, finding that this act was now no longer a dead letter, applied to parliament; but a committee of the house of commons, appointed in March, 1813, made a report in favor of their opponents; and in the succeeding spring an act was passed, confirming, in the most explicit terms, the claim of the public libraries, who were not even required to pay any proportion of the price of such books as they thought proper to require. Enc. Brit. Sup.

[2] The present English Copyright Law (5 and 6 Vict. 45), dating from 1st July, 1842, gives to authors a copyright in their

contained in it should extend or be construed to extend "to prohibit the importation, vending, or selling of any books in Greek, Latin, or any other foreign

works, for the natural life of the author, and for seven years after his death; or in any event, for forty-two years from the first publication.

The honor of this bill is due to Mr. Sergeant Talford, whose brilliant effort in its behalf merits all preservation. Said the sergeant, in 1837, "Although I see no reason why authors should not be restored to that inheritance which, under the name of protection and encouragement, has been taken from them, I feel that the subject has so long been treated as matter of compromise between those who deny that the creations of the inventive faculty, or the achievements of the reason, are the subjects of property at all, and those who think the property should last as long as the works which contain truth and beauty live, that I propose still to treat it on the principle of compromise, and to rest satisfied with a fairer adjustment of the difference than the last act of parliament affords. I shall propose—subject to modification when the details of the measure shall be discussed—that the term of property in all works of learning, genius, and art, to be produced hereafter, or in which the statuable copyright now subsists, shall be extended to sixty years, to be computed from the death of the author; which will at least enable him, while providing for the instruction and the delight of distant ages, to contemplate that he shall leave in his works themselves some legacy to those for whom a nearer, if not a higher duty, requires him to provide, and which shall make 'death less terrible.' When the opponents of literary property speak of glory as the reward of genius, they make an ungenerous use of the very nobleness of its impulses, and show how little they have profited by its high example. When Milton, in poverty and in blindness, fed the flame of his divine enthusiasm by the assurance of a duration coequal with his language, I believe, with Lord Camden, that no thought crossed him of the wealth which might be amassed by the sale of his poem; but surely some shadow would have been cast upon 'the clear dream and solemn vision' of his future glories, had he foreseen that, while booksellers were striving to rival each other in the magnificence of their editions, or their adaptation to the convenience of various classes of his admirers, his only surviving descendant—a woman—should be rescued from ab-

language printed beyond the seas; anything contained in this act to the contrary notwithstanding.

223. The next statute on the subject was that of ject want only by the charity of Garrick, who, at the solicitation of Dr. Johnson, gave her a benefit at the theatre which had appropriated to itself all that could be represented of Comus. The liberality of genius is, surely, ill urged as an excuse for our ungrateful denial of its rights. The late Mr. Coleridge gave an example, not merely of its liberality, but of its profuseness; while he sought not even to appropriate to his fame the vast intellectual treasures which he had derived from boundless research, and colored by a glorious imagination; while he scattered abroad the seeds of beauty and of wisdom to take root in congenial minds, and was content to witness their fruits in the productions of those who heard him. But ought we, therefore, the less to deplore, now when the music of his divine philosophy is forever hushed, that the earlier portion of those works on which he stamped his own impress—all which he desired of the world that it should recognize as his—is published for the gain of others than his children—that his death is illustrated by the forfeiture of their birthright? What justice is there in this? Do we reward our heroes thus? Did we tell our Marlboroughs, our Nelsons, our Wellingtons, that glory was their reward, that they fought for posterity, and that posterity would pay them? We leave them to no such cold and uncertain requital; we do not even leave them merely to enjoy the spoils of their victories, which we deny to the author; we concentrate a nation's honest feeling of gratitude and pride into the form of an endowment, and teach other ages what we thought, and what they ought to think, of their deeds, by the substantial memorials of our praise. Were our Shakespeare and Milton less the ornaments of their country, less the benefactors of mankind? would the example be less inspiring if we permitted them to enjoy the spoils of their peaceful victories—if we allowed to their descendants, not the tax assessed by present gratitude, and charged on the future, but the mere amount which that future would be delighted to pay—extending as the circle of their glory expands, and rendered only by those who individually reap the benefits, and are contented at once to enjoy and to reward its author?

"But I do not press these considerations to the full extent; the past is beyond our power, and I only ask, for the

89 Geo. I., Chapter 13, which extended the provisions of the statute of Anne to every person who should "invent or design, engrave, etch, or work in mezzo-

present, a brief reversion in the future. 'Riches fineless,' created by the mighty dead, are already ours. It is in truth the greatness of the blessings which the world inherits from genius that dazzles the mind on this question; and the habit of repaying its bounty by words, that confuses us and indisposes us to justice. It is because the spoils of time are freely and irrevocably ours—because the forms of antique beauty wear for us the bloom of an imperishable youth—because the elder literature of our own country is a free mine of wealth to the bookseller and of delight to ourselves, that we are unable to understand the claim of our contemporaries to a beneficial interest in their works. Because genius by a genial necessity communicates so much, we cannot conceive it as retaining anything for its possessor. There is a sense, indeed, in which the poets 'on earth have made us heirs of truth and pure delight in heavenly lays;' and it is because of the greatness of this very boon—because their thoughts become our thoughts, and their phrases unconsciously enrich our daily language—because their works, harmonious by the law of their own nature, suggest to us the rules of composition by which their imitators should be guided—because to them we can resort, and 'in our golden urns draw light,' that we cannot fancy them apart from ourselves, or admit that they have any property except in our praise. And our gratitude is shown not only in leaving their descendants without portion in the pecuniary benefits derived from their works, but in permitting their fame to be frittered away in abridgments, and polluted by base intermixtures, and denying to their children even the cold privilege of watching over and protecting it!

"There is something, sir, peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth, sufficiently full of hope and joy, to slight its promises. It gives a bounty to haste, and informs the laborious student, who would wear away his strength to complete some work which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the moment it is most needed, and when

tinto or chiaro oscuro, or from his own works and inventions should cause to be designed, engraved," &c. . . .

the benignity of nature would extract from her last calamity a means of support and comfort to survivors. At the season when the author's name is invested with the solemn interest of mortality—when his eccentricities or frailties excite a smile or a sneer no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country, your law declares that his works shall become your property, and you requite him by seizing the patrimony of his children. We blame the errors and excesses of genius, and we leave them,—justly leave them,—for the most part, to the consequences of their strangely-blended nature. But if genius, in assertion of its diviner alliances, produces large returns when the earthly course of its frail possessor is past, why is the public to insult his descendants with their alms and their pity? What right have we to moralize over the excesses of a Burns, and insult his memory by charitable honors, while we are taking the benefit of his premature death, in the expiration of his copyright and the vaunted cheapness of his works? Or, to advert to a case in which the highest intellectual powers were associated with the noblest moral excellence, what right have we to take credit to ourselves for a paltry and ineffectual subscription to rescue Abbotsford for the family of its great author (Abbotsford, his romance in stone and mortar, but not more individually his than those hundred fabrics, not made with hands, which he has raised, and peopled for the delight of mankind), while we insist on appropriating now the profits of his earlier poems, and anticipate the time when, in a few years, his novels will be ours without rent-charge to enjoy—and any one's to copy, to emasculate, and to garble? This is the case of one whom kings and people delighted to honor. But look on another picture —that of a man of genius and integrity, who has received all the insult and injury from his contemporaries, and obtains nothing from posterity but a name. Look at Daniel De Foe; recollect him pilloried, bankrupt, wearing away his life to pay his creditors in full, and dying in the struggle!—and his works live, imitated, corrupted, yet casting off the stains, not by protection of law, but by their own pure essence. Had every school-boy, whose young imagination has been prompted by his great work, and whose heart has learned to

The statute of George III., Chapter 38, came next in order, extending the benefit of the act to every person who should "engrave, etch, or work in mezzo-

throb in the strar ;e yet familiar solitude he created, given even the halfpeni y of the statute of Anne, there would have been no want of a provision for his children, no need of a subscription for a statue to his memory!

"The term allowed by the existing law is curiously adapted to encourage the slightest works, and to leave the noblest unprotected. Its little span is ample for authors who seek only to amuse; who, 'to beguile the time, look like the time;' who lend to frivolity or corruption 'lighter wings to fly;' who sparkle, blaze, and expire. These may delight for a season—glisten as the fire-flies on the heaving sea of public opinion—the airy proofs of the intellectual activity of the age; —yet surely it is not just to legislate for those alone, and deny all reward to that literature which aspires to endure. Let us suppose an author, of the true original genius, disgusted with the inane phraseology which had usurped the place of poetry, and devoting himself from youth to its service; disdaining the gauds which attract the careless and unskilled in the moving accidents of fortune—not seeking his triumph in the tempest of the passions, but in the serenity which lies above them,— —whose works shall be scoffed at—whose name made a by-word—and yet who shall persevere in his high and holy course, gradually impressing thoughtful minds with the sense of truth made visible in the severest forms of beauty, until he shall create the taste by which he shall be appreciated—influence, one after another, the master-spirits of his age—be felt pervading every part of the national literature, softening, raising, and enriching it; and when at last he shall find his confidence in his own aspirations justified, and the name which once was the scorn admitted to be the glory of his age—he shall look forward to the close of his earthly career, as the event that shall consecrate his fame and deprive his children of the opening harvest he is beginning to reap. As soon as his copyright becomes valuable, it is gone! This is no imaginary case—I refer to one who 'in this setting part of time' has opened a vein of the deepest sentiment and thought before unknown—who has supplied the noblest antidote to the freezing effects of the scientific spirit of the age—who, while he has detected that poetry which is the essence of the greatest things, has cast a glory around the lowliest conditions of hu-

tinto or chiaro oscuro, or cause, &c., &c., any print taken from any picture, drawing, model or sculpture, either ancient or modern, . . . in like manner as if such print had been graved or drawn from the original design of such engraver, etcher, or draughtsman," and the term of protection afforded, from fourteen to twenty-eight years. The statute 38 George III., Chapter 71, extended this protection to models and busts, and the statutes 41 Geo. III., Chapter 107, and 54 Geo. III., Chapter 156,[1] amended the existing provisos as to remedies and penalties.

224. Such was generally the condition of the statutes, down to the year 1783, in England. Let us now look at America.

manity, and traced out the subtle links by which they are connected with the highest—of one whose name will now find an echo, not only in the heart of the secluded student, but in that of the busiest of those who are fevered by political controversy—of William Wordsworth. Ought we not to requite such a poet, while yet we may, for the injustice of our boyhood! For those works which are now insensibly quoted by our most popular writers, the spirit of which now mingles with our intellectual atmosphere, he probably has not received through the long life he has devoted to his art, until lately, as much as the same labor, with moderate talent, might justly produce in a single year. Shall the law, whose term has been amply sufficient to his scorners, now afford him no protection, because he has outlasted their scoffs—because his fame has been fostered amidst the storms, and is now the growth of years?"

Sergeant Talfourd afterwards, in 1838 and 1839, delivered other speeches in favor of the extension of copyright, and the measure was finally carried in 1842, proving, as said the poet Wordsworth, who was one of the petitioners for the copyright, that "justice is capable of working out its own expediency." (Three Speeches delivered in the House of Commons in favor of the Measure for an Extension of Copyright. By T. N. Talfourd, Sergeant-at-Law. London, 1840.)

[1] Repealed by 5 and 6 Victoria, ch. 45, § 1, except as to rights existing or proceedings pending at the time of the passing of that act.

The fundamental principle of the law of the United States, is that the colonies possessed, as their heritage, the common law of England, in so far as it was suited to their circumstances and condition.[1] "Our ancestors," said Parsons J.,[2] "when they came into this new world, claimed the common law as their birthright, and brought it with them, except such parts as were inapplicable to their new state and condition."

And so whatever was common law in England up to the 4th of July, 1775, or, as some say, up to the formal adoption of the Articles of Confederation, was and is the common law of the United States to-day.

225. The state of Connecticut, as early as January, 1783, passed an act "for the encouragement of literature and genius," of which the preamble ran as follows: "Whereas it is perfectly agreeable to the principles of natural justice and equity, that every author should be secured in receiving the profits that may arise from the sale of his works: and that such security may encourage men of learning and genius to publish their writings, which may do honor to their country and service to mankind," &c., &c. The law contained a proviso to the effect that the benefit of the law should not extend to the authors of another state, until such state should have passed similar laws.[3]

The state of Massachusetts, in March, 1783, passed a law entitled, "an act for the purpose of securing to the authors the exclusive right and benefit of publishing their literary productions for twenty-one years." The preamble to this act was as follows: "Whereas

[1] 1 Story on Const. 137–140; Vanness v. Packard, 2 Pet. 144; Wheaton v. Peters, 8 Id. 591.

[2] In Commonwealth v. Knowlton, 2 Mass. R. 534.

[3] Statutes of Conn. 474.

the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness greatly depend on the efforts of learned and ingenious persons in the various arts and sciences; as the principal encouragement such persons can have to make great and beneficial exertions of this nature, must exist in the legal security of the fruits of their study and industry to themselves; and, as such security is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labor of his mind; therefore, to encourage learned and ingenious persons to write useful books for the benefit of mankind, be it enacted, &c." The act then proceeds to declare that all books, treatises, and other literary works, &c., shall be the sole property of the author or authors, being subjects of the United States of America, their heirs and assigns, for the full and complete term of twenty-one years from the date of their first publication. And certain penalties are affixed to a violation of the right, with a proviso that the act shall not be construed to extend in favor, or for the benefit of any author or subject of any other of the United States, until the state, of which such author is a subject, shall have passed similar laws for securing to authors the exclusive right and benefit of publishing their literary productions.[1]

It appears from the journals of the old Congress[2] that the question was brought before that body, by sundry papers and memorials on the subject of literary property, "which upon being referred to a committee of which Mr. Madison,[3] afterwards President Madison,

[1] Laws Mass. 94.

[2] 8 Journals, 257.

[3] Mr. Madison was author of "The Federalist," No. 43, in

was one, the following resolution was reported and adopted on the 27th of May, 1783:

"That it be recommended to the several states, to secure to the authors or publishers of any new books not hitherto printed, being citizens of the United States, and to their executors, administrators and assigns, the copyright of such books for a certain time, not less than fourteen years from the first publication, and to secure to the said authors, if they shall survive the term first mentioned, and to their executors, administrators and assigns, the copyright of such books for another term or time not less than fourteen years, such copy or exclusive right of printing, publishing, and vending the same, to be secured to the original authors or publishers, their executors, administrators and assigns, by such laws and such restrictions, as to the several states may seem proper."

In 1785 Virginia followed,[1] and, in 1786, the colony of New York passed a law "to promote literature," reciting, "whereas it is agreeable to the principles of natural equity and justice that every author should be secured in receiving the profits that may arise from the sale of his works; and such security may encourage

which the clause of the constitution, giving congress power to pass laws regulating copyright, is discussed.

The utility of the power will scarcely be questioned. The copyright of authors has been solemnly adjudged in Great Britain, to be a right at common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The states cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of congress.—"The Federal," No. 43 (old No. 42), University Edition, New York, 1870, p. 297.

[1] 1 Rev. Code, Virgin. 534.

persons of learning and genius to publish their writings, which may do honor to their country and service to mankind," &c., &c. The law makes provision for securing to authors the sole right of printing, publishing, and selling their works, for fourteen years, with a proviso to the fourth section of the act, recognizing a common-law right, but leaving it open and unaffected in cases not coming within the act, as follows: "Provided that nothing in this act shall extend to, affect, prejudice, or confirm the rights which any person may have to the printing or publishing of any books or pamphlets at common law, in cases not mentioned in this act."[1]

But under the existing governments of the United States, before the adoption of the Constitution, adequate protection could not be given to authors throughout the United States by any general law. It depended on the legislatures of the several states, others of whom, following the examples of states above quoted, had meanwhile enacted similar laws, and this led to the provision in the present constitutution[2] of the United States (May, 1789), which enacted that congress should have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, . . . and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.[3]

[1] Wheaton v. Peters, 8 Pet. p. 682.

[2] Con. art. 1, § 18.

[3] Mr. Madison proposed the following: "To secure to literary authors their copyrights for a limited time.

"To establish a university.

226. Next chronologically to recognize and protect the rights of authors of all kinds of writings, of composers of music, of painters and engravers, were the French, who, by the Republican decree of July nineteenth, of the year 1793, giving to all such a right for life in their works, and to their heirs for ten years after their deaths, with strong provisions against the invasion of such literary property. The history of this law is curious and instructive, the French National Convention having passed it in that memorable month of July, 1793, "when the whole republic was in the most violent convulsions: when the combined armies were invading France and besieging Valenciennes; when Paris was one scene of sedition, terror, imprisonment, proscription, and judicial massacre; when the convention had just been mutilated by its own denunciation, and the imprisonment of the Girondist deputies, and when the whole nation was preparing to rise en masse to expel the invaders. The spectacle of an assembly, at such a moment, sitting calmly down to pass, for the first time, a law to protect

"To encourage by premiums and provisions the advancement of useful knowledge and discoveries."

Mr. Pinckney proposed:

"To establish seminaries for the promotion of literature and the arts and sciences.

"To secure to authors exclusive rights for a certain time."

These propositions were referred to a committee of eleven, but not reported back.

Mr. Madison and Mr. Pinckney, near the close of the session, renewed their proposition as follows:

"To establish a university in which no preferences or distinctions should be allowed on account of religion."

Mr. Morris remarked: "It is not necessary; the exclusive power at the seat of government will reach the object."—Yeas 4. Nays 6. The committee of eleven reported the clause (8), as it stands, and it was agreed to, nem. con.—Towle's Hist. and Analysis of the Constitution, p. 129.

its authors, is no more curious than admirable and instructive."[1]

This law was further modified by an imperial decree of February 5th, 1810, and the French author now enjoys the protection of his copyright during his life, and after his death his heirs for fifty years are secured therein. By the decree of Napoleon of the 5th of February, 1810 (now abrogated) a distinction was made between descendants and other heirs, that law giving the security of copyright to the author's widow for twenty years after his death, and to his children for twenty years after that. As this operated as a premium upon matrimony, it has been said, that Napoleon in this decree had "it as much in view to encourage the multiplication of soldiers as of books."[2] But no such distinction now obtains.[3]

[1] 2 Kent Com. p. 377 (note).

[2] Nicklin on Copyright, p. 75.

[3] Comment en France les lois ont-elles successivement résolu les questions relatives a la propriété des œuvres littéraires, dramatiques et artistiques? Voilà ce que je me propose de passer rapidement en revue dans ce chapitre, afin de mieux juger des progrès introduits peu à peu dans la législation.

Pour plus de clarté, je traiterai successivement de ces trois sortes d'œuvres; mais, que le lecteur ne s'effraie point, je ne commencerai pas mon récit à la création du monde, je dois me borner à remonter au déluge des productions de l'esprit, c'est-à-dire à l'époque où les droits des auteurs commencèrent à prendre quelqu'importance à cause de la facilité plus grande qu'ils eurent de tirer profit de leurs œuvres; en ce qui concerne les œuvres littéraires il ne sera donc point nécessaire de se reporter au delà de l'anée 1436, époque de la découverte de l'imprimerie; et, en ce qui concerne les représentations dramatiques et les œuvres artistiques, il ne sera même pas possible de remonter aussi haut.

L'imprimerie ayant commencé vers 1469, à être exercée dans la capitale de la France, Louis XI. en 1475 et Charles VIII. en 1488 accordérent, par lettres patentes, certains advantages aux imprimeurs; ce sont les deux plus an-

227. In Russia the first copyright law was enacted in 1828, securing the author's right during his life, and his children for twenty-five years, extendable for

ciens documents relatifs à cette matière. Il faut ensuite passer sans transition à l'ordonnance de Moulins, rendue sous Charles IX. en 1566, laquelle accordait aux auteurs la jouissance exclusive de leures œuvres, à la condition de demander une concession royale. Dès cette époque jusqu'en 1789 le régime du privilége prévalut comme en toute autre matiére, et le roi devint pour ainsi dire le suzerain de la propriéte intellectuelle, comme il était déjà celui de la propriété territoriale; toutefois, outre les priviléges concédés par le roi, il y en eut qui furent accordés par les parlements, par les unviersités et même par le prévôt de Paris. Ces priviléges étaient, ou perpétuels, ou limités; ils pouvaient être prolongés et accordés même pour des ouvrages anciens tombés dans le domaine public; on en indiquait la nature en tête de l'ouvrage. Du reste, c'était ordinairement aux imprimeurs et aux libraires qu'ils étaient concédés; quant à l'auteur, il verdait son manuscrit aux éditeurs et ne s'occupait pas ordinairement de la publication; des priviléges furent même parfois accordés aux éditeurs sans le consentement de l'auteur.

Pendant deux siècles la question sommeilla dans le même ordre d'idées; sans parler d'une déclaration de Charles IX. en 1571 et des lettres patentes de Henri III. en 1581, il n'y à noter qu'un édit de Louis XIII. de 1617, qui ordonne de faire à la bibliothèque le dépôt de deux exemplaires de toute publication. Mais, au commencement du régne de Louis XVI., furent rendus deux arrêts du Conseil du roi qui tranchèrent la question de propriété. Ces arrêts sont très-importants; le premier du 30 août 1777, arrêt du Conseil du 30 août 1777, décida que l'auteur avait sur son œuvre un droit de propriété perpétuelle, transmissible à ses héritiers; mais qu'en cas de cession, ce droit se réduirait à la durée de la vie de l'auteur; le second, du 30 juillet 1878, arrêt du Conseil du 30 jullet 1778, confirma et compléta ces dispositions.

En 1789, tous priviléges étant abolis, les auteurs purent publier librement; le principe de la perpétuité continua à subsister à leur profit, mais on ne tarda pas à apporter des restrictions à la durée de leurs droits. L'assemblée constituante, par décret du 13 janvier 1791, commenca par régler le droit de représentation des œuvres dramatiques; l'auteur put dès lors, pendant sa vie, empêcher d'exécuter ses œuvres sans son autorisation; mais le droit des héritiers et celui des cession-

five years more by publication of a new edition, such right being exempted from conversion for debt. By a ukase of 1857, which is the present law, the author's

naires fut restreint à cinq ans après la mort de l'auteur. Quoi qui ce décret ne se soit occupé que du droit de représentation, i a eu une grande importance sur la réglementation du droit de publication des œuvres littéraires, car il présentait la questior sous un jour nouveau en distinguant le droit de l'auteur de celui de ses héritiers; deux ans après on s'inspira des mêmes idées pour promulguer la loi des 19–24 juillet 1793 relative à la publication; cette loi donna à l'auteur un droit de propriété sur ses œuvres pendant sa vie, et le même droit, pendant dix ans aprés sa mort, à ses héritiers ou cessionnaires. Elle s'applique aux auteurs d'écrits en tous genres, aux compositeurs de musique, aux peintres, et aux dessinateurs qui font graver des tableaux ou dessins; elle règle en outre les poursuites, punit la contrefaçon et ordonne le dépôt. Quoiqu'en principe elle soit encore aujourd'hui en vigueur, elle a été successivement modifiée dans ses différentes parties, et l'on n'en a guères conservé qne la disposition qui accorde à l'auteur un droit exclusif pendant sa vie.

D'abord, en ce qui concerne le droit des successeurs, un décret du 5 février 1810 introduisit une première innovation; il accordait à la veuve de l'auteur un droit exclusif pendant sa vie, au détriment des héritiers, si toutefois ses conventions matrimoniales lui en donnaient le droit; la loi du 8 avril 1854 resta dans cet ordre d'idées; le droit viager fut laissé à la femme dans les mêmes conditions; celui des descendants ne commencait qu'à son décès. La nouvelle loi de 1866 modifie ce droit: 1° en ce qn'elle l'accorde non-seulement à la veuve mais à tout conjoint, prévoyant ainsi le cas où c'est la femme qui est auteur; 2° en ce qu'elle le qualifie de simple jouissance; 3° en ce qu'elle le déclare réductibie s'il depasse la quotité disponible dans le cas où il y a des héritiers réservataires; 4° en ce que le conjoint survivant est appelé à jouir de ce droit viager quel que soit le régime qu'il ait adopté par son contrat de mariage.—On voit que ce sont là toutes dérogations apportées aux principes de droit commun; j'examinerai plus loin si elles sont suffisamment justifiées, je me borne en ce moment à une simple énonciation.

La durée du droit accordé aux héritiers de l'auteur s'est étendue de plus en plus depuis la loi de 1793; elle était, d'après cette loi, de 10 ans à partir du décès de l'auteur; le décret du 5 février 1810 introduisit une distinction: pour les descendants