REMARKS

ON

LITERARY PROPERTY.

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Dedication.

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To HENRY C. CAREY, Esquire,

Member of the American Philosophical Society;

THIS LITTLE VOLUME

Is Respectfully Inscribed,

AS A MARK OF THE HIGH ESTIMATION IN WHICH
HIS LABOURS AS A POLITICAL ECONOMIST, AND
HIS CHARACTER AS A PUBLISHER,
ARE HELD BY

THE AUTHOR.

PREFACE.

Some may think it strange that an old Publisher should undertake to write a book, albeit a little one: there was however no such *undertaking*, but it was rather an *overtaking*: it was intended to publish Mr. Lowe's valuable article on Copyright, with a few prefatory remarks and a note or two, but during the concoction of said proemials, the writer was *overtaken* by the importance of the subject, which compelled him, *inertiâ nolente*, to convert a preface into nine chapters.

Mr. Lowe's article contains the history of Copyright, down to the year 1819, and its condition at that time. It subsequent

history, alterations, and present condition, may be learned from the "Remarks."

In publishing this little volume, the writer's object is to draw the attention of authors, publishers, and readers, to a subject that is important to them all; and to furnish as much information on it as his limited means have enabled him to collect.

A friend has just handed to him a slip of paper containing the following information, from the best authority, which is inserted here because it came too late for the text:—"The copyright of publications "in Denmark is perpetual. The reprinting of foreign works is generally permitted, with the exception of those of "foreign countries protected by treaty "stipulations, to which Denmark more "particularly has acceded with the German states."

The subject of literary property is un-

der invcstigation at present in England, France, Germany and Prussia, and their inquiries will no doubt elicit much light: it is therefore to be hoped, that Congress will do no more at this session than appoint committees of inquiry, to report at a future time, when enough of information has been obtained to form a solid basis for sound legislation.

It is a very pleasant thing for a writer, after the body of his task is finished, to gossip a little in his preface, with his readers, (if there bo any such predestinate unfortunates,) and that cacoethes is at present rife, but luckily for the saving of paper and patience, the *devil* has just come into the study, and holds forth his inky paw for copy, and therefore, "*voici* "*le commencement de la fin*;" first advising you, amiable reader, that the compositor, (perhaps a young radical,) has set up the word *liberty* in place of the word

library, in the seventh line from the bottom of note on page 104, thereby knocking the sense out of the sentence.

Philad. 17th March, 1838.

CONTENTS.

CHAPTER I.

Petition of British Authors to Congress—Observations thereon—American Authors not injured by the republication of Foreign Books—The Authors of France are situated with respect to Belgium and Germany, as those of Britain are with respect to the United States, and make a similar request with equal absurdity. 13

CHAPTER II.

Mr. Clay's Report to the Senate, made 16th February, 1837—Foreigners can rarely avail themselves of the security offered by the British Law of Copyright—Property in a material Book is very different from an Author's immaterial right—The Republic of Letters should have one Law of Literary Property—The Bill which passed the Senate—Observations thereon. 27

CHAPTER III.

Reasons against an International Law of Copyright at present—British Authors and British Critics—British Critics and American Au-

thors—British Market almost inaccessible to Foreign Authors—Washington Irving, a brilliant exception—Marshall's Washington—Our Market would be glutted with Belgian Contrefaçons, to the mortal injury of American Industry. 39

CHAPTER IV.

All mankind interested in the security of literary property—Erroneous views of Authors, Publishers, Consumers and Legislators—Injustice of the British and American statutes—A perpetual right in Authors would produce good and cheap books—Not a monopoly. 49

CHAPTER V.

Progress of Opinion on this Subject in various Countries—In Britain—Serjeant Talfourd's Speech in the House of Commons—Mr. Thomas Tegg's Pamphlet in Opposition to Authors' Rights—His True Reason—What the Law takes from Authors for the sake of the Public, inures to the benefit of Publishers. 57

CHAPTER VI.

Opinion in the United States—Report to Congress in 1831—American Jurist—Report to Congress in 1837—Notice of Mrs. Macaulay's Defence, in Law Intelligencer. 67

CHAPTER VII.

Progress of Opinion in France—Law of the National Convention—Of the Empire—Uncertainty of duration—Opinion of Mons. Bossange—Of the Journal des Débats—Copyright in Russia—In Norway and Sweden—In the Germanic Confederacy—Resolutions adopted by the Germanic Diet, in November, 1837—Prussia. 73

CHAPTER VIII.

A universal republic of letters should be established—Its advantages, pacific, literary, intellectual, religious—Charity should begin at home—and then may go abroad—The law of literary property should be uniform throughout the world—Free trade in books. 83

CHAPTER IX.

Mon. Bossange's Suggestions for the Improvement of the Law of Literary Property—Author's Property terminates at the moment it becomes available for Profit—La Fontaine and the Rothschilds—Natural Death of Pirates and Piracy—Conclusion. 89

COPYRIGHT.

By Joseph Lowe, Esq.

Delivery of Copies to Libraries.	98
Term of Copyright; its successive variations.	101
Objections and Answers.	102
Partial Prolongation in 1814.	109
Inquiry as to the advantages of a farther Prolongation.	110
State of Copyright on the Continent.	122
Inadequacy of our present term.	124
Sketch of the proposed alteration.	125
Its benefit to Authors.	127
Its Benefit to Booksellers.	130
Benefit to the Public.	138.

REMARKS

ON

LITERARY PROPERTY.

CHAPTER I.

Petition of British Authors to Congress—Observations thereon—American Authors not injured by the republication of Foreign Books—The Authors of France are similarly situated with respect to Belgium and Germany, as those of Britain are with respect to the United States, and make a similar request with equal absurdity.

In February, 1837, a petition, signed by fifty-six British authors, among whom were stars of all magnitudes, was presented to the senate by the honourable Henry Clay, asking the privilege to secure copyrights for their works in the United States, and supporting their petition by arguments not entirely worthy of the dis-

tinguished signers. The petition follows, with a few remarks upon its contents.

"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 respec- "tive writings may be secured to them in the United "States of America.

2. "That, for want of such 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 lan- "guage 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 appro- "priated, by American booksellers, not only without "the consent of the authors, but even contrary to their "express desire—a grievance under which your peti- "tioners have, at present, no redress."

The third paragraph, which states that English authors are extensively read in the United States, is a refutation of that part of the first, which says that they suf-

fer in reputation from the want of a law, for if an author's reputation does not gain by the admiration of millions, the word has different meanings on the two sides of the Atlantic; and so far from injury being done to their property, the fact is, that their American fame is echoed back across the ocean, and increases the value of their copyrights at home.

It is a great mistake to suppose that any part of the sum that would go to the author, if he were protected by law, now goes to the bookseller. The trade is free, and therefore competition obliges the publisher to sell at the very lowest price that will afford the necessary return for the capital employed; and it is in consequence of this low price that *good* English works have a large circulation in the United States, whereby the reputation of the authors is greatly *increased*, and not diminished as saith the petition. Raise the price by a copyright tax, and you diminish the circulation from two thousand to five hundred, or to nought, in proportion

to the amount of the author's wish to gain.

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 "persons who may have an interest in reducing the "price of the works, or in conciliating the supposed "principles or prejudices of purchasers in the respec-"tive sections of your union: and that, the names of "the authors being retained, they may be made respon-"sible for works which they no longer recognise 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."

The fifth paragraph contains a very grave charge, which should not have been preferred except on credible evidence; and the motives assigned in the fourth for the base perpetrations, exist only in the prejudices of the petitioners. If the allusion be to slavery, it was not respectful to make it to the Senate, in which *all* the states are represented in their corporate capacities. But almost all the British books that go through the American press

are published in the northern and middle states, where British opinions on that grave topic are not in disrepute, and where the interest of the publishers would not tempt them to mutilate, on such an account.

English law books are printed here, and the parts relating to tythes, copyhold estates, and other branches of law that do not exist here, are sometimes left out; and notes are added showing how our law and practice differ; but the text is never altered; and the elisions and notes are carefully designated by the American editor, who is generally a lawyer of reputation.

There is not the least inducement to mutilate English books, or to alter them in any way without distinct acknowledgment; for they come here with a reputation already gained, and it is an exact copy which the reader requires, and which the publisher is obliged to furnish.

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 Eng-

"lish publishers in New York to be the sole authorized "possessors and issuers of the works of the said peti- "tioners; and by publishing in certain American news- "papers, their authority to this effect."

That effort failed, because it was an attempt to establish, in the hands of an English house in New York, a monopoly in the republication of English books. Other English authors have made contracts with American houses, by virtue of which they have received large sums for the first copies of various books. The first copy of Lockhart's Life of Scott will, perhaps, cost the house which republishes it, three thousand dollars.

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 pre- "sent, no redress.

8. "That American authors are injured by the non- "existence of the desired law. While American pub- "lishers can provide themselves with works for publi- "cation by unjust appropriation, instead of by equitable "purchase, they are under no inducement to afford to "American authors a fair remuneration for their labours: "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."

The English books are not *unjustly* republished, for by the present defective copyright law the English author has only a right of use for a term of years, and that limited to the British empire; *that* is the reward for which he writes, and no labour is expended on his work for the benefit of other nations, but it is expressly adapted to the use of his own countrymen; and the merit of his book is, *in general*, commensurate with the poor encouragement and imperfect protection afforded by his own government.

The eighth paragraph is a distinguished specimen of the *argumentum ad hominem*, and is more supererogatory than sincere. If the desired law would not prevent the circulation of British books, it would not help American authors; and surely the petitioners do not desire a prohibition. The only inducement that can make a publisher buy a book, is its possessing such

a value as will insure a sale; he cannot be made to buy the copyright of a bad American book, because he must pay for English copyright. An American author who would go to England to sell a copyright that he could not sell here, would display less sagacity than commonly falls to the lot of an American, even though he be an author. His American fame must first cross the Atlantic, or he and his manuscript may stay at home.

The sale of American copyrights is not interfered with by the republication of foreign books; because the latter is merely an investment of capital, with a view to gain the common profit of trade, and is subject to the risque of competition; and consequently the publisher would much prefer, and does prefer, investing his capital in American copyright books, in the exclusive sale of which he enjoys legal protection, whenever *such as will sell* are offered to him. Authorship is heir to the same ills here, (*ilias malorum,*) as it is in Great Britain; and a very large propor-

tion of the books that are written do not pay the cost of paper and print. In this country publishing is not a monopoly, as it is, (practically,) in Great Britain,* and many of our great authors publish their own books, charge a high price and make a *large profit* on a limited circulation, instead of realising the much greater *amount of gain* that an experienced publisher would secure by a low price and an extensive circulation.

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* In Great Britain, the business of publishing seems to be so close a monopoly as to be retained almost entirely in the hands of the great booksellers in London: this is shown by the following extract from a letter addressed by Sir Walter Scott to J. G. Lockhart, Esq. dated Edinburgh, 20th January, 1826, contained in Lockhart's Life of Scott:—"But while I live I shall "regret the downfall of Constable's house, for never did "there exist so intelligent and so liberal an establish- "ment. They went too far when money was plenty, "that is certain; yet, if every author in Britain had "taxed himself half a year's income, he should have "kept up the house which *first broke in upon the mono-* "*poly of the London trade*, and made letters what they "now are." But, alas! that breaking in upon monopoly, broke the Constables, though they used a capital of £1,200,000.

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 uncer-
"tainty 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."

In all religious, metaphysical, moral and imaginative works, the republishers are obliged to give exact copies, or the books would not sell, and the mutilaters would lose their customers. Many English copies of all new works of merit are received in this country, by public libraries, reviewers, publishers, and individuals, and if the reprints were not faithful to the originals, the reviewers and newspapers would fall upon the publishers *unguibus et dentibus*, and he would not come out of the contest covered with glory, as Napoleon's bulletins did use to have it. Moreover, such sharp competition exists among our publishers, that none dare sin in this way, for fear of sudden punishment, in the shape of a rival and correct edition.

10. "That your petitioners beg humbly to remind "your Honours 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 "labours; that an equitable remuneration might have "saved his life, and would, at least, have relieved its "closing years from the burden of debts and destruc-"tive 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 Honours, the representatives "of the United States in Congress assembled, will "speedily use, in behalf of the authors of Great Bri-"tain, your power 'of securing to the authors the exclu-"sive right to their respective writings.'

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

It is probable that the life of that illustrious and excellent man, Sir Walter Scott, was shortened by the great amount of mental labour which his honesty induced him to undergo, for the noble purpose of paying his debts; legal debts created by the fault of others, no part of which rests upon Americans. The first publishers of

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* "Dr. M'Vickar.—Vide letter to the editor of the "New York American, Nov. 19, 1832."

his novels here, paid such a sum for the first *copy*, as would be considered a handsome payment to an American author for the first *edition* of an original novel. These payments were made under the certainty that numerous rival editions would spring up like mushrooms in a night, and be sold at little more than the cost of paper and print; and it was this very cheapness that was the principal cause of that *great* circulation of Sir Walter's novels in this country, which made our people utter that universal shout of praise which helped to raise his fame above that of any other writer, and no doubt increased the value of his works at home.

That justice is the best foundation of friendship between nations, no one will deny: but where was justice when parliament took from British authors the perpetual right to their own productions, granting them in return a beggarly term of years, and laying upon them the unequal tax of giving eleven copies of all new

works to certain corporations; no matter whether the price be one or one hundred guineas, whether the edition be one hundred or one thousand copies. British authors are now asking relief at the hands of our government for the injustice inflicted by their own. The absurdity of the request may be clearly shown, by asking them a question which has been propounded by a writer, (in the Gazette de France of the 16th November, 1836,) to the authors of France, who are demanding an international copyright law with Belgium and Germany, to prevent in those countries the reprinting of their books: he asks—"N'est ce pas une belle propo-"sition à faire aux puissances de l'Europe "que de leur dire: Vous pouvez avoir les "livres Français à très bon marché, mais "vous les paierez très cher par respect "pour la propriété littéraire des auteurs "Français, et par contre nous ne vous "offrirons rien, car nous ne réimprimons "pas vos livres!" Which, (*mutatis mutandis*,) may be translated as follows:—"Is

"it not a pretty offer to make to the "United States, to tell them:—'You can "now have English books very cheap; "but out of respect to the literary pro- "perty of English authors, we would be "much obliged to you if you will bind "yourselves by law to pay dear for them, "although we cannot offer you a *quid* "*pro quo*, for *we seldom reprint your* "*books.*'" And, if British publishers were obliged to pay for American copyright, *seldom* would be changed to *never*.

CHAPTER II.

Mr. Clay's Report to the Senate, made 16th February, 1837—Foreigners can rarely avail themselves of the security offered by the British Law of Copyright—Property in a material Book is very different from an Author's immaterial right—The Republic of Letters should have one Law of Literary Property—The Bill which passed the Senate—Observations thereon.

On the 16th February, 1837, the Hon. Henry Clay made the following Report to the Senate of the United States:—

"*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 bene-"fits of our law."

The word "*while*," should have been inserted in this clause next before the phrase "residing abroad," because our law allows a foreigner to secure a copyright as soon as he comes to this country. There is a singular obliquity in the phraseology of the whole clause, calculated to mislead the mind of the hasty reader: in the beginning it is said, "the benefits of the "act are *restricted to citizens*, or residents "of the United States:" the clause concludes with saying, that the object "is to "remove this *restriction as to British* "*authors*, and to allow them to enjoy the "benefits of the laws." Foreign authors are not restricted, or restrained from enjoying the benefits of the law, but can all come here and enjoy them; and herein they are, (*de facto*, though not *de jure*,) upon a par with American authors, who have found by experience, that it is next to impossible to derive any benefit from

copyright in Great Britain, without going there in person.

2. "That authors and inventors have, according to "the practice among civilized nations, a property in "the respective productions of their genius, is incon- "testable; 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 men- "tal labours for the means of subsistence; and are fre- "quently, from the nature of their pursuits, or the con- "stitutions of their minds, incapable of applying that "provident care to worldly affairs which other classes of "society are in the habit of bestowing. These consi- "derations give additional strength to their just title to "the protection of the law."

The general scope of this clause is excellent, and clearly proves that authors have a property in their works as indefeasible and transmissible as that of the owner of a house; and consequently, that it is inexpedient, at present, by an act of imperfect legislation, to make it more difficult to do them complete justice at a future day.

3. "It being established that literary property is "entitled to legal protection, it results that this protec- "tion 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. 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 prin- "ciple 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 reci- "procal 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 sub- "jected 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 republica- "tion, 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 pub- "lished after its passage. It is also limited to the sub- "jects of Great Britain and France; among other rea- "sons, because the committee have information that, by "their laws, American authors can obtain there protec- "tion for their productions; but they have no informa- "tion that such is the case in any other foreign coun- "try. But, in 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 "reasonable time."

The third clause is logically deficient, and the conclusion, (or *shock*,) is deduced from the use of similar terms in different senses. If a British merchant bring to the United States a box of books, the moment they come within our laws, they throw around them, (*the books*,) effectual security, and they cannot be appropriated by any resident here without paying for them: and if the author *bring* one copy of a new

work, and take out a copyright, no other resident can appropriate to himself the right of publishing and selling the same without the author's permission. The property in a *material* printed book, is a very different kind of property from the author's *incorporeal* right of exclusive publication. Unhappily, we are not *all* shocked, when the law not only tolerates, but requires, the taking away from the foreign merchant who brings to the United States a bale of merchandise, one-fourth, one-third, or one-half of its value, without paying for it, in order that somebody, somewhere down east, may be able to make a similar sort of thing; and yet, *mirabile dictu!* a law is proposed to prevent us from making books like those imported by the foreign merchant.

The last paragraph in the 4th clause is erroneous, because foreign authors are not *denied* that protection here, which is enjoyed by our authors; but can obtain it by residence.

"Entertaining these views," the com-

mittee have arrived at unexpected conclusions in the 5th clause. One would think that, if glaring injustice has been done to foreign authors, its progress should be arrested by the new law, and the copyright property of those books that have been republished here without the consent of the owners, should be secured to said owners in future. In the last paragraph but one of the 6th clause, the committee admit that the republic of letters should be one great community, and that a system of protection for literary property should be adopted every where. This is true; but such a republic must have one organic law, perpetual, and similar in its provisions for all civilized nations: this would be a glorious consummation, the first step towards which would be worthy of our country.

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 con-
"trary, highly probable that, when the American pub-
"lisher has adequate time to issue carefully an edition
"of the foreign work, without incurring the extraordi-
"nary 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 consi-
"deration 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 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 pre-
"servation.

9. "With respect to the constitutional power to pass
"the proposed bill, the committee entertain no doubt,

"and congress, as before stated, has acted on it. The "constitution authorizes congress 'to promote the pro- "gress 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 resi- "dents 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 use- "ful 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, the promotion of the pro- "gress 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 7th clause merely shows that the proposed bill would perpetuate the injury already done, and now doing, to foreign authors, as regards those works that have already been reprinted, or are now in progress.

The 8th and 9th clauses contain some interesting matters that will be adverted to before the close of these remarks, for the purpose of sustaining the opinions of the author.

The following bill accompanied the report:—

"A Bill to amend the act entitled 'An Act to amend 'the several acts respecting copyright.'

"*Be it enacted by the Senate and House of Repre-*
"*sentatives of the United States of America in Con-*
"*gress 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 require-
"ments of the said act: *Provided*, That this act shall
"not apply to any of the works enumerated in the afore-
"said 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 copy-
"right, shall be printed and published in the United
"States simultaneously with its issue in the foreign
"country, or within one month after depositing as afore-
"said the title thereof in the clerk's office of the dis-
"trict court, the benefits of copyright hereby allowed
"shall not be enjoyed as to such work."

If the claims of the foreign authors be well founded, the bill would have been more just, without the provisos. Why

should the act not apply to works which have been etched, engraved, or printed, or published, prior to the passage of the act, so far as to restrain persons from *printing* and *publishing* them again after the passage of the act, but not preventing the sale of those copies that were printed before? All such works as are in course of printing might be considered as printed and published, and the restraint as applying only to editions *commenced* after the passage of the act. Such a restraint would enhance the value of the copies unsold, and would thus compensate the publishers, and the only injury that would flow from it, would be a little rise in price that the consumers would have to pay.

The last proviso would almost nullify the law, as regards benefit to foreign authors. The foreign and American editions could not be published simultaneously, unless two manuscript copies were prepared, or unless the foreign edition were delayed a considerable length of time; and if *simultaneously* means *on the*

same day, there would be great difficulty, if not impossibility, in conforming to the law. If the publishing be not *simultaneous*, it must be in this country within thirty days after making the deposite of a printed title of the work: this indecent hurry may be looked upon as a mere mockery by foreign authors, as it would either deprive them of protection, or oblige them to charge their works with the "extraordinary expense which they "would have to sustain to make a hurried "publication of them, and to guard them-"selves against dangerous competition."*

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* See 8th clause of Report, lines 11 to 14.

CHAPTER III.

Reasons against an International Law of Copyright at present—British Authors and British Critics—British Critics and American Authors—British Market almost inaccessible to Foreign Authors—Washington Irving, a brilliant exception—Marshall's Washington—Our Market would be glutted with Belgian Contrefaçons, to the mortal injury of American Industry.

I SHALL now offer some reasons why there should be no legislation extending protection to foreign authors for some years to come. First, an immense amount of capital is employed in publishing books, in printing, in binding, in making paper, and types, and stereotype plates, and printing presses, and binders' presses and their other tools; in making leather and cloth, and thread, and glue, for binders; in copper plates, in copyrights, and in buildings

in which these various occupations are conducted. The whole of this investment is very great, and is variously estimated by experienced persons, between the limits of thirty and fifty millions of dollars; and in the opinion of the same persons, keeps in comfortable employment two hundred thousand people, of whom fifty thousand are women and children. It is probable that one-fourth of the business done by publishers is in reprinting foreign books, and this large portion of their business would be reduced perhaps as much as nine-tenths, certainly as much as three-fourths, if copyright be granted to foreign books at present; because it would be the interest of the bookseller to print small editions and to charge high prices, as he would be protected from competition; and such a great reduction in the amount of publishing, would disturb the whole amount of capital, and produce incalculable distress. At this time such a measure would be peculiarly disastrous, because the various trades in question are just beginning

to recover from the stagnation produced by the inconvertibility of the paper currency, and the consequent derangement of the internal exchanges. The publishers would suffer least, and perhaps not at all, for they might be compensated for diminished sales, by the high prices that copyright would enable them to obtain; but the other trades would suffer not only by a diminution of business, but also by a reduction in profit.

Secondly, the advantages flowing from such a law would not be reciprocal. This objection applies particularly to Great Britain; but also to other nations, though with less force. On the score of justice to authors, we have gone ahead of our enlightened mother, for we grant to an author twenty-eight years, with an additional term of fourteen, if *he or his wife or children* live so long, taxing him but one copy; whereas she grants him twenty-eight years, and if *he* live longer, to his life's end, taxing him five copies; so we should get a term generally

33⅓ per cent. shorter,* and pay a tax 400 per cent. greater. But this shortcoming is nothing compared to what we should suffer in consequence of the unequal state of things in the two countries: *we* have confidence in British authors and British critics, and as soon as the works of the former have gained the approbation of the latter, we, good honest souls and dutiful children, stand with open mouths ready to praise and swallow whatever food their authors offer to our literary appetite: *they* have no such confidence in our authors and critics; and therefore the works of *our* authors must obtain the approbation of *their* critics, before they can be available for purposes of profit in the Britannic market.

Thirdly; The condition of the publishing business in Great Britain is against us:

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* Few authors live 28 years after the publication of a successful book; the value of the contingency of such rare longevity is hardly appreciable, and not worth taking into the account.

the spirit of the ancient guilds, a spirit of ferocious monopoly yet presides over the trade, and unless an American author has by some lucky charm obtained a vested right in the favour of some great London publisher, he will strive in vain to gain access to the organs of praise, or to enter the avenues to success. It is not so here: our publishers would eagerly compete with one another in buying British copyrights, and publishing British books. Even now, when no copyright-protection exists, considerable sums are paid to British authors to ensure the reception of the first copy that shall reach our shores; it is then hurried through the press in forty-eight hours; and in forty-eight more, very often, a rival edition makes its appearance, and thus the public are furnished with an abundant supply at reasonable prices. The expense and difficulty of bringing an American work into notice with the British public, are entirely insurmountable by American authors generally, for, saith the British reviewer, "who reads an Ameri-

"can book?". I think I hear a petitioner exclaim, "You forget Washington Irving;" nobody who has read the Conquest of Granada, the Life of Columbus, and the Tales of the Alhambra, can ever forget him; yet he, the very glory of modern English, found it necessary to spend seventeen years abroad, to achieve that complete success which at length did crown his persevering industry: he is an exception, *et exceptio probat regulam.*

The following fact shows, in a clear light, how difficult of access is the British market to an American work: the life of the first man in this nation was written by the pen of the second, and for fulness of detail, fidelity of statement, and impartiality of representation, the work is equal, if not superior, to any other uninspired book; and it will be considered by the writers of the coming age as a well of truth, from which they may draw the pure streams of history. Six years ago, this author, the revered John Marshall, revised and condensed, and almost re-wrote the

work in question, giving to the biography of Washington, the shape in which he wished it to descend to posterity: one of our most extensive publishing houses, whose bookselling connexions in Britain are extensive and powerful, sent two hundred and fifty copies to London, and offered them to the trade at about one-fourth of the price of the first edition; the books remained in London two years, and the adventure was finally wound up by selling fifty copies on a long credit and at a low price, and sending back two hundred copies to Philadelphia, saddled with heavy expenses. While this valuable work was knocking at John Bull's gate of triple brass, whose hinges did not even condescend to 'grate harsh thunder,' the sale in this country amounted to several thousand: but when a British book of equal reputation knocks at the gate of our literary market, the portal forthwith emits 'harmonious sound, on golden hinges turning.'

Fourthly, if the reprinting of new British

books here were subjected to a copy-right tax, they would immediately be print-ed in Belgium, Holland, Switzerland, and perhaps in France and Italy, expressly for this market, in such cheap forms as to enable them to pay the duty and under-sell the American copyright editions. There are large capitals in Belgium con-stantly employed in making what the French call *contrefaçons*, (called here re-prints) of all the new books that appear in France, for which the Belgiums pay no copyright, and which they print with such expedition, that they are often on their way to the four quarters of the earth, before a dozen copies of the originals have escaped from the confines of France. Belgium is in a similar position with regard to the literature of France, that we are in, with respect to that of Britain. French authors publish new works, and the Belgians re-print them not only for Belgium, but all the rest of the world except France; and thus cut off France from a foreign commerce in books. France (like Britain of us,) com-

plains of Belgium, and asks for an international law, but Belgium says, no; the benefit would not be mutual. Such a law between us and Britain would open our market to these industrious Belgians, whose *protography** would swell our surplus revenue to such a ruinous size, that even an Indian war would scarcely cure its plethora, and would operate as a check upon a very considerable portion of what is called by some statesmen, *American industry*.

It seems to me a needless thing to cite any more reasons against the passage of an international copy-right law at present; I will therefore now endeavour to make my own views understood, as to what ought to be done by all civilized nations, on the subject of literary property.

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* These Belgian pirates are very learned pundits, and dignify their business of making *contrefaçons* of new French works with the sounding title of *protography*, signifying that their hasty cheap editions are *printed* from the *first* copy that escapes from the lethargy of a French bookstore.

CHAPTER IV.

All mankind interested in the security of literary property—Erroneous views of Authors, Publishers, Consumers and Legislators—Injustice of the British and American statutes—A perpetual right in Authors would produce good and cheap books—Not a monopoly.

THE subject of copyright, or the protection of literary property is one of great importance to the whole world. Every human being, great and small, high and low, gentle and simple, male and female, is interested in this matter. Legislators have treated it as a question of conflicting interest between authors and publishers on the one hand, and the public or the consumers of books on the other; authors, particularly when young, too frequently look upon it as a question of conflicting interest between themselves and the pub-

lishers; and consumers through their representative legislators, have endeavoured to secure to themselves the blessing of cheapness, by injurious enactments.

These erroneous notions have produced the unjust and defective statutes on this subject passed by the parliament of Great Britain, and the congress of the United States; unjust, because they have abridged the perpetual right which an author ought to have in the product of his own labour, giving him for his *fee simple*, a term of years of little worth: defective, because they have not afforded encouragement to authors, nor secured cheapness to consumers, the effects intended to be produced by their enactors. Like the interests of a man and his wife and their children, those of authors, publishers and consumers are not in conflict, but in harmony, and (if not interfered with by erroneous legislation,) tend to produce the best commodity at the lowest price and the greatest amount of gain. I will try to explain these seeming paradoxes. That the limited term grant-

ed to authors by the statutes is not a sufficient inducement to produce *good* books, is proved by the flood of trash that has overwhelmed both England and America; and it is trash, because the author's short-lived interest in his work cannot remunerate him for, nor induce him to, expend the time and labour required to produce a good book. As the circulation of these crudities must be limited, the price must be high, and the interests of the authors, the publishers and the public are all in conflict.

A law of perpetual copyright would produce exactly contrary results. Men of talents would devote their lives to literature, because the fruit of their labours would descend to their children; so many good books would be produced that bad ones would be driven out of market, and their production would cease; and as a great circulation is much to be desired for works that will last for ages, it would be the interest of the authors, or the owners of the copyrights, to sell at the lowest

price that would produce the greatest *amount* of gain, and not the greatest *proportion* of profit. In the sale of commodities that are good enough to be looked upon as necessaries, the former condition lessens price, the latter increases it.

To explain this matter of gain, we will suppose that where there is one person who can afford to give two dollars for a book, there are three who can give a dollar and a half, and ten who can give a dollar; so that if 1000 copies would sell at $2, 3000 would sell at $1 50, and 10,000 would sell at $1.

Cost of 1000 copies,

Setting the Types	$ 500
Paper, Press-work and Boards,	500
Author for Copyright,	500
	$1500

or $1 50, per copy.

Wholesale price $1 75; Retail price $2; Publisher's profit $250.

Cost of 3000 Copies.

Setting the Types,	$ 500
Paper, Press-work and Boards	1500
Author for Copyright,	1000
	$3000

or $1 per copy.

Wholesale price $1 25; Retail price $1 50; Publisher's profit $750.

Cost of 10,000 Copies.

Setting the Types,	$ 500
Paper, Press-work and boards,	5000
Author for Copyright,	2000
	$7,500

or 75 cts. per copy.

Wholesale price 87 1-2 cts.; Retail price $1; Publisher's profit $1250.

Thus it appears, that at the medium price, the author would make twice as

much, and the publisher three times as much, and at the minimum price, the author would make four times as much, and the publisher five times as much, as if the book were held at the maximum price. The paper-makers and binders would be benefited in one case by having three times as much work, and in the other, ten times as much. The proportion of advantage would not be so great to the printers, because the increase would only be in press-work. The public would be great gainers by 10,000 readers being supplied instead of 1,000; and by a value of $10,000, instead of $2,000, being added to the national wealth.

These considerations extinguish the notion of monopoly, which some suppose would be conferred on authors by perpetual copyright; simply because interest, that most eloquent of teachers, will persuade them to sell at low prices. One other word to those who fear to do justice, lest monopoly should ensue: it is admitted that a person shall have a per-

petual property in the work of his hands, a labour which gives him healthy days, cheerful evenings, and quiet nights; he builds a house *for his own benefit*; he lives and dies in it, and transmits it to his heirs or assigns forever; and you do not call this monopoly, and you are right: another person devotes himself to literature, and writes books for the *benefit of his fellow mortals*, (for if they give neither pleasure nor profit, they will not sell;) he labours day and night with his head and pen, a work that gives neither healthy days, nor cheerful evenings, nor quiet nights; his spirit is forced to grapple daily in desperate struggle with the inertia of its earthy tabernacle, in order to gain the mountain height of severe thought; and thus with wear and tear of mind and body, he produces, not a house useful only to himself, but a moral, or religious, or imaginative, or scientific book, that may increase the happiness of thousands yet unborn; and yet this honest labourer is not to have a

complete property in his labour's product, for fear of monopoly!

His case is precisely the same as that of the maker of houses, who cannot get a monopoly rent, because other men make more houses, as soon as he demands too much. So, when an author who has produced a book for which the demand is great, is unwise enough to ask too high a price, another author, (perhaps greater than he,) will write another book on the *same subject*, and thus demolish his ideal monopoly.

CHAPTER V.

Progress of Opinion on this Subject in various Countries—In Britain—Serjeant Talfourd's Speech in the House of Commons—Mr. Thomas Tegg's Pamphlet in Opposition to Authors' Rights—His 'True Reason —What the Law takes from Authors for the sake of the Public, inures to the benefit of Publishers.

THE article on copyright which is now republished from Napier's valuable Supplement to the Encyclopædia Britannica, was written in 1819, and contains the history of the subject up to that time; and such a discussion of the defects and effects of the copyright law, as must convince every reader of the ability of the author, and of his thorough knowledge of the subject. It is earnestly recommended to the deliberate perusal of every one who is interested in Literary Property, either as author, owner, publisher, or reader; and

most particularly to those honourable persons who possess the power of modifying it, either for good or for evil, by acts of legislation. It was the opinion of its author that matters were not then ripe for perpetual copyright, and of an international law he merely puts forth a tender bud.

Since then matters have ripened considerably, and it is to be hoped that the fullness of time has nearly arrived, when mankind will consent to do justice to those who labour in the fields of literature and science. The indications of the progress of opinion towards a healthy state, both in Europe and America, are not to be mistaken. In Britain the subject has for some time occupied the public mind, and on the 18th of May last Mr. Serjeant Talfourd, in the House of Commons, moved for leave to bring in a bill to consolidate the law relating to copyright, and to extend the term of its duration. The following extracts are taken from a very interesting speech made on that occasion by the learned and enlightened Serjeant:

"It is, indeed, time that literature should experience "some of the blessings of legislation; for hitherto, with "the exception of the noble boon conferred on the acted "drama, by the bill of my honourable friend the mem- "ber for Lincoln, it has received scarcely any thing "but evil. If we should simply repeal all the statutes "which have been passed under the guise of encourag- "ing learning, and leave it to be protected only by the "principles of the common law, and the remedies which "the common law could supply, I believe the relief "would be welcome. It did not occur to our ancestors, "that the right of deriving solid benefits from that "which springs solely from within us—the right of "property in that which the mind itself creates, and "which, so far from exhausting the materials common "to all men, or limiting their resources, enriches and "expands them—a right of property which, by the "happy peculiarity of its nature, can only be enjoyed "by the proprietor in *proportion as it blesses* mankind "—should be exempted from the protection which is "extended to the ancient appropriation of the soil, and "the rewards of commercial enterprise. By the com- "mon law of England, as solemnly expounded by a "majority of seven to four of the judges in the case of "'Donaldson v Beckett,' and as sustained by the addi- "tional opinion of Lord Mansfield, the author of an ori- "ginal work had FOREVER the sole right of multiplying "copies, and a remedy by action, incident to any right, "against any who should infringe it."

"In the special verdict of 'Miller v. Taylor,' (1769,) "it was found as a fact, 'that before the reign of Queen

"Anne, it was usual to purchase from authors the *per-*
"*petual* copyrights of their books, and to assign the
"same from hand to hand for valuable considerations,
"and to make them the subject of family settlements.'
"*In truth*, the *claim* of the author to perpetual copy-
"right was never disputed, until literature had received
"a fatal present in the first act of parliament for its
"encouragement—the 8th Anne, c. 19, passed in 1709;
"in which the mischief lurked, unsuspected, for many
"years, before it was *called into* action to limit the
"rights it professed, and was probably intended to
"secure."

"This act," "confers on learning the benefit of a
"*forced contribution* of nine copies of every work, on
"the best paper, for the use of certain libraries. Except
"in this last particular, the act seems to have remained
"a dead letter down to the year 1760," "no one having
"suggested that its effect had been to repeal the com-
"mon-law right of authors to the term during which
"its remedies were to operate. So far was this *con-*
"struction from being suspected, that in this interval
"of fifty years, the Court of Chancery repeatedly inter-
"fered by injunction, to restrain the piracy of books in
"which the statutable copyright had long expired.
"This protection was extended in 1735, to 'The Whole
"Duty of Man,' the first assignment of which had been
"made seventy-eight years before; in the same year to
"the 'Miscellanies of Pope and Swift;' in 1736, to
"'Nelson's Festivals and Fasts;' in 1739, to the 'Para-
"dise Lost;' and in 1752, to the same poem, with a

"life of the author, and the notes of all preceding edi-
"tions."

"In 1766, an action was brought, 'Miller v. Taylor,'
"for pirating 'Thomson's Seasons,' in the Court of
"King's Bench, before whom it was elaborately argued,
"and which, in 1769, gave judgment in favour of the
"subsisting copyright, Lord Mansfield, Mr. Justice
"Willes, and Mr. Justice Aston, holding that copyright
"was perpetual by the common law, and not limited by
"the statute, except as to penalties, and Mr. Justice
"Yates dissenting from them. In 1774, the question
"was brought before the House of Lords, when eleven
"judges delivered their opinions upon it—six of whom
"thought the copyright limited, while five held it per-
"petual; and Lord Mansfield, who would have made
"the numbers equal, retaining his opinion, but express-
"ing none. By this bare majority—against the strong
"opinion of the Chief Justice of England—was it
"decided that the statute of Anne has substituted a
"short term in copyright for an estate in fee; and the
"rights of authors were delivered up to the mercy of
"succeeding parliaments."

After enumerating the minor details of the proposed bill, the learned mover approaches and enunciates its principal object in the following manner:—

"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 pro- "perty at all, and those who think that the property "should last as long as the works, which contain truths "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 modi- "fication when the details of the measure shall be dis- "cussed—that the *term of property* in all works of "learning, genius, and art, to be produced hereafter, or "in which the statutable 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.'*"

"There is something, sir, peculiarly unjust in bound- "ing 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 pro- "bable reward it permits to youth—to youth suffi- "ciently full of hope and joy, to slight its promises. It "gives a *bounty to haste*, and informs the *laborious stu-* "dent 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 perfec-
"tion, the *more limited* shall be his interest in its fruits.
"It stops the progress of remuneration at the moment
"it is most needed, and when the benignity of nature
"would extract from her last calamity a means of sup-
"port and comfort to survivors. At the moment when
"his name is invested with the interest of the grave—
"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 seiz-
"ing the patrimony of his children."

"The term allowed by the existing law is curiously
"adapted to encourage the lightest 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 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."

The foregoing quotations from the learned Serjeant's speech, which may fairly be called "elegant extracts," seem to me to contain unanswerable arguments in favour of an author's fee simple. I have not

learned the fate of his bill, but Mr. Thomas Tegg, a London bookseller, in a pamphlet written by him *against* the proposed bill, says, "It is not without surprise "that I see the House of Commons so dis- "posed to entertain the proposition of the "learned Serjeant." It is to be hoped that this *surprising* disposition of the house is a true exponent of the improved state of public opinion in Britain, on the important measure of restoring their just rights to authors. The true reason of Mr. Tegg's opposition, peeps through the *spaces* of the following paragraph, quoted from the 19th and 20th pages of his "Remarks on the Speech of Serjeant Talfourd;"

"The expense of making a book known,
"is much greater than the public, and,
"perhaps, than members of the House of
"Commons have any idea of; and this all
"falls on the bookseller, who knows that
"the connexion he forms with the book
"*survives* the term of the monopoly, and
"that he retains a sort of good-will pro-
"perty, after the expiration of the copy-

"right, and generally the principal share "of the subsequent sale." Mr. Tegg being an old publisher, probably possesses many of these rights that have survived the term of their legal existence, and therefore he cannot rejoice in any legal provision that would transfer them to their proper owners. The quotation also shows that the consumers do not gain by shortening the author's term, because a *sort of good-will property* survives, vesting in the bookseller, instead of the author, and putting into the pocket of the former, a profit which ought to inure to the latter. If time and space would permit, it would be an easy task to prove, that the expense of making the book known does not "all fall "on the bookseller;" for this item is provided for, either by deduction from the sum allowed by the bookseller for copyright, or by addition to the price paid by the readers of the books: except where an inexperienced publisher *buys* the copyright of a worthless book, and then the loss is all his own.

CHAPTER VI.

Opinion in the United States—Report to Congress in 1831—American Jurist—Report to Congress in 1837—Notice of Mrs. Macaulay's Defence, in Law Intelligencer.

That public opinion in this country is rapidly ripening into justice towards authors, may be inferred from the following quotations from a report made by the Judiciary Committee in 1831, when Congress passed the last law increasing the duration of an author's protection:—

"Upon the first principles of proprietor-
"ship in property, an author has an *exclu-*
"*sive and perpetual* right, in preference
"to any other, to the fruits of his labour.
"Though the nature of literary property is
"peculiar, it is not the less real and valua-
"ble. If labour and effort in producing
"what before was not possessed or known

"will give title, then the literary man has "title, perfect and absolute, and should "have his reward: he writes and he labours "as assiduously as does the mechanic or "husbandman."

"Nor is there any doubt what the inter- "est and honour of the country demand on "this subject."

"We ought to present every reasonable "inducement to influence men to conse- "crate their talents to the advancement of "science. It cannot be for the interest or "honour of our country that intellectual "labour should be depreciated, and a life "devoted to research and laborious study "terminate in disappointment and pov- "erty."

Not having the report itself, I have taken the above sentences from a very interesting article on literary property contained in the tenth volume of the American Jurist,* the learned writer of which is the author of several very successful and use-

* Page 80.

ful treatises on several branches of law. The enlightened writer proceeds thus: "It will be seen by the above extract, that "a respectable committee of the House of "Representatives assert, that an author "according to all the rules of law, has a "*perpetual* copyright; and that it is evi- "dent that that committee would have re- "ported a bill to this effect, if they had "thought the public mind prepared for so "great a change at one stride. But the "time, we venture to augur, is not far "distant, when authors will be placed "nearer upon an equality with their fel- "low-men in the enjoyment of what they "earn by their labour. The public are "growing more and more disposed to ad- "mit, that if there be one description of "property which merits more protection, "or one which it is more politic to favour "than another, it is literary property; and "certainly if there be any sum which "the public are more free in paying than "another, it is the trivial extra sum put "upon a book, which is intended for the "author's pocket."

The same improvement in public opinion, may be inferred from the general tenor of the report made on the 16th February, 1837, by a select committee of the senate; and particularly from the following paragraph; "That authors and inventors have, "according to the practice among civili- "zed nations, a property in the respective "productions of their genius, is incontes- "tible: and that this property should be "protected as effectually as any other "property is by law, follows as a legiti- "mate consequence."

In the United States Law Intelligencer, for August, 1831, is an interesting article having relation to our subject, under the caption of "Mrs. Macaulay's defence of "Literary property;" in which are long quotations from her 'Modest Plea for the 'property of copyright,' one of which is a triumphant refutation of Lord Camden's bombastic argument against literary property, that "Glory is the reward of science, "and those who deserve it scorn all meaner "praise: it was not for gain that Bacon,

"Newton, Milton and Locke, instructed the "world." Law Intelligencer, for August, 1831, p. 276. In the closing paragraph of that article, the editor says: "We are "happy to observe, that the opinions entertained and so well expressed, by this "female defender of the rights of authors, "are gaining favour in the United States. "That the indifference to literary labour "and merit, is yielding to the liberality "and good sense of the age, we have the "best evidence in the success of Mr. "Verplank's bill at the last session of Congress."

The following is quoted from an opinion full of light and learning, delivered by Mr. Justice Thompson, of the Supreme Court of the United States, in the case of Wheaton *v.* Peters; and shows his own sentiments on the subject of literary property, as well as those of Mr. Christian, the learned annotator upon Blackstone:

"And, in accordance with these sound principles, "and as applicable to the subject of copyright, are the "remarks of Mr. Christian, in his notes to Blackstone's

"Commentaries, (2 B. Com. 406, and note.) 'Nothing,'
"says he, 'is more erroneous than the practice of refer-
"ring the origin of moral rights, and the system of
"national equity, to that savage state, which is sup-
"posed to have preceded civilized establishments, in
"which literary composition, and of consequence the
"right to it, could have no existence. But the true
"mode of ascertaining a moral right, I conceive, is to
"inquire whether it is such as the reason, the cultivated
"reason of mankind, must necessarily assent to. No
"proposition seems more conformable to that criterion,
"than that every one should enjoy the reward of his
"labour; the harvest, where he has sown, or the fruit
"of the tree, which he has planted.' 'Whether literary
"property is sui generis, or under whatever denomina-
"tion of rights it may more properly be classed, it seems
"founded upon the same principle of general utility to
"society, which is the basis of all other moral rights
"and obligations. Thus considered, an author's copy-
"right ought to be esteemed an inviolable right, esta-
"blished in sound reason and abstract morality.' It is
"unnecessary, for the purpose of shewing my views
"upon this branch of the case, to add any thing more.
"In my judgment, every principle of justice, equity,
"morality, fitness, and sound policy, concur in protect-
"ing the literary labours of men to the same extent
"that property acquired by manual labour is protected."

CHAPTER VII.

Progress of opinion in France—Law of the National Convention—Of the Empire—Uncertainty of duration—Opinion of Mons. Bossange—Of the Journal des Debats—Copyright in Russia—In Norway and Sweden—In the Germanic Confederacy—Resolutions adopted by the Germanic Diet, in November, 1837—Prussia.

A PAMPHLET lately written in Paris by Mons. Bossange, an eminent bookseller, contains the following sentence, which indicates the progress of opinion in that country:

"La justice, le bon sens et l'équité
"veulent que la propriété littéraire ne soit
"plus un mensonge sous forme de conces-
"sion temporaire. Il faut qu'elle soit une
"propriété garantie par les lois, inviolable
"et à toujours:" that is to say, "Justice,
"common sense and equity require that

"literary property shall no longer be a "fallacy under the form of temporary "grant. It ought to be a sacred and per- "petual property guaranteed by law."

The French law secures the usufruct to the author during his life, and to his *children* for twenty years after his death. This seems a beneficial term; but it may end one day after the publication of a book, or sooner, for an author may die without children the day after his book is published, or while it is in press. This uncertainty must render literary property very worthless, particularly to an author who has no children.

The French law of copyright originated in the National Convention on the 19th of July, 1793; this was the exception which proved the general rule of the rapacity of that body, and it granted to authors the exclusive property of their works during their whole life, and secured the same exclusive right to their *heirs*, for the space of ten years after the death of the authors. The empire, that is Napoleon, on the 5th

of February, 1810, modified the decree of the Convention, and declared that the *children* of authors should enjoy the right for twenty years after the death of their parents; thus showing the sincerity of his celebrated answer to Madame De Stael, when she asked him, "what woman deserved most of her country?" and he replied "she who has the greatest number of children." This law is more unequal than that of the Convention, for a multitude of persons die without *children*, where one dies without *heirs*; and perhaps in altering the law, Napoleon had it as much in view to encourage the multiplication of soldiers as of books It certainly holds out but small encouragement for a bachelor to write a book, as publishers will not give much for property held by so slight a tenure as a single life; and such an author would not be able to compete with the father of a family, in the sale of his literary ware. Thus that great destroyer offered a premium to bachelor authors to get themselves wives, that they might help to

fill some of those awful chasms created by his cannon.

Our law gives the author a greater value in his copyright; for, first he has a fixed term of twenty-eight years, whether he live or die, which he can use or assign; and secondly, a contingent term of fourteen years more, in case he or his wife or child survive the first term. Whether this contingent term be assignable before the expiration of the first term, seems uncertain.

The opinion of Mons. Bossange is supported by a writer in the Journal des Débats of 5th November, 1836. In discussing the remedy for the evils arising from the present defective state of the law of Literary Property, he says, "Le remède "qui se présente le premier à l'idée con- "sisterait à faire assimiler par le droit des "gens la propriété litteraire à toute autre "propriété, de sorte que l'écrivain ou le "libraire qui le represente fussent protégés "partout contre la spoliation au même "titre que le négociant." That is to say,

"The remedy that is first suggested to the "mind, would consist in placing literary "property on the same footing with every "other kind of property, by the law of "nations; so that the author, or the book-"seller who represents him, should enjoy "every where the same protection against "spoliation as the merchant."

It is said in page 69, volume X., of the American Jurist, that, "in Russia every "author, or translator, has the exclusive "copyright during his life, and his heirs "enjoy the same privilege for twenty-five "years after his death. In Norway and "Sweden the copyright is *perpetual*."

"The copyright is also perpetual in "Germany, the very country where the "art of printing was invented. But in "Germany an author has to labour under "this inconvenience, viz. that his copy-"right only extends to the state in which "it has been granted."

I am not sure that the Jurist is accurate in stating that copyright is perpetual in Germany, for the Encyclopædia Ameri-

cana, one of whose editors is a German, says that, "in Germany, the laws respecting copyright vary in the different countries; but in general there is no fixed time. The copyright is almost always given for the lifetime of the author." In a pamphlet on Literary Property, lately published in Paris, by Ambroise-Firmin Didot, it is stated in a note to page 13, that, "La propriété literaire en Allemagne est perpetuelle et transmissible,* comme toute autre espèce de propriété:" that is, that literary property in Germany is perpetual, and passes* like every other kind of property. Here is certainly a discrepance between the witnesses; but, whether it be for life or forever, and whether it be identical or different in the thirty-eight states at present united in the Germanic Confederation, we are informed that all Germany is at present intent upon improving the condition of literary pro-

* I suppose this means, by *purchase and descent.*

perty, by the passing of the following resolutions in the Germanic Diet, on the 9th November last :—

"Article I. Literary productions of every kind as "well as works of art, whether already published or "not, shall not be multiplied by mechanical means "without the consent of the authors or artists, or those "to whom they may have transferred their rights. "Art. 2. The rights above mentioned shall pass to the "heirs or representatives of the authors or artists, or "those to whom they have been transferred, and when "he who brought out the work, or he who is the editor, "is named, this right shall be recognised and protected "in all the States of the Confederation, for a period of "ten years at the least. This period shall be applicable "to literary productions, and works of art, which have "already appeared within the territories of the Germa- "nic Confederation during the twenty years which have "preceded the date of this resolution, when these pro- "ductions and works shall be published anew, reckon- "ing from the year of their new publication. When "works are published in parts, the period shall be "reckoned from the publication of the last part. Art. "3, allows the prolonging of the shortest period of copy- "right for expensive works for a time not exceeding "twenty years. Art. 4, gives to authors and artists a "right of compensation from all persons who may pub- "lish surreptitious copies of their works, and declares "that such surreptitious copies, as well as all the mate- "rials used in their production, shall be seized and "destroyed. Art. 5, interdicts the sale in any of the "States of the Confederation, of all surreptitious works, "whether made within or without the state in which "they are offered for sale, and declares that all such "sales shall be liable to the penalties of the law. Art. 6,

"requires that all the states shall communicate to the "Diet the measures they shall respectively take for "enforcing the observance of the foregoing articles. It "also reserves to the Diet the power of deliberating, "after the commencement of the year 1842, upon the "propriety of extending the term of the rights now "granted to literary men and artists, unless circum-"stances should render an earlier re-consideration of "the subject necessary. Another separate resolution "reserves the question of the rights to be granted to the "authors of musical and dramatic works and composi-"tions to future consideration, upon a report about to "be made by a commission."

By these resolutions, all works printed in one of the states of the German Confederacy, will be protected for the space of ten years from piracy in any of the other states; which is a protection in addition to that afforded by the law of literary property of the state in which a book is published. Unlike the statute of Anne, the German law is cumulative, and not destructive.

Previous to this important decree, the authors of Schwartzburg-Sondershausen, &c. were subject to piracy by the printers of Hohenzollern-Siegmaringen, &c. because literary property in *each* of the thirty-eight

states, was protected only within the borders of said state by its own laws; but this wise measure adopted by the Diet, which secures, for a considerable period, to the authors of each Germanic state, the collective market of the whole confederation, is a strong proof that that great and enlightened nation will soon be ready to do full justice to the owners of literary property.

The last arrival from Europe brings information, that the king of Prussia has published a law much more favourable to literary property than that of the Germanic Diet. Prussia possesses an enlightened system of education, one of whose results is a law having a strong tendency to improve the national literature.

CHAPTER VIII.

A universal republic of letters should be established—Its advantages, pacific, literary, intellectual, religious—Charity should begin at home—and then may go abroad—The law of literary property should be uniform throughout the world—Free trade in books.

What has been said, seems to lead to the conclusion, that public opinion has made such progress in the various civilized nations, as would justify a great movement in favour of establishing a universal republic of letters; whose foundation shall be one just law of literary property embracing authors of all nations, and being operative both in peace and war. Besides the great impulse that would be given by such a law, to the improvement of literature and intellectual cultivation, the fellowship of interest thus created among the learned men throughout the world, would

in time grow into a bond of national peace. Authors would soon consider themselves as fellow-citizens of a glorious republic, whose boundaries are the great circles of the terraqueous globe; and instead of lending their talents for the purpose of exasperating national prejudice into hostile feeling, to further the views of ambitious politicians, they would exert their best energies to cultivate charity among the numerous branches of the human family, to rub off those asperities which the faulty legislation of the dark ages has bequeathed to the present generation, and to extend the blessings of christianity to the ends of the earth.

Now, since charity begins at home, let us first do justice to our own authors by securing to them either a perpetual right of some sort, or else a term considerably longer than that they now enjoy. It would be a good first step, for Congress to appoint a committee to gather information on this subject, and to make a report thereon at the next session. If that report

should induce Congress to secure to our authors a perpetual right or a very long one; it would be well to empower the President of the United States to appoint commissioners to meet (at Berlin, Oxford, Paris, Frankfort on the Maine, or any other place that may be agreed upon,) such commissioners as may be appointed by other nations, to negociate for the enactment of a *uniform* law of literary property, and the extension of its benefits to all civilised nations. It should be a new chapter of the *Jus Gentium*, and should be one law (*iisdem verbis*,) for all the enacting nations, extending over their territories in the same manner as our law of copyright extends over the territories of our twenty-six sovereign states; so that an entry of copyright in the proper office of one nation should protect the author in all the others; a notice of such entry being printed on the back of the title page. The law should not be operative until several years after its enactment, that capital may flow without loss into the new channels.

A free trade in books should also be established between the contracting parties; that is to say, importations should be allowed every where, either free, or subject only to an equal duty, levied for revenue and not protection; exportations should not be stimulated by bounties, nor importations be restrained by excessive imposts. Domestic production should not be forced to a rotten ripeness by the manure of legislative protection, nor the consumption of exotic books be checked by the destructive restraints of commercial jealousy; but authors and their assigns should be absolutely and *internationally* free, every where, to print or import, provided their books contain nothing *contra bonos mores*. American enterprise would willingly and successfully run the race of competition with the whole world, upon such equal terms of freedom.

Whether authors should have 1. a *full property in perpetuity*, or 2. a *limited property in perpetuity*, or 3. a *full property for a limited term*, or 4. a *limited proper-*

ty for a limited term, or 5. a *full property for a limited term, succeeded by a limited property in perpetuity*, are questions to be inquired into and reported upon by a committee of Congress. I incline to the belief that authors should have a *full property in perpetuity*; that is to say, that they, their heirs, and assigns, should possess the entire control over their works for ever; because, in the first place, I think that justice demands it, and in the next place, that it would conduce greatly to the moral and intellectual improvement of mankind, by holding out a sufficient inducement to men of talent and virtue, to devote their lives to the production of excellent works; and thirdly, because its inevitable consequence would be cheapness in the products of literary labour. For proof of these positions see pages 51 to 56.

CHAPTER IX.

Mon. Bossange's Suggestions for the Improvement of the Law of Literary Property—Author's Property terminates at the moment it becomes available for Profit—La Fontaine and the Rothschilds—Natural Death of Pirates and Piracy—Conclusion.

As it is not probable, however, that public opinion will yet sustain such a law, I will here make some quotations from the pamphlet of Mons. Bessange, who argues ingeniously in favour of the fifth proposition above stated, viz. a full property for a limited term, succeeded by a limited property in perpetuity. His knowledge of the fate of the works of French authors had led him to the conclusion, that a book does not attain a great circulation, until it is freed from the trammels of exclusive privilege; ("qu'un ouvrage ne prend son "essor que dès qu'il est délivré des entraves

"du privilége exclusif;") that is to say, under the present laws, until the author's right has terminated; the very moment when he can no longer profit by the success of his labour: he proceeds, "Est it "possible de concilier la liberté du com- "merce et le droit de l'auteur? Rien "n'est plus facile; il ne s'agit pour cela "que de changer le privilége exclusif tem- "poraire en un privilege perpétuel sur les "réimpressions des ouvrages:" Is it possible to reconcile freedom of trade with the rights of authors? Nothing is easier; you have only to change the temporary exclusive privilege into a perpetual one, (*not exclusive*,) over all new editions:— "Déclarez donc l'abolition du privilége "exclusif, permettez à tout le monde l'im- "pression des livres quels qu'ils soient, "mais sous condition d'un droit à payer "chaque fois aux auteurs:" Abolish then the author's *exclusive* privilege, and allow every body to print any books they choose, on condition of paying a small allowance to the author on every edition.

"This allowance, he thinks, should be "very small, so as not to discourage the "reprinting of books; but however small "it may be, if books were given up to the "energy of free trade, they would all give "good returns, except the bad ones. Open "the doors and let out industry, and she "will work miracles, which experience "has already proved."

But, continues M. Bossange, "if it be "true that the printing of books should be "freed from all restraint, new questions "arise: What would be the condition of "authors? How can we secure the exe-"cution of the contract on the part of the "publisher? How shall we guarantee the "integrity of the work? The answers "seem to me easy."

"1. As to the work: that the author "may have time to correct his work, and "to profit by the trial of a first publica-"tion, no one should be allowed to re "print his book without his express per-"mission, until ten years after its first "appearance; and after that period no

"one should be allowed to make alterations, suppressions, or additions, without "the author's consent.

"2. No new edition should be offered "for sale until after the publisher had paid "in money an allowance to the author or "his assigns." "In order to avoid all dispute, this allowance should be fixed, (by "law,) at so much per leaf, according to "the various sizes, or at so much per "cent. on the cost of fabrication; and lest "it should be said, that this would be "valuing all books at the same rate without regard to merit, I remark that it is "not the greatness of the author's allowance, (*la quotité du droit,*) which swells "the amount, but *the number of copies "worked off.*"

"3. The guarantee of the performance "of the contract would consist in giving "a new activity to the laws already in "existence."

Mons. Bossange then proceeds to recommend various regulations suited to the state of things in France, but which would not

suit this country. To show the advantages of his plan he gives the following illustration:—

"Il y a un homme qui a écrit un petit "volume qui se lit en moins d'une matinée. "Si les heritiers ou les descendans de cet "ecrivain avaient reçu un droit de 10 "pour 100 sur les frais de fabrication de "toutes les reimpressions qui ont été "faites de son livre, ils seraient tous fort "riches; oui la famille du bonhomme La "Fontaine serait aussi riches que la famille "Rothschild." "A man once wrote a "little book, which may be read in a short "forenoon. If his heirs, or descendants, "had received an allowance of ten per "cent. on the cost of all the copies printed, "they would all be quite rich; yes, the "family of La Fontaine would be as rich "as the Rothschilds."

He also states another advantage in the following terms:—"A côté de l'avantage "materiel, on trouverait un avantage mo-"ral immense. Il n'y aurait plus ni con-"trefacteurs, ni contrefaçons. Et n'est ce

" rien qu'un délit à supprimer de la liste
" malheureusement trop longue des délits ?"
" Besides the material advantage, a great
" moral benefit would accrue; pirates and
" piracies will vanish;—and is it nothing
" to blot out one from the list of offences,
" unfortunately too long?"

That same abolition of literary piracy is the consummation devoutly wished in France, and ought to be desired every where; and it would be attained every where, if nations would grant the same security to the property produced by brains, as they extend to that produced by hands.

I stop now, because I am afraid I have already written more than will be read, and not because there is not much more to be said on this subject; but, to use the concluding words of Mons. Bossange's interesting pamphlet:—"Je m'arrête, par-
" ce que ce n'est pas en quelques pages
" qu'on pourrait épuiser la question, et que
" Je n'ai pas prétension de le faire. J'ai
" seulement voulu apporter mon grain de

"sable dans la balance au moment où la
"question s'agite."

"Je sais que les objections ne manque-
"ront pas, tant les idées de monopole et
"de privilége obscurcissent encore les
"questions les plus simple, mais j'ai foi
"que tôt ou tard mon idée germera. Je
"*crois au temps.*"

"I stop, because the question cannot be
"exhausted in a few pages, nor do I pre-
"tend to do it. I only wish to cast my
"grain of sand into the scales, while the
"beam is yet balancing."

"I know that objections will not be
"wanting, so much are the simplest ques-
"tions *mistified* by notions of monopoly
"and privilege; but, I hope that, sooner
"or later, my plan will germinate. I trust
"to time."

FINIS.

COPYRIGHT;

WRITTEN BY

JOSEPH LOWE, Esq.

REPRINTED FROM NAPIER'S SUPPLEMENT TO THE ENCYCLOPÆDIA BRITTANICA.

COPYRIGHT denotes the property which an author has in his literary works, or which a bookseller, or any other person, may acquire by purchase,—a property founded, in either case, on the exclusive right to the publication of a particular work. The subject involves two important inquiries; one, the propriety of the obligation imposed by law on the publisher to sacrifice a given number of copies to our public libraries; the other, a much more extensive, and, in a public sense, more interesting question, the expediency of prolonging the duration of the exclusive property of a book.

Delivery of Copies to Libraries.

1. Recent discussions have made the public so familiar with the merits of the first question, that we shall merely give our readers a short history of the facts of the case. Printing became extensive in England about a century after its discovery; and it was in the year 1556 that a charter was granted to the Stationers' Company, an incorporation, consisting not of venders of stationary, 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 should be entered the title of every new book, the name of the proprietors, and the successive transfers of the copyright. By-laws were enacted by the company; fines were levied on members acting in contradiction to their regulations; and, in the course of time, these resolutions of the association were confirmed by a well known measure of government, we mean the licensing act of 1662; an act prohibiting the publication of any book, unless first licensed by the Lord Chumberlain, and entered in the stationers' register. In 1684 a new charter was issued to the company, partly for the purpose of securing the property of books, but more with the view of interposing the royal interdict on any publication at variance with the despotic government of Charles II. In the auspicious reign of William

(1691), this act was repealed; but while the liberty of the press was restored, the door was unluckily thrown open to infractions on literary property by clandestine editions. It was in vain for the owner of a copyright to bring an action against the trespasser: he had no other protection than common law; he could recover only to the extent of the "damage proved;" that is, he could not adduce evidence of the tenth, or, perhaps, twentieth part of the damage suffered, as he could not prove the sale of one copy out of twenty. This led to applications to Parliament in 1703 and 1706; but no act was passed until 1709, when, after much discussion, the sanction of the legislature was given to a bill, of which the prominent features were two: first, an obligation to deliver nine copies to as many public libraries; and next, a provision for guarding, by severe penalties, the property of a copyright, during *fourteen years*. The public libraries entitled to the receipt of a copy each, were,

The King's Library, now transferred to the British Museum.

The Bodleian at Oxford, and the University Library at Cambridge.

In London, Sion College, or the Library of the London Clergy.

In Scotland, the libraries of the Universities of Edinburgh, Glasgow, St. Andrews, and

Aberdeen, with that of the Faculty of Advocates.

To these were added, by a subsequent act, in 1781, 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 favour 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.

Term of Copyright; its successive variations.

2. For many years, we might more properly say for a couple of centuries, the property of a book seems to have been considered as permanent as the property of an estate; shares of literary works being bought and sold without any idea of their expiring. It is not till 1709, that we discover a trace of interference with its permanency, the act of that year defending it against intruders during fourteen years and *no longer*. The limitation, however, had no practical effect; copyright was considered permanent, both by the booksellers and the public,—nay by three out of the four judges of the Court of King's Bench, in the celebrated trial Millar *v.* Taylor, which took place in 1769, and led to a very memorable display of judicial erudition. The plaintiff charged the defendants with a trespass, in publishing an edition of Thomson's *Seasons*, of which the plaintiff was the sole proprietor. Lord Mansfield, with Judges Willes and Aston, gave an opinion in favour of the permanency of copyright, in which they were confirmed by Judge Blackstone; but one of their brethren, Judge Yates, took a very different course, and

adhered resolutely to the literal construction of the act.

An action for a similar trespass was some time after brought before the Court of Session in Scotland; the London proprietor of a copyright claiming damages for an infraction by a provincial bookseller. (Case of Hinton *v.* Donaldson.) Here the majority of the bench were adverse to the opinion formerly delivered by Lord Mansfield, and discharged the defendant without a dissentient voice, except that of the well known Lord Monboddo. At last, in the session of 1773-4, the question came decisively before parliament, the booksellers having brought in a bill for declaring copyright perpetual. This bill passed the Commons, but was thrown out, after much debate, in the Lords.

Objections and Answers.

To avoid perplexity, we shall endeavour to comprise the *pros* and *cons* in these various discussions, in a kind of regular succession, adopting the plan of appending a rejoinder to each argument, as the best method of doing justice to both sides.

Objection. Ideas cannot be the object of property; they are not visible, tangible, or corporeal. (Judge Yeates.)

Answer. Whatever admits of exclusive enjoyment may be property. (Hargrave.)

O. Another person may arrive, by his own process of thought, at similar conclusions, would you deny to him what you granted to his predecessor?

A. There is very little apprehension of such a coincidence; the plans and the results of study admit of as infinite variety as the human countenance; the same views, or the same conclusions, will never come from two persons, or even from the same person at different times, in the same language. At all events, an arbitrator or a court of justice can be at no loss to decide, whether a second publication on the same subject comes within the description of plagiarism.

O. A literary composition is undoubtedly the property of the writer, so long as it remains in MS.; but by the act of publishing,* he gives it to the world; he lets the bird fly; his property is gone. (Judge Yates.)

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* The right of an author in his copy, (that is, his copyright, in modern parlance,) consists in an exclusive privilege of *making a profit* by multiplying and selling copies of his work, either *per se* or *per alium*. When he sells printed copies, it is true, he parts with or publishes his *ideas* for the benefit of the public, who can read and enjoy them, but have therefore no right to multiply copies of the book; they can sell it, or keep it, or burn it, or lend it, or hire it out for pay, but have no

A. He gives the public the free use of the knowledge contained in his book; but this is a very different thing from the profit as publisher. The ten shillings paid for a volume entitles the reader to the use of its contents, but can certainly give him no claim to the

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right to multiply it, which belongs solely to the author. He lets his bird fly, and his property in *that particular bird*, (*or copy*,) passes to the purchaser, but the right of multiplying remains in the author.

Professor Vethake, in page 22, of his Political Economy, says, that "wealth may be defined," "to consist of every thing, material or *immaterial*, having "exchangeable value;" and in Chapter IV., he argues with great ability, and to my mind convincingly, that immaterial products are capable of accumulation and of constituting a portion of capital.

Every copy of a book is a machine which is capable, as long as it lasts, of creating immaterial products having exchangeable value; namely, the agreeable sensations for which readers are willing to pay. It is the consumption of these immaterial products, which yields a revenue to the owner of a circulating liberty. Thus is shown the superiority of mental over manual labour, because it yields the labourer an incorporeal property, indestructible, (except by Legislative spoliation,) and yielding him income by the very act of furnishing the public with a multitude of beneficial machines, that are constantly creating immaterial products of exchange-

hundred pounds which may be expected from a new edition. (Lord Mansfield, Judges Willes, Blackstone, and Aston.)

O. It is not clear that common law ever sanctioned the exclusive enjoyment of copyright; the only titles appear to have been the royal patent and the license of the Stationers' Company. (Lord Camden.)

A. It seems to have been always taken for granted by Chancery and other courts, that an exclusive right existed. There was a confirmatory example in the highest quarter; the king is perpetual proprietor of the right of publishing acts of Parliament and all public documents. (Lord Mansfield, Judges Willes, Blackstone, and Aston.)

O. The patentees of mechanical inventions possess but a limited term; none of them ever advanced a claim to perpetuity. (Judge Yates.)

A. Such patentees are much sooner reimbursed than authors; the fruit of their invention is of a more direct practical application. Besides, the stranger who makes a duplicate of a machine, incurs a much greater relative

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able value. These facts prove that dogma to be absurd, which teaches that a thing "cannot be the object of "property," which is "not visible, tangible, or corporeal."

P. H. N.

expense than the stranger who reprints an edition of a book,—in the one the materials form the chief part of the cost; in the other, they are comparatively insignificant, and copies may be multiplied by the thousand.

O. The statute of the 8th of Queen Anne, expressly limits the duration of copyright; it enacts that the protecting penalties shall be in force during fourteen years, and no longer. (Judge Yates.)

A. This is, no doubt, the apparent meaning of the statute, but the preamble of the act declares, that it is passed for the protection of literature; to make the act an instrument for curtailing a literary privilege would certainly be at variance with its general language. (Lord Mansfield.)

O. If such property be admitted for a time, is not the term of fourteen years sufficient? What good could the public expect from the writings of men so selfish as to call for a perpetual monopoly?

A. Monopoly is not the proper word; the object may be attained, as will be shown presently, under modifications which insure to the public a complete supply of books at reasonable prices.

O. "Glory," said Lord Camden, "is the reward of science, and those who deserve it scorn all meaner views."

A. Reputation is, and always will be, the

grand stimulus to literary exertion, but it requires long-continued exertion; and if we do not enable a writer to live by his works, we confine the possiblility of acquiring reputation to a very small class—to the rich, or to those who derive an income from other means. Such, in fact, has hitherto been the case; standard works have been attempted only by men who, like Gibbon, possessed patrimony, or who, like Robertson and Hume, arrived at the possession of income from other sources. No one imagines that our military or naval officers follow their profession for the sake of pay; yet no one would propose to abridge it on the ground of reputation being their primary object.

O. "It was not for gain," said Lord Camden, "that Bacon, Newton, Milton, and Locke, instructed the world."

A. Each of these distinguished men were obliged to trespass on the time devoted to literature, and to seek an income from public employments. How much better would it have been could they have given an undivided and uninterrupted attention to their favourite pursuits?

In comparing these various arguments, the balance is evidently on the side of the advocates of exclusive right in every point except one—the interpretation of the statute of Queen Anne. There the words, "fourteen years

and no longer," are too pointed to admit of the construction put on them by Lord Mansfield. In the beginning of 1774, when the question came before the House of Lords, the judges attended and delivered their opinions at length. Lord Mansfield advocating the cause of permanency, while Judge Yates, now supported by his brethren, Baron Eyre and Baron Perrot, asserted once more the necessity of limitation. Thurlow, at that time Attorney-General, addressed the House, as a counsellor, against the perpetuity, and found an ardent auxiliary in Lord Camden; but the opposite side was ably supported by Dunning, by Solicitor-General Wedderburne, and by Lord Lyttleton. One party contended, that fame was the only true reward of literary exertion, while the others maintained, that without an adequate pecuniary provision, the public would remain deprived of many useful works. The House, however, appear to have been alarmed at the idea of perpetuity, and finally decided, that the exclusive right should last only "fourteen years, with a contingent fourteen, if the author happened to be alive at the end of the first period."

The grand error on the part of the booksellers lay in demanding *perpetuity* instead of *prolongation*. The idea of perpetuity has in it something very serious, and will not be sanctioned by a legislature without the clear-

est proof of public advantage; it would be premature to ask it even in the present age. They ought to have urged the attention of Parliament to the number of years required to compose a standard work, and to the farther length of time necessary to give it effectual currency; appealing to the good sense of the legislature, whether fourteen or even twenty-eight years were not wholly inadequate to remunerate these multiplied labours.

Foiled in the House of Peers, the booksellers determined to do what men always will endeavour to do when unjustly controlled —evade that which they cannot resist. They resorted to the alternative of giving an ostensible renewal to a work, by adding, at the end of the term of each copyright, notes and other appendages, which remained their property during another period of fourteen years, and afforded them a kind of guarantee in two ways: *first*, because a competitor, whatever he might do with the original text, could not touch the *addenda*; and, next, because the great body of publishers residing in London act as a corporation, and combine to give circulation to works thus edited, to the exclusion of rival impressions.

Partial Prolongation in 1814.

The law continued on this footing for forty years, the term of copyright receiving no

extension till 1814. On that occasion it was soon apparent that the universities would carry the point of the delivery copies, and the only alternative was, to seek an indemnity in an extension of copyright to twenty-eight years; that is, by rendering the last fourteen *certain* instead of contingent. This was obtained; and here ends the historical part of our sketch.

Inquiry as to the advantages of a farther Prolongation.

We are now to enter on the grand question, of the "advantages of a farther prolongation of the term of copyright;"—a question that has never yet been brought fully before the public, and which requires a considerable share of previous explanation.

We shall begin, by examining a very material point,—we mean the dispositions and habits of those with whom authors have principally to deal. And here, from long familiarity with men of business, we entreat the particular attention of our literary brethren; for, however anxious to be instrumental in procuring them relief, we must not hesitate to point out their errors or misconceptions. Of the surprising quantity of publications issuing annually from the press, not a tenth part are the production of writers of established character; the rest proceed from candidates whose reputation is yet to make. In what manner are booksellers to form an estimate of the

mass of unknown MSS. thus laid before them? Their own habits are not those of study but of business, and they must consign the task of examination to friends who have been called not unaptly "literary tasters." Need we wonder that the patience of the critic should be put to a severe test by the mediocrity of the great majority of these performances, and that his report should, in general, be so little decisive, that the bookseller is led into the habit of putting one work on a par with another, and of subjecting them, in the mode of publishing, to the coarse application of a common rule? It has become the avowed practice to decline any other terms for a new work than those of defraying the paper and print in return for the manuscript, and in the understanding that the profit of the edition, *if there be any*, shall be shared between the bookseller and the author.

Now, this plan of publishing, however natural in the present state of the law, is replete with mischief to all parties, bringing forth a mass of books which ought never to have seen the light, and which, in truth, would never have been published, could the writer or publisher have forseen their failure. It is a remarkable fact, disclosed in the inquiries arising from a late parliamentary discussion, that only "*one publication in eight is found to come to a second edition.*" (See *Evidence*

taken by Copyright Committee in 1814. The unfortunate limitation of copyright discourages literary men from the labour necessary to produce standard works; and the bookseller, tempted to assail the public by the attraction of novelty, goes on publishing books by the dozen, in the hope that some lucky chance may make up for his past disappointments.

All this shows that, in the great majority of cases, the contract between an author and a bookseller is made without previous *data*, and is nothing more nor less than what is commonly termed a blind bargain. Dr. Paley, on finishing the MS. of his *Moral and Political Philosophy*, tendered the copyright of it to a bookseller for 300*l*., and was offered in return 250*l*., exactly in the way that a cautious purchaser takes care to bid for unknown merchandise. During this negociation, it happened that a brother of the trade, apprised of the value of Paley's Work, came boldly forward and offered 1000*l*. for the copyright. The author consenting to give the party first in treaty the previous option, the latter now saw the matter in a new light, and ended by paying four times the amount of his original offer.

No notion is more general among authors than that booksellers make rapid fortunes at their expense. One writer has published, that Jacob Tonson and his nephew died worth

£200,000, (D'Israeli's *Calamities of Authors*, Vol I. p. 29;) and not one reader in twenty will stop to question the accuracy of the allegation. It is our firm belief that such a sum was never possessed by any bookseller, or parnership of booksellers, that ever existed. Among them, as in all lines of business, there are examples of considerable capitals, but these are only realized in the case of long-established concerns, and after a progress of acquisition infinitely slower than the angry imaginnation of a disappointed author allows him to believe. In his eagerness to take for granted that his publishers are getting rich at his expense, he forgets the history of the fathers and grandfathers of the present men, and omits to mark the slow steps by which they paved the way for the eventual rise of their descendants. He fails, likewise, to scrutinize another material point, namely, the *quantum* which a close calculator would deduct from the estimated fortunes so liberally assigned by current report to booksellers. The latter, like all men in business, are desirous of passing for affluent; but, if so few publications are found to be successful, must there not necessarily follow a large abatement from the imagined extent of their annual gains? It is, on various accounts, a matter of regret, that the limited profits of the bookselling business should not be better understood by lite-

rary men. The discovery of it would remove the film from their eyes, would lessen greatly their habits of complaint, and would lead to cordial co-operation for redress of their common grievances. We may with confidence assert, that a small offer from a bookseller, as in the case of Paley, is indicative, not of a design to overreach, but of an apprehension that, to give more, would be to injure himself. On the other hand, we are by no means disposed to launch out into a panegyric of the liberality either of particular individuals, or of the body at large. Like other men of calculation, they naturally mete out their advances, not by attachment to the writer, but by the extent of the expected return. A large allowance for a finished book denotes a confidence of extracting a still larger from the public, while the scanty, and apparently niggardly, payment of an unknown author, is a token of the fear and trembling with which a bookseller handles a production of doubtful promise.

The customary agreement between a bookseller and a new author proceeds as follows: The latter having prepared a work, of which he has high hopes, but in which he has not had either guidance or advice, sets out by making an offer of his MS.; and, after some time taken for consideration, is answered, that his name not being yet known to the public,

the publishers cannot take on themselves to make him a payment for his labour, but are willing to give it to the world on their joint account. This leads to a compact in terms somewhat like the following:—

It is agreed between Messrs. Y. and Company, booksellers, and Mr. Z. that Messrs. Y. and Company shall print and publish for their account, jointly with Mr. Z. in two volumes octavo, his historical work on ———— Mr. Z. supplying the manuscript, and Messrs. Y. and Company taking on themselves the paper, printing, and other publishing charges. The statement of the account to be made up every year at midsummer; and when, after deducting the various publishing expenses, there shall appear a balance of profit, the same to be equally shared between Mr. Z. and Messrs. Y. and Company. The books to be accounted for at the regular trade sale price.

The publication now takes place, and in a twelve-month after, an account is made up in the following form:—

Dr. History of ———— by Mr. Z. Cr.

Printing 60 sheets at 40s.	£120	0	0	750 Copies printed, retail price 21s. the price to the trade 15s. 150 copies sold and delivered in sheets, at 15s.	£112	10	0
Over-running and corrections,	9	0	0				
Paper, 90 reams at 30s.	135	0	0				
Advertising,	30	0	0				
Boards for 25 copies delivered to the author's friends,	2	10	0	Balance at Dr., carried to next year	184	0	0
	£296	10	0		£296	10	0

Next year the account is considerably shorter, the charges consisting only of advertising and interest of money; but the attraction of novelty having gone off, the sale is also less, and does not probably exceed eighty copies, leaving still an adverse balance of £100. The bookseller goes on with mercantile punctuality to render him a farther account, but the sale is now in a state of progressive decrease, and does not, for the third year, exceed fifty copies, leaving still an unfavourable balance of £80. The author now loses patience, and entreats the bookseller to relieve him of all responsibility, by taking over the remaining copies, and considering the account closed. Such is the fate of five-sixths of the books, great and small, that come before the public. Composed without the benefit of experience, they are unprofitable to the publisher, uninstructive to the reader, and discouraging to the author. If we are suspected of stating an extreme case, let another be supposed, in which the author is less of a novice, and in which a bookseller, from confidence equally in him and in the subject, ventures to make an advance of money, and to agree to pay a fixed price for the copyright. An arrangement is made for bringing out the work against a given time, and the writer proceeds with all the ardour attendant on a new enterprise. Authors,

however, were never remarkable for accurate calculations, or rather their undertakings are almost always found to require more time and labour than is anticipated:—the prescribed time expires, and the bookseller agrees to postpone it for another twelvemonth. This also passes away; the publishing season draws near; the work is still unfinished, but the author is impatient of farther labour, and the bookseller thinks it high time to get a return for his money. The work goes to press, and comes out without either a correction or an acknowledgment of its imperfections, unless the author be particularly modest, in which case the public is requested, in a well turned apology, to make allowance for his multiplied avocations and the urgent nature of the subject. This is the case with almost all the better class of our new publications; the sale, in such cases, is somewhat less unfavourable than the specimen given above; but four or five years are requisite to run off an edition, and, on coming a second time before the public, it is necessary for the author to do what should have been done at first—revise and correct the whole. A second edition comes out, but under considerable disadvantages; the attraction of novelty is gone or greatly impaired; the number of readers is lessened by those who have purchased copies of the first edition, and the

character of the book has been estimated, in Reviews and elsewhere, by an unfavourable standard. The bookseller is thus curtailed of profit, the author of reputation, yet each has the happy gift of throwing blame off his own shoulders; the publisher attributing the failure to the distraction of the public attention by some unlucky novelty, while the other vents his compluints on the incurable frivolity of the age. In truth, noither of the parties is much to blame; their conduct is the natural result of their situation; the haste of authors and the acquiescence of the booksellers are mainly owing to the short-lived tenure of the fruits of their labour; the habits of the one and the calculations of the other having been all along adapted to this state of things.

Is there then no remedy for so mortifying a state of things? no method of relieving the public from such an unprofitable expenditure of time and attention?—Some have been desirous to call in the patronage of government, and have argued, that literature can never, like the coarser objects of industry, find adequate repayment in the fruit of its exertions. It is, indeed, a current subject of complaint among authors, that there should not be a larger proportion of provisions for life appropriated to literary men. *Sed non tali auxilio*—whatever be their distress, we beg to

deprecate any interference on the part of government. No engine is so formidable as the press in the hands of an arbitrary or artful ruler. Look at the degraded picture exhibited, during a succession of years, by the French press; and you will find men, who, under the auspices of freedom, would have acted an independent part, tempted, threatened, and gradually compelled to become the advocates of a tyrant, and to participate in the guilt of rivetting the chains of their countrymen. It is in vain, even for a liberal legislature or a disinterested sovereign, to attempt to make up for the deficient reward of literary labour, by granting pensions or creating places for men of letters. These measures, though apparently beneficial, carry with them all the disadvantages of irregular and unnatural interference. A literary man promoted, as is not unusual in France, to a government employment, is withdrawn from his proper sphere of utility; he becomes lost to general reasoning and liberal views amid the endless details of practical routine. The pension granted to Johnson by Lord Bute was generally approved, both as the fair reward of past industry, and as a seasonable relief to pecuniary difficulty; but, what was the consequence? it fostered his natural indolence, prevented the composition of farther works, and, by enabling him to live in idleness, rendered him perpe-

tually dissatisfied with himself. Had the property of his literary labour been permanent, he would have received twice as much from the booksellers, and might have continued his proper pursuits under circumstances progressively improving, without incurring the humiliation of dependence, or degrading his name by the composition of party pamphlets.

It is equally vain for zealous friends to attempt making up for the inadequacy in question, by procuring private subscriptions for a work; for, whatever may be the success, in a pecuniary sense, the step is humiliating to the author, is liable to abuse, and is, besides, an interference with the proper business of a bookseller. One of the most splendid of such examples was Pope's translation of *Homer*; an undertaking where the importance of the task and the talents of the translator called equally for liberal remuneration. Pope was perfectly ready to sacrifice several precious years for the sake of eventual competency, and he found in his friends, particularly in Swift, a most zealous promoter of his views. Proposals were circulated, liberal subscriptions were obtained, and a favourable bargain made with the bookseller: the translation of the *Iliad* was executed, and will for ever remain a proof of the perseverance to which an author may be prompted by the love of fame, when relieved from pecuniary pressure, and enabled to give

long continued labour to his task. So far all was well; but the success of this first undertaking induced Pope to resort to the same method for publishing a translation of the *Odyssey*, which proved far inferior; being performed either *hastily* by *himself*, or by two coadjutors, whose respective contributions, though not altogether concealed, were unfairly represented to the world. Could such an abuse have taken place had subscription been out of the question, and had the remuneration of Pope been proportioned to the eventual sale of his book? The public would, in that case, have had a translation of equal merit with its predecessor, and Pope would have been spared the reproach of a literary imposition. The least exceptionable mode of rewarding literary eminence is by church preferment in the southern part of the kingdom, and by admission to professorial chairs in the north. But the extent of both, particularly of the latter, is limited, and does not always place a man in that station where he can be most useful, or in the mode of employment most congenial to his habits. Both besides require more of connection, of interest, and of *management*, than commonly falls to the lot of a retired student.

The only effectual plan is, to find the means of relief in the prosecution of literature itself; to relieve it from existing shackles, and to

allow every writer to reap his reward in the sale of his books, exactly as we do in other kinds of employment. This is all that literature wants, and all that it is good for her to have. She will then make no claims to patronage from Government—no appeal to the subscriptions of private friends—nor will appointments in the church, or at universities, be an object of indecent contention; they will be coveted by a smaller number; by those only whose particular habits fit them for such situations. Perpetuity of copyright is as much the right of the author or purchaser of a book, as of the builder or purchaser of a house; and the public will never reap its full harvest of advantage from literary compositions till the law be made to confirm the claim of equity. But, as this opinion is as yet far from general, the true plan is to desist from pressing it to its extent, to demand only the grant of a specific period, and to leave the public to enact perpetuity at a future time, when it shall have had practical and undoubted evidence of the beneficial effect of prolongation.

State of Copyright on the Continent.

Let us first see if we can take a useful lesson from the example of our continental neighbours. In France, copyright has of late received several prolongations; at first limited to the author's life, it was extended in 1793

to ten years, and in 1805, to no less than twenty years after his death. Taking twenty years as the average of life after the publication of a work, we have here, in the whole, a medium term of forty years, which is considerably longer than ours. But the grand practical example is to be found in Germany. In that country, *copyright is perpetual*; and though the sales of editions are very limited, in consequence of the facility of importing clandestine impressions, from the territory of neighbouring princes, such is the benefit of permanency, that Germany sends forth more works of lasting use than any other country in Europe. Compare their performances in Statistics and Geography with those of France, England, or Italy, and we shall be surprised at their superior research, and their careful examination of the necessary documents. It is at present proposed to effect a most important improvement in the state of book property in Germany, by rendering the protection general throughout the empire; and by enacting, that a clandestine edition published in a different state shall be subject to the same penalties as if published in the country of the writer. The great powers, Austria and Prussia, are understood to favour this measure, and some objections raised by the lesser states are likely to be overcome; and if the decision of the diet be speedy, Germany will take the

lead of all Europe in the production of standard works.

Inadequacy of our present term.

There is evidently no reason that the term of book property should have a reference to the probable time of an author's life; it is much more equitable to prolong it to a considerable time after his death, as a provision for a family deprived of its natural protector. Our present term of twenty-eight years appears, at first sight, no inconsiderable tenure; but the circulation of literary works is often only beginning to become considerable when the property is drawing to a close. *Paradise Lost* remained in comparative obscurity for many years; and, on coming nearer our own times, we find Hume's early works, and even the first volume of his *History*, falling dead-born from the press; and Smith's *Wealth of Nations*, the labour of half a lifetime, going through only two editions in the course of eight years. No wonder, then, that a bookseller should pause before giving a large price for a short-lived possession. But, prolong copyright, and you relieve him from the necessity of laying stress on the sale of this or that season; you direct his hope to eventual and permanent circulation; and you put it in his power to pledge himself for a considerable sum, because he is justified by the prospect of the return. An author, thus sup-

ported and encouraged, will no longer scruple to give year after year to studying a subject thoroughly, and bringing out his book in a finished state.

We shall next put the principal suggestions which have occurred to us into a specific form, less under the idea of their forming the basis of a legislative measure, than as a convenient mode of stating the substance of a case.

Sketch of the proposed alteration.

Grant, in all books to be hereafter published, a prolongation of copyright for twenty-two years, making in the whole fifty years. Appoint a commission (with power of reference to a jury) to act in all cases where the owners of copyright withhold publication, or confine it to an expensive form. Empower this commission to order the publication of such works, in the form which they judge most proper, and without any other obligation towards the proprietor of the copyright than that of paying over to him or his representatives the proportion of profit accruing, by the practice of the trade, to the owner of a copyright. (*Quarterly Review*, Vol. VIII. p. 112.)

The power of this commission to be operative only for the additional term (twenty-two years), without application to the existing twenty eight.

The act of 1814 would thus remain in force. —Should it however appear, in the progress

of the disscussion, that the additional prolongation made it necessary to provide for the interest of the public, or of the minor booksellers, the power of the commission might be made applicable to a certain portion of the twenty-eight years. Such interference would probably not be wanted, the interest of the copyright owners being the same as that of the public; but the former would, at all events, have no reason to complain, the additional prolongation being a very substantial equivalent for any curtailment of their powers.

The grand objection hitherto has arisen from an idea, that, to prolong copyright, was to prolong the power of the owner to deal with the public as he chose. Nothing, however, is easier than to separate the two, preserving to the bookseller his property, and giving the public the right of calling for editions of his book, in the manner most suited to general convenience. This seems sufficiently explained in the above provision; and the only matter of surprise is, that it should not have been sooner acted on.

This clause would put book property on so plain and equitable a footing, as to open a prospect to another and very desirable arrangement—*a community of copyright between this country and the United States*; that is, a mutual compact that "the publisher of a book in the one should possess the property of it

also in the other," subject always to the interference of a commission or jury in each country, who should take care that it be given to the public in a cheap and convenient form.

Its benefit to authors.

Such is the plan of the proposed alteration. We are next to consider its probable effects; —and first, as to literary men. They certainly feel sore at the obligation of sacrificing eleven copies of every book to the public libraries. A prolongation of copyright would go far to remove this uneasy sensation; but we would urge it on higher grounds; and *here it is fit to state, that our arguments are* not at all intended to favour a *mercenary* spirit. Those persons who write merely for money, find, at present, an ample stock of employment, in compiling, abridging, and plagiarizing; they are dead to the feeling of reputation; and incapable of that judicious and honourable calculation which shows that the true way to attain either fame or competency, is to be sparing of early publications, to study in silence, and to aim only at ultimate success. Such men do not properly belong to literature; they have been cast into it merely as a refuge, and because its pursuits bear a certain connection with their early education. The men who would be benefited by the change would be a very different class; they would be those who embrace literature as

others embrace medicine, law, or the church, with the intention of following it as a profession; who make allowance for the years that must be passed in unproductive study, and who do not repine at the postponement of their reward, provided it be not eventually withheld. The proposed alteration would operate in their favour, not by gratifying a mercenary spirit, which literature never engenders, and which, if it previously existed, would be modified, perhaps cured, by such pursuits; but, by enabling the individual to pursue his task, without discouragement, and without feeling that, by gratifying his personal predilection, he is doing an injury to his family. Improve his circumstances, not that he may amass money, but that he may have the means of support during the long labour necessary to reputation. More is not to be desired; the wants of literary men are few, their residence,—their plan of life,—their mode of bringing up a family, ought all to be such as to recall the philosophical simplicity of former days.

What a reproach to Modern Europe, that, with all the benefit of extended circulation and the invention of printing, our literary compositions should not have surpassed those of the ancients! Does not this argue, that there must exist somewhere an unhappy counteraction to our advantages? In number of

studious men we far surpass the fairest days of Greece and Rome; but few of them, comparatively, become writers; they meet a deal of difficulty and discouragement in their attempts to address the public, and the result is, that their knowledge expires with themselves. Such will be the case until an effectual change be made; we shall have the mortification of seeing men capable of enlightening the world and accelerating the progress of improvement, doomed to waste their time in teaching pupils, or relinquishing literature for the pursuit of professions productive only of money. Others who prefer the gratification of their taste to all considerations of property, must be content to live on a trifling pittance abroad, or in a corner of their own country, remote from libraries and the pleasure of literary intercourse.

To make literature a profession for life, is almost a new project; for hardly any have set out with the intention of making it their sole object. They have, consequently, proceeded without a settled plan,—have arrived at no definite method until advanced in years, and have seldom, if ever, thought of drawing up instructions for the guidance of their successors. Observe in mercantile business, in public offices, and in the law, how labour is methodized and subdivided; in what manner the mechanical and uninstructive part is made

to devolve on inferior assistants, and the time of the principal reserved for general views and important decisions. In literature, any thing of the kind that has yet been attempted, is in its infancy; yet the same plan is applicable; and were authors so far put at their ease as to be enabled to make an undisturbed apportionment of their time, they would soon learn to make great improvements in their mode of study.

Its benefits to Booksellers.

In the present situation of copyright, a bookselling house generally keeps the property of a book till towards the end of the twenty-eight years, when a sale takes place on the plan of interesting the trade at large in the preservation of the property. The work is put up to auction at the Chapter Coffee-house, in sixteenth or thirty-second shares, and disposed of to a number of different purchasers, who all become interested in supporting each other, and in discouraging the sale of rival editions, printed at Edinburgh, Dublin, or elsewhere. In this manner the property of Cowper's *Poems* is said to have been sold in October, 1812. for £4160. The shares of all our *standard* writers are thus vendible, and for sums which would surprise those who do not happen to be initiated in the mysteries of the trade. Hence the great cause of the indifference of booksellers to the

question of prolongation, for they consider themselves as enabled, by this happy expedient, both to baffle the tyrannical limitation of the law, and to keep within bounds the demands of authors. "At present," say they, "we are sure of having the power of purchas-"ing shares in any valuable book property; "our profits, indeed, are considerably lessen-"ed by the cheaper printing of booksellers "residing out of the metropolis; but the "extent of connection of us, the London "traders, is such as to give a tolerable degree "of certainty to the value of our shares. "Were authors assured of a prolonged term, "it is questionable whether we should so soon "have the option of buying copyrights; at all "events, we should pay dearer for them." This reasoning is plausible, but, like the general conclusions of most practical men, will be found to be drawn from a narrow circumference. Whatever be the duration of copyright, the property of it, in nineteen cases out of twenty, must be vested in the bookseller. How can authors have the means of running the risks, or waiting year after year, the tardy returns of sale? Must they not continue to exchange these formidable contingencies for a specific allowance in the shape of ready money? To write books is one thing; to sell and to hold the property of them is another. The one is the province of the retired and

sedentary student, the other of the man of activity and capital. Again, as to augmentation of price, booksellers would, indeed, in the event of a prolongation, find it necessary to increase the remuneration of good writers; but this increase would be repaid them threefold in the augmented value of their editions, which would, in that case, embrace the circulation, in all probability, of the United States. Printing, at least the printing of English copyrights, cannot, in time of peace, continue in America, unless we persist in our present system. Give encouragement to our own writers, and the compositions offered to our booksellers will soon be of a stamp that will rival the impressions of France, where two or three thousand copies are struck off for one thousand in England. Observe the effect of such a change in facilitating the recovery of the drawback on paper: a drawback at present of little benefit to our exporting booksellers, because the books shipped to America are frequently in such petty lots as not to defray the expense of the debenture. These considerations are of the highest importance at a time when the re-establishment of peace and the commercial activity of the continent of Europe, gives reason to apprehend the printing of rival editions of our standard books for the American market.

Cheapness is not to be sought by the infe-

riority of type and paper; but it would be the result of those progressive improvements, which would soon take place among us, were things left to their natural operation. An increase in the size of an edition, implies the practicability of reducing the price to the public. Of the various benefits arising from cheapness few of us are sufficiently aware, accustomed as we have been to progressive enhancement in this age of war and expenditure. It would enable us both to supply the foreign market and to increase greatly our circulation at home, by inducing individuals to buy books which they would otherwise borrow, and to have always at hand those to which they would otherwise only have occasional access.

What is the ordinary course of the business of a great publishing house? A large proportion of the books they send forth pass unnoticed, and hardly defray the paper and print. What loads of unsaleable volumes encumber their warehouse! What a world of expense do they incur for unproductive advertising! The success of the house depends on the very few works of standard merit, (perhaps one in forty,) which obtain extensive sale, and form a counterpoise to their ill-starred brethren. Now, the effect of a prolongation of copyright would be to increase very considerably this select number, and to afford on a large, that

benefit which is now enjoyed on a small scale. Booksellers have merely to look around them to see that those publications succeed best where the encouragement of the writer is most liberal. This has been strikingly exemplified in the principal Reviews and other conjunct compositions of the day; and how much greater would be the exertion in the case of a separate publication,—a case where the personal fame of a writer is so much more at issue? The expense of paper, print, and advertising, are as great on a bad as on a good manuscript, and it would in time become a rule with our leading booksellers to publish none but first-rate books:—adhere to this, and you may safely dispense with repeated and expensive calls on the public attention,—the name of your house will do more than every thing else.

Another and by no means inconsiderable advantage of the command of a valuable manuscript, is the power of obtaining, either in money or otherwise, an allowance from a French or a German bookseller for the use of the English sheets, for the purpose of translating,—a point hitherto little attempted, in consequence of the trifling nature of most of our publications.

Booksellers complain, and probably with truth, of the vanity and unreasonableness of authors; but the literary line has many attrac-

tions, and whenever you satisfy men that they will not doom themselves to a life of poverty by following it, you may be assured that you will soon have to transact with a very different class.

It is usual with booksellers, when treating with an author of reputation, to make their bargain with reference to successive editions, that is, they pay a certain sum for the first; a farther sum when a second is called for; and a final payment on the appearance of a third, generally completes the purchase of the copyright. This plan would be regularly acted upon, could the bookseller have confidence in his literary contractor. It reduces the risk of the former, while, to the author, it affords the gratification of prospect, and gives him the strongest motives to render his book worthy of permanent favour.

Such is the state of the case as regards the elder brethren of the trade,—the principal publishers; but we must address a few words likewise to a numerous, and, in general, a respectable class,—the printers and lesser booksellers. These persons may apprehend that a prolongation of copyright would prove a continued suspension of their power of coming forward with cheap editions; but we refer them to the clause in the above sketch of the proposed act, which might be so framed as to allow any bookseller who chose to make the

speculation, to print an edition of a work on his obtaining the assent of the proprietor of the copyright, or, failing that assent, on his getting the sanction of the committee or jury authorised to settle disputed points. What sum should be paid to the copyright owner, is a point for farther consideration, depending on the nature of the work, its size, its popularity; but the custom of the trade would supply the proper rules, and the principle, once established, the arrangements would suffer no greater difficulty than other changes in business.

We are next to call on the lesser booksellers and printers to take a comprehensive view of their situation, and to mark that progressive change and extension of the bookselling business, which shows that there is no ground for keeping up ancient jealousies, or for considering the interest of one branch as different from that of the others. Look back to the history of the trade, and observe how it has gradually, and without the aid of interference, divided itself into a variety of distinct branches. Booksellers combined at first the sale of stationery with that of books; hence the Stationers' Company. In process of time they relinquished, in great towns at least, this unnecessary appendage, and, after a farther lapse of years, divided the wholesale book business from the retail. Progressive exten-

:ion led next to a distinction between the publishing and the old book departments; and we have at present in one house, (the house so well known as the publishers of Hume and Robertson,) the example of an establishment avoiding all business, even wholesale, except what relates to books printed for their own account. These subdivisions tend exceedingly to facilitate business; they cause it to be done both better and to greater extent. The longer our experience, the more we are satisfied, that the repetition of employment is the only true road to success, and that we cannot more effectually clog our progress than by attempting the conjunction of dissimilar undertakings. The farther course of things, particularly under an extension of the term of copyright, would lead to the formation of establishments on a still more simple plan; some bookselling houses would confine themselves to the mere management of copyrights, and leave not only the printing, but the sale, to the trade at large. Such houses would merely stipulate a certain payment for leave to print an edition of a given size and form, and transfer all details of management to the undertaker of the speculation. Is this a prospect calculated to alarm either the printers or minor booksellers? Does it not tend to show, that things, when left to their natural course, fall invariably into their true channel, and

render superfluous both the care of the legislature and the by-laws of corporations?

Benefit to the Public.

We come next to consider the interest of the public in the proposed regulations. We are not aware, that there exists at present complaints of books being capriciously withheld, or confined to expensive forms. In the case already quoted, Cowper's *Poems*, there were on sale at one time, and that *before* the expiration of the copyright, no less than five editions, viz.

One in 8vo. with plates, £1 6s.
One in 8vo. without plates, £1 1s.
One foolscap 8vo. 14s.
One do. of inferior print and paper, 7s.
One 12mo. stereotype, 9s.

Nothing, moreover, can be clearer to a man of business, than that the dearer an edition, the fewer the purchasers; and that the true plan is to meet the demand of all classes with as little delay as possible. This we see repeatedly exemplified in the case of new books, where an 8vo. edition is brought forward before the sale of the 4to. is completed; but as all booksellers might not be equally accommodating, the plain alternative is to invest *a commission with explicit powers to interfere.* This will form a full and conclusive answer to those arguments which Judge

Yates on the bench, Lord Kaimes in the Court of Session, and Lord Camden in the House of Peers, so strongly urged against giving what they termed the "continued mono-"poly of a book." These distinguished persons were not aware of the difference between the preservation of property and the continuance of control; they could not see by intuition what it has taken no small share of time and reflection to discover.

The existing restrictions as to the term of copyright, tend only to open a door to abuse, by inducing an author to make his work less perfect in the first instance, on the plan of affording him an easy method of renewing the exclusive property. Gibbon did not scruple to write to his publisher, that a thorough revisal of his history would form "a valuable "renewal of the copyright at the end of the "term."* Booksellers follow this plan avowedly and habitually; and it is the remark of a very intelligent writer on the subject of copyright, that, unless a change take place, our purest and best authors will become so disfigured by annotation, and increased in price by increased bulk, that the early editions will be called for.†

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* Correspondence from Lausanne, annexed to his *Memoirs.*

† *Address to Parliament on the claims of Authors,* by a member of the University of Cambridge, 1813.

We by no means assert, that the proposed change would stop the appearance of trifling works, since every man must be allowed to waste his time and his property as he chooses; but it would surprisingly increase the number of good books, prompting many, who are at present entirely discouraged, to become authors, and inducing others who labour, but labour with haste, to give a finish and attraction to their performances.

It is long since Dr. Johnson pronounced us "a nation of readers," yet we are still extremely deficient in *standard works*, and on subjects too where we ought to have been long since amply supplied. Have we a good *general* history of Ireland or Scotland, or even of England? No wonder that we should still be deprived of such works when we calculate the time, labour, and expense required in their composition. Now, that public records have become so voluminous, and the transactions of nations so complicated, whoever undertakes to do justice to such topics will find himself subjected to a variety of expenses; he must set apart two, perhaps three, years for what apparently requires one; he must have his residence in the vicinity of great libraries; he must carry on an extensive correspondence; he must employ clerks in making copies of official documents and family papers. The same observations are applicable to sci-

entific labours. At present, no bookseller can afford to indemnify a writer for the years he would be disposed to bestow on a favourite but insulated branch—he must have a work on a subject of general interest; that is, one which will take in a number of topics, without going to the bottom of any. But prolong the term, and afford a prospect that a well written book, even in a limited department, will make its way, and the bookseller will find himself justified in offering to the author a sum which will enable the latter to indulge in his predilection for the branch in question. This point is of great consequence, for almost every author has a favourite subject, which he would cultivate with great zeal, did not necessity oblige him to turn aside to popular topics, for the sake of a livelihood. We have known works that might have been completed in two or three years, postponed from interval to interval, so as to occupy seven, eight, or nine, in consequence of those unwelcome avocations.

The more a man of taste and judgment studies the true nature of composition, the more he becomes attached to simplicity; he loses all relish for flowery diction; he learns to chasten his early predilection for ambitious passages: for point and antithesis he substitutes the plain language of the Grecian and Roman models. Such a style is calculated to

be permanent, but may not for some time be popular, perverted as the public taste is by a habitual tone of exaggeration and inflation. The reward of such writers is thus to be found only in length of time. Grant but this, and you will accomplish a total change in the character of new books, rendering the writers indifferent to whatever may be called tricks of composition, and directing their attention to the plain, the solid, the permanent. What a prospect is here opened both of improving our national style and of diffusing useful information! This is one of the many things which show that the benefit of one part of the community is the benefit of all; and that, whenever we are enabled to sift a subject to the bottom, and to view a question in all its bearings, we find, that the existing evils are the result of our own prejudices or mistaken regulations. We have treated this subject with reference to four distinct parties;—authors; publishing booksellers; the lesser booksellers with the printers; and, finally, the public; yet we challenge any opponent to produce a single point in which the advantage of the one is not found to coincide with and promote the advantage of the others.

How has it then happened that a case calling so strongly for amendment has not hitherto been fully brought before the public? The reasons are the following:

Publishing booksellers have been, and still are, unconscious of the improvement which it would produce in literary composition.

The lesser booksellers and printers were not aware of the practicability of combining prolongation of copyright with freedom of competition.

The parliamentary opponents of the measure, such as the late Lord Camden, were equally unaware of the possibility of the provision in question.

And as to literary men, their error has been partly in want of co-operation, partly in asking too much, by urging at once a claim to perpetuity.

But is there now any prospect of the adoption of such a measure? The progress of improvement is slow; our legislators have not leisure to study such matters to the bottom, and our practical men are, in general, wedded to ancient usage. At the same time, there are strong reasons to hope, that the question, if taken up by a spirited and persevering member of parliament, will eventually be carried. The universities afford an encouraging example. They have long possessed copyright without abusing it. Booksellers are beginning, particularly since the peace, to take a wider view of their business; to aim at exportation, to lessen their prices, and to seek an equivalent in a wider circulation. As to

authors, their object is completely the same with that of the public—extended circulation. Precedent, likewise, is in favour of the measure. We have the example of successive prolongations of copyright in this country and in France; and a most encouraging proof of the effects of perpetuity in Germany. Finally, it may be safely urged, that, until some such measure is adopted, the public will receive very few standard books.

END.