OBSERVATIONS

ON THE

LAW OF COPYRIGHT;

IN REFERENCE TO THE

BILL INTRODUCED INTO THE HOUSE OF COMMONS

BY

MR. SERGEANT TALFOURD:

4243

IN WHICH IT IS ATTEMPTED TO BE PROVED,

THAT THE PROVISIONS OF THE BILL ARE OPPOSED TO THE PRINCIPLE OF ENGLISH LAW;

THAT AUTHORS REQUIRE NO ADDITIONAL PROTECTION;

AND THAT SUCH A BILL

WOULD INFLICT A HEAVY BLOW ON LITERATURE,

AND PROVE A GREAT DISCOURAGEMENT TO ITS DIFFUSION IN THIS COUNTRY.

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LONDON:

PRINTED FOR SCOTT, WEBSTER, AND GEARY,

CHARTERHOUSE SQUARE.

1838.

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TO THE RIGHT HONOURABLE

LORD JOHN RUSSELL,

ONE OF HER MAJESTY'S

PRINCIPAL SECRETARIES OF STATE, &c. &c. &c.

MY LORD,

THE declarations which you have lately made have inspired the friends of National Education with the hope that so great a blessing will yet be conferred in their time; and as I believe that you are the first minister of the Crown who has publicly declared, that "it is the paramount duty of the Government to provide education for the whole body of the people," I sincerely trust that you will have the high honour of carrying your beneficent intentions into effect—by establishing a parochial school in every parish in the empire. In doing so you will lay a sure foundation for the future glory of your country, in the triumphs of peace, prosperity, and virtue; and lest the progress of that intelligence which would thereby be created should be arrested by restrictive legislation, I have ventured to place my observations on copyright under your protection, and to solicit your attention to that most important subject. The extending the duration of copyright, in my opinion, would be as unjust, as it would be injurious to restrict the liberty of the press itself; and from

this consideration I trust that the extravagant measure which has now been brought forward by Mr. Talfourd will never meet with your approbation, nor command your support. In it the interests of the public have been entirely abandoned; it is opposed to the spirit of all just legislation, and is incapable of any modification that would render it adapted to the present wants of society. It is, therefore, my earnest wish that the principle of that bill will meet with the disapprobation of the House of Commons, and of every one who is desirous to promote the diffusion of knowledge and the advancement of the literature of his country.

I have the honour to be,

MY LORD,

Your Lordship's

very faithful and obedient servant,

THE AUTHOR.

London, January 25, 1838.

OBSERVATIONS

ON THE

LAW OF COPYRIGHT.

In the last session of Parliament a Bill was introduced by Mr. Sergeant Talfourd, Mr. Spring Rice, Lord Mahon, and Sir R. H. Inglis, for the purpose of making an extensive alteration in the law of Copyright, or of literary property, under the plea that it was required to promote the advancement of literature, and to protect the interests of literary men. That bill was read a first time, but the demise of the crown prevented it from being proceeded with, and thus an opportunity has been given to those who are interested in national education, to consider the effect which the proposed changes in the law would have on the progress of literature.

In the present session Mr. Talfourd has again obtained leave to bring in a bill to amend the law of Copyright, and having informed the House that the provisions of his intended new bill will differ but little from those of last year, and as there appears a disposition on the part of many members on both sides of the House to be carried away by the fallacious arguments which he has adduced, we consider it important that the country at large should be made acquainted with the extraordinary provisions of that bill, and with the serious injury which the general interests of literature would sustain by any such legislation being allowed to prevail in this country.

It is an easy matter to excite the public sympathy in favour of literary men, and any measure which has their benefit for its object will generally meet with a favourable reception; therefore, if it were true that the law was so unjust as it has been represented, it is not likely that those who are so well able to state their own wrongs would have submitted, for any length of time, to injuries of a personal nature without frequently complaining. Yet Mr. Talfourd and others have

declared, that the present law of copyright is unjust to authors and their descendants, and therefore he has readily been permitted to submit his views to the consideration of Parliament; and from the feeling which exists in favour of the authors of our literature *it is not to be wondered at that no objection* has yet been made to the principle of the bill, particularly when we have the admission of a Cabinet Minister, that some bills are allowed to pass which contain clauses of the most objectionable character;* and lest such should be the case in this instance, we shall consider it our duty to watch its progress with the greatest anxiety, for we are sure that a more obnoxious and injurious measure could scarcely have been proposed by any body of men. Mr. Talfourd has professed himself a Reformer, but no one who has examined the measure which he has brought forward can believe that he is a sincere one; or surely he never would have busied himself in devising a law which would have the effect of creating a MONOPOLY in literature, and which would do more to retard the diffusion of knowledge, of education, and a taste for literature, in this country, than all the acts of parliament that have ever been passed have done to promote them.

Mr. Talfourd has declared himself in favour of a perpetual copyright in books, and states that he is only restrained from proposing such a law from the belief that the principle would not be recognised; and yet we have a minister of the crown, Mr. Spring Rice, giving his support to a bill which would indirectly accomplish that object. Who could have supposed that, within five years from the passing of that Bill which so many hailed as the commencement of a new era in popular legislation, a minister of the crown would be found to give his support to any measure which would create restrictions on the diffusion of knowledge, and prevent the people from being delighted and instructed by the circulation of a cheap literature? The injurious effects of monopolies have long been recognised, and Mr. Macculloch has forcibly and justly declared, that the act which abolished them (21 Jac. I. c. 3.) "did more to excite a spirit of invention and industry, and to accelerate the progress of wealth, than any other in the statute book." *Copyright* and *patent right* must be considered as synonymous, and the legislation that is required for the one is all that can be required for the other. Protection ought only to extend to such a reasonable period as will give the amplest encouragement to individuals to devote their

* See Mr. P. Thomson's remarks on the Fishguard Harbour Bill.—*Morning Chronicle*, Dec. 22, 1837.

time and their capital in promoting the instruction and comfort of society. It is surely a monstrous idea to suppose that the public shall not be permitted to enjoy, within a reasonable time, as a portion of the public property, the additions which are made to the literature of the country, just in the same way as they *do* enjoy the valuable discoveries in science which have done so much to improve the condition of every individual. The only wonder is, that any one could be found to recommend the continuance of a copyright or a patent right for so long a period as to secure to any individual a monopoly in production during the whole time that the commodity would be required by the public, and such is the effect which would be produced by Mr. Talfourd's bill. Even under the existing law, literature is particularly in this situation, and no fact is more generally known than the extreme uncertainty of authorship. Of the 1500 new publications which are supposed to issue annually from the press of this country, it is given in evidence by Mr. Murray, that not one in a hundred is ever reprinted even at the distance of fourteen years from the date of publication, and this disproportion rapidly increases as the period extends.* It may be doubted if there is one author in five thousand who produces a work which will possess any mercantile value at the distance of seventy-five years. In judging by the past we find that the language, the literature, and the taste of the country are constantly undergoing change, and there is, perhaps, no book in English literature, which was published previous to the year 1600, the copyright of which is of any value, however rich it may be in that poetry which Mr. Talfourd considers to be "the essence of the greatest things." It is therefore with truth we state, that the extension of copyright, as proposed by Mr. Talfourd, would annihilate the reprinting of cheap standard literature in this country. It may be asked, would such a principle be recognised for one moment so far as any invention or discovery was concerned? Would Parliament consent to continue to the discoverer of any powerful bleaching agent, such as chlorine, or to the inventor of any machine whatever, a patent right to the exclusive use of such discovery or invention for the period of his life, and for the farther term of sixty years

* "On a late investigation (1835) into the affairs of an extensive publishing concern, it was found that of 130 works published by it in a given time, *fifty had not paid their expenses*. Of the eighty that did pay, thirteen only had arrived at a second edition; but in most instances these second editions had not been profitable. In general it may be estimated, that of the books published a *fourth* do not pay their expenses; and that only *one in eight or ten can be reprinted with advantage*. As respects pamphlets, we think we are within the mark when we affirm, that not *one in fifty* pays the expenses of its publication."—*Macculloch's Dictionary of Commerce*, p. 144.

after his death; or even for twenty-eight years, and during his life? If such had been the law, it is easy to guess in what state the arts and manufactures of the country would have been at this moment. It surely cannot be said that a discovery or invention may not have required as great an effort of mind, and as great a sacrifice of time, as the production of a song, a ballad, or a tragedy; or even a history, or any of our more valuable works; and so far as the public are concerned, the first may have justly entitled its author to the honours of the peerage and the bounty of the country, when many of the others may have deserved the public censure.

We think Mr. Talfourd's bill has been brought forward at an extraordinary time, particularly in the face of the cheering declarations of Lord Melbourne and Lord John Russell, that it is the paramount duty of every government to provide public instruction for the whole body of the people. We cannot believe that any government would ever contemplate creating restrictions on the liberty of the press, at a time when they are professing a desire to establish an universal system of national education; but certainly had it been the wish of the Chancellor of the Exchequer to promote the advancement of learning, it is remarkable that he should have been a party to the bringing in of any such measure as that proposed by Mr. Talfourd. Had it really been his wish to afford encouragement to authors, and to promote the literature of his country, he needed not to have travelled beyond his own department to have discovered that the greatest discouragement that authors and literature have had to contend with, had been created by his predecessors, and continued by himself, in the tax on paper,* on advertisements,† on newspapers, and in the unjust and compulsory library tax. If it is for the *public* benefit that the British Museum and certain private libraries should be supplied with every new publication, however trifling, or however expensive it may be, surely it is the duty of the Chancellor of the Exchequer to propose that they should be paid for by

* That the Bible and Book of Common Prayer may be circulated at the cheapest rate, the drawback of the duty on paper has always been allowed; but had the Government abolished the patent right in the printing of these works, and continued the duty, they would have accomplished their object much better, and saved a large sum of money besides. However, the intention was good—but if so, it is evident that Government knew that a duty on paper would have the effect to discourage the printing of other works. The present tax on paper is about 15 per cent. on its value.

† To promote the sale of their publications the booksellers have lately established an Advertising Circular, which circulates gratuitously. They pay about £20. a month to be permitted to do so, in the shape of advertisement duty, and £30. besides for the stamps, and the duty on the paper upon which it is printed.

the *public*, and not supplied at the expense of authors and publishers. We have applied the term "private libraries," for surely no library can be called a public library to which the public have no access, as is the case with all of them except the British Museum. These grievances, which are popularly termed the taxes on knowledge, have long been complained of by authors and publishers, and have often been ably brought before Parliament and the public, and by none more so than by Sir H. Parnell and Mr. Macculloch. The opinion of the latter has been strongly expressed; he says,

"The taxes on literature have been carried to such an extent in England as to be in the highest degree injurious. They are at once impolitic, oppressive, and unjust: impolitic, because they tend to obstruct the growth and diffusion of knowledge; oppressive, because they very frequently swallow up the entire reward of the labour of the most deserving persons; and unjust, because they are not proportioned to the value of the article on which they are laid, and are indeed much oftener paid out of capital than out of profit."*

Such objections must be very familiar to Mr. Spring Rice, but yet, in the expression of his anxiety for the benefit of authors and literature, he does not allude to the obstacles which he himself maintains, but offers his support to a measure which is opposed to a great principle of public advantage—the education of the people.†

The importance of national education is now universally acknowledged, and yet at the very time that it is so, a bill is proposed to be brought in to prevent its development. Education makes a people more industrious, and teaches them the benefits that may be secured by industry; and as industry is promoted, so is the national wealth increased—therefore, it is the interest of every Government, and of every individual, that education should be universally diffused. Crime is nearly universally the offspring of ignorance and poverty; and

* *Commercial Dictionary*, p. 143.

† This is not the only instance in which the "Government of the people" has been blamed for neglecting the interests of the many. The friends of popular government have been obliged to submit to be told by Lords Lyndhurst and Ellenborough, "that Bills are sent up to the House of Lords with such recklessness in their composition, so bad in principle, and so utterly impracticable in their details, that unless the House of Lords gave attention to every one of the clauses of any important bill, it would be perfectly impossible to expect obedience from the people. We are called upon almost exclusively to perform the duty of protecting the interests of the poor, even in measures which have for their object the procuring of benefits to the rich—these benefits were to be purchased by fines and imprisonment, imposed only upon the poor. It is not therefore to be wondered at that in doing so we should incur some obloquy from those whose errors in legislation and incompetence we are obliged to reveal to the country."—See Lord Ellenborough's Speech at Tewkesbury, *Spectator*, Sept. 9, 1837.

as education promotes industry, and thereby creates wealth, so it removes ignorance, and lessens crime.* Our greatness as a nation has principally been produced by the extraordinary industry of the people, and that industry has been rendered greatly more productive by the many splendid discoveries and inventions which have been made by our operative mechanics, such as Watt, Arkwright, and others. It therefore may be presumed, that if education, particularly of a scientific character, were more generally diffused, the progress of invention and discovery would be much more rapid than at present, and the wealth of the country still more greatly increased.

If such are the results of education, it follows as a matter of course, that it is the duty of our own government to give the greatest development to the intellectual cultivation of the people that its resources will permit, and to remove every restriction which may in any way retard its progress. Every one must admit that elementary education is merely an instrument by which individuals may be enabled to assist themselves in the process of self-education, and therefore, that any measure which will prevent the public from enjoying the advantage of a cheap supply of standard literature must be very injurious. "Books carry the productions of the human mind over the whole world, and may be truly called the raw materials of every kind of science and art, and of all social improvement."†

As the subject of copyright may be little understood by many who are interested in the question, we think it desirable to supply a short outline of the law, as it formerly existed, and as it now exists, extracted from an article on that subject by Mr. Macculloch, before offering any observations on the principle of the measure which has been proposed by Mr. Talfourd:

"1. For a considerable time after the invention of printing, no question seems to have occurred with respect to copyrights. This was occasioned by the early adoption of the licensing system. Governments soon perceived the vast importance of the powerful engine which had been brought into the field; and they endeavoured to avail themselves of its energies by interdicting the publication of all works not previously licensed by authority. During the continuance of this system piracy was effectually prevented. The licensing act (13 and 14 Chas. II. c. 2.) and the previous acts and proclamations to the same effect, prohibited the printing of any book without the consent of the owner, as well as without a license.

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* "In the last Surrey Sessions Calendar for the eastern division of the county, containing the names of 70 prisoners, at the Newington Court-house, 28 are marked as 'neither able to read nor write,' and the majority of the remainder are described as *imperfectly* educated in the *first rudiments*."—*Morning Chronicle*, Aug. 30, 1837.

† Sir H. Parnell on Financial Reform, p. 27.

"2. In 1694, the licensing act finally expired, and the press then became nearly free. Instead, however, of the summary methods for obtaining redress for any invasion of their property, enjoyed by them under the licensing act; authors were now left to defend their rights at *common law*; and as no author or bookseller could procure any redress for a piracy at common law, except in so far as he could prove damage, property in books was virtually annihilated; it being in most cases impossible to prove the sale of one printed copy out of a hundred.

"3. Under these circumstances applications were made to Parliament for an act to protect literary property, by granting some speedy and effectual method of preventing the sale of spurious copies. In consequence, the statute 8 Anne c. 19. was passed, securing to authors and their assignees the exclusive right of printing their books for *fourteen years certain* from the day of publication, with a contingent fourteen years, provided the author were alive at the expiration of the first term. Every one must be satisfied, that fourteen years' exclusive possession is far too short a period to indemnify the author of a work, the composition of which has required any considerable amount of labour and research; *though twenty-eight years is, perhaps, all things considered, as proper a period as could be fixed upon.* Here the great defect of the statute of Anne consisted in its making the right to the exclusive possession for twenty-eight years contingent on the fact of a person having lived a day more or less than fourteen years after the publication of his work. This was making the enjoyment of an important right to depend on a mere accidental circumstance, over which men had no control. Could any thing be more oppressive and unjust than to hinder an author from bequeathing that property to his widow and children, that would have belonged to himself had he been alive?

"4. Nothing, indeed, as it appears to us, can be more obvious than the justice of extending all copyrights to the same period, whether the author be dead or not. But though the extreme hardship, not to say injustice, of the act of Queen Anne had been repeatedly pointed out, its provisions were continued down to 1814, when the existing copyright act, 54 Geo. III. c. 156, was passed. This act extended the duration of all copyrights, whether the authors were dead or alive, to twenty-eight years, but with the farther provision, that if the author should be alive at the end of that period, he should enjoy the copyright during the residue of his life."—*Macculloch*, Art. Books, p. 140.

It is to us a matter of surprise that Mr. Talfourd, in inviting the attention of the House of Commons to the state of the law as respects literary property, should have proposed to abandon altogether the interests of the public, and that he should be unable to suggest any other means for the promoting of learning and science than that of creating restrictions and perpetuating a monopoly in literary property. To this object alone his Bill is directed, on the grounds,—

I. 1. "That it is required to induce authors to devote their time to the production of works of standard interest.

2. "That the claim of the author to perpetual copyright was never disputed until literature had received a fatal present in the first act of Parliament which was passed for its encouragement—the 8 Anne, c. 19. 1709-10.

3. "That this act remained a dead letter down to 1760, and that no one suggested that its effect had been to repeal

the common-law right of authors to the term during which its remedies were to operate."*

II. Therefore, to restore in some degree what he considers the just rights of authors, he considers it necessary,—

1. "To secure additional justice to learning by extending the time during which the *descendants* of authors shall enjoy the direct pecuniary benefit flowing from the sale or any book which may be published.†

2. "To prevent any author from being permitted to sell his labour absolutely, or for a longer period han twenty-eight years, or during his life!!"‡

III. To accomplish these objects, Mr. Talfourd has prepared a bill by which he proposes

1.—To create a *patent right* in all literary *property* for the term of the natural life of the author and for *sixty years* after his death.—*Section* 3.

2.—To continue to the authors of works which are already published, the copyright during their life, and for sixty years after their death.—*Section* 4.

3.—To provide that if an author be dead, and any copyright be still vested in his representative, then the representative to have the same for the residue of the term of sixty years from the death of the author.—*Section* 4.

4.—To provide that in cases of subsisting copyright, which has been assigned, the assignee shall enjoy it for twenty-eight years and during the author's life, and then it shall revert to the representative of the author for the residue of sixty years from his death.—*Section* 5.

5.—To provide that if any book which has been published for 33 years is allowed to remain out of print, then that any one after having given *one* or *two* years' notice (according to the number of pages) to the proprietor or publisher, may petition the Lord Chancellor, the Master of the Rolls, or Vice-Chancellor, for liberty to reprint the same, and that it shall be lawful for them to allow the petitioner to reprint such book *on such terms and conditions* as they shall consider just!!—*Section* 6.

6.—To continue, what Mr. Talfourd terms, 'the forced contribution,' that five copies of every book which may be published shall be delivered within a month after demand for the use of the following libraries: British Museum, Bodleian Library at Oxford, Public Library at Cambridge, Advocate's Library at Edinburgh, and Trinity College, Dublin.—*Section* 7.

7.—To provide that as some doubts have been entertained respecting the right of Foreign authors, whose works had been first published in a foreign country, to enjoy property in the copyright thereof in the British dominions, it is proposed to secure to them or their assigns such copyright on registering their books at Stationers' Hall, within one year from the time of their first publication in a foreign country!!—*Section* 11.

8.—To propose to make it a *piracy* to print any portions of a book which may be copyright without the consent of the proprietor, unless the portions so printed were *bona fide* made from any book for the purpose of criticism, observation, or argument!!—*Section* 13.

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* See Mr. Talfourd's Speech, p. 3.

† See Speech, p. 8.

‡ See Speech, p. 5.

Having stated (I.) the reasons which Mr. Talfourd has assigned for soliciting to be permitted "to declare" a new law of copyright; and (II.) the object for which he is desirous to legislate; and (III.) the provisions by which he intends to accomplish that object: in objecting to these, we shall commence by stating that the views which are entertained by Mr. Talfourd are opposed to all the legislation that has ever existed in this country; and in seeking to legislate on the subject of authorship, he casts aside the valuable body of evidence which Parliament has already provided to guide any real statesman in dealing with the acknowledged grievances which authors and literature have had to contend with; and in place of proposing to remove them, he has declared himself willing to continue them all, and to add such others as will prevent "the productions of the great in literature" from scattering the seeds of knowledge and of truth over the length and breadth of the land. We are opposed to Mr. Talfourd on every statement, and to the principle of every alteration, which he has proposed, and we are sure that, if he had been specially retained to draw up a Bill for the express purpose of "inflicting a heavy blow and great discouragement to literature," he could not have devised a measure which would have more completely accomplished that object, and that too under the profession that it was intended to promote the advancement of learning; such encouragement would be opposed to the interests of society, and to every principle of justice; and this we trust we shall be able to prove.

I. 1. It may be denied that authors require any farther protection to induce them to undertake works of the most laborious character, and such as require the greatest research; and we are sure that Mr. Talfourd will not be able to produce a single instance in which any literary undertaking has ever been abandoned from the want of legislative protection; but, on the contrary, he will find, from the evidence of those who are most capable of judging, that the present extended period of protection is not required to protect either the interests of the author or of the publisher.* Mr. Murray, the eminent publisher, and most extensive purchaser of authorship, has given, in the most clear and satisfactory manner, his reasons for the truth of such an opinion.† He was asked,

"In treating with an author for the purchase of copyright, should you give more for the twenty-eight years, now absolutely extended to authors, than you would for his copyright of fourteen years, as formerly?—I do not think I should, because

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* See the Evidence of Messrs. Longman, Rees, Murray, &c. as given before the Committee of the House of Commons, on Acts respecting Copyright, No. 341, 1813, and No. 280, 1818.

† See Minutes of Evidence, p. 61, No. 280, 1818.

there are so few books, upon the copyright of which we can calculate for its extending to twenty-eight years. The chance that a book will survive the first fourteen years is so small, that I do not feel that the twenty-eight years' certain copyright, in the generality of works, would be sufficient to enable me to increase the terms of the author; generally speaking, there are few books whose reputation extends beyond fourteen years, so as to render them a valuable property after that period."

Again, it was asked,

"Are you not aware, that in 1814 it was considered a great point, for which many petitions were presented to the House of Commons, to have the contingency of the twenty-eight years' copyright turned into a certainty?—[To this Mr. Murray replied]—I think it was so considered, but I do not believe I was one of those who were very desirous of that extension."

This answer not being agreeable to the wishes of some of the Committee, it was again asked,

"Can you form any calculation what the chances are of a book having a sale, after the period of fourteen years is expired?—The average of chances is, that it would not have any sale beyond the fourteen years. Perhaps I should say that the average would be about *one in a hundred* that would be likely to retain any value of copyright after the first fourteen years had expired."

Mr. Longman was asked,

"As a principal bookseller, and a great purchaser of copyright, did not you consider an extension of the term of copyright quite equivalent for the loss which the booksellers would sustain by the delivery of the eleven copies?—I did not consider that.

"Was that generally thought?—I do not think it was; there were some persons of that opinion."

We have also the testimony of the late Mr. Rees to the same effect, than whom there was no one more capable of giving a correct opinion. He was asked,

"Do you ever require any protection of copyright for high-priced books?—That is hardly necessary, but in very few instances; generally speaking, there are very few expensive books of which the copyright is of any value after the publication.

"Would you prefer abandoning the copyright to giving the eleven copies?—In most instances of expensive books we would do it, particularly in books of limited numbers."

Again, it was asked,

"Would you, rather than pay the eleven copies, surrender the fourteen years' copyright given by the Act (1814)?—Yes, we would; upon that point I have made some calculations; I have found, out of seventy-six authors, whose books we published in the years 1803—4, now just fourteen years have expired (1818); only twelve of them have died within the period, and I do not believe there is one of the copyrights of those twelve which we consider of any value whatever, so that we should certainly prefer being placed in that situation than deliver out eleven copies.

"The additional copyright of fourteen years, then, has been of no great avail to you?—No.

"How many copyrights retain any considerable value twenty-seven years after publication?—Not one in fifty.

"In your opinion, what is the effect of a book being put into a public library, to which people may have gratuitous access, with regard to taking people out of the market?—Certainly, I think it occasions a prevention of the sale of a great number of copies."

If the evidence of Mess. Colburn, Bentley, Saunders and Otley, and other extensive publishers, were to be sought for, we believe it would be found that they would willingly give up a large portion of the present period of copyright for a very trifling concession on the part of the Chancellor of the Exchequer—so far as they are concerned *sixty months* in place of sixty or one hundred years is all the protection that they would ask for. Experience has also proved, that no such protection is required; for it may be said, that the noblest monuments of British genius were all produced within the period when authorship was least protected, as the works of Spenser, Shakspeare, Bacon, Milton, Owen, Baxter, Locke, Butler, Johnson, Hume, Gibbon, Robertson, A. Smith, Cowper, &c.

From the extracts which have been given from the evidence of the eminent publishers who are the most extensive purchasers of authorship, and the greatest patrons of literary men, we think it cannot longer be doubted that an extension of copyright would not be of any advantage to authors; and as this is the opinion of Mr. Macculloch, who is himself one of the ablest and most laborious authors of the present time, and whose attention has been particularly directed to such questions, it ought to be admitted as a *fact* that no such legislation is required; he says,

"It has been argued by many, that copyright should be made perpetual (which is Mr. Talfourd's opinion); that were this done, men of talent and learning would devote themselves much more readily than at present to the composition of works requiring great labour; inasmuch as the copyright of such work, were it published, would be an adequate provision for a family. But we doubt much whether these anticipations would be realized. Most books or manuscripts are published upon the presumption that there will immediately be a demand fo them; and we apprehend that when copyrights are secured for twenty-eight years certain, very little more would be given for them were they made perpetual. The copyright of an unpublished work is, of all descriptions of property in which to speculate, the most hazardous, and the chances of reaping contingent advantages from it, at the distance of twenty-eight years, would be worth very little indeed. We are therefore clearly of opinion, that good policy suggests the limiting of the exclusive right of printing and publishing literary works to such a reasonable period as may secure to authors the greatest part of the profit to be derived from their works; and that this period being expired they should become public property. We do say, that more injury than benefit would result to literature by extending the period of copyright beyond twenty-eight years."—*Macculloch's Commercial Dictionary*, Art. Books.

I. 2. Mr. Talfourd states, that "the claim of the author to perpetual copyright was never disputed until literature had received a fatal present in the first act of Parliament for its encouragement—passed A.D. 1709; and that so far as he can trace, there was no interference with the common-law right of authors until the year 1760."

It is not here necessary to enter into a discussion to shew that it is doubtful whether any such right as that which has been claimed did exist at common law—on that point many eminent lawyers have held different opinions; and we shall leave Mr. Talfourd to establish the fact, if he considers it of importance to do so. At any rate, if such a right did ever exist, it was decided by the House of Lords, that it was abrogated by the statute of 8 Anne; and as we find that the common law did not afford a protection to literary property in the period from 1694, when the licensing system expired, until it was again protected by the statute of Anne, we have a right to assume that it did not exist, otherwise "the excellent statute," as Mr. Godson calls it, would not have been gladly accepted by the booksellers of that day. The following account of the origin of literary property is much more probable than that which has been assumed by Mr. Talfourd.

"On the discovery of the art of printing, the first inventors were very desirous to monopolize it, and therefore did their utmost to conceal the process. But in spite of their endeavours it soon spread; printers multiplied and interfered with one another, as must always be the case, in a greater or less degree, with persons who are concerned in the same trade. In order to prevent this inconvenience, some of the early printers applied to the Pope, the republic of Venice, and the state of Florence, to get the sole privilege of printing the books of which they were the first publishers; and this they obtained for a term of years, seldom exceeding fourteen years, and often not so long, as appears from the first editions of the Classics to which patents are commonly prefixed. Hence it would appear that literary property was originally a privilege granted, not to authors, to encourage them to write, but to printers, to induce them to print editions of works which were then in manuscript. But the transition from the encouragement of printers to that of authors was natural and obvious; and accordingly, soon after, privileges appear in favour of the author, which are by him assigned to the bookseller whose name appears on the title-page. Upon this footing, therefore, the matter stood throughout Europe: the abstract right does not appear to have been legally recognised; but privileges were granted from favour, and with a view to public expediency."—*Edinb. Ency. Article, Literary Property.*

It never has been said that in England a property in literature originated in the desire either to benefit printers or authors, for it is admitted, that until the year 1556 there is no evidence of the recognition, in any form, of the copyright of authors;

and whatever right was supposed to originate from that period was derived from the charter which was then given to the Stationers' Company by Philip and Mary, conferring on them the exclusive patent right of printing in England, not for the purpose of promoting the advancement of knowledge, but for the declared object of preventing it;* from the regulations of the Star Chamber, and from the various licensing systems which were afterwards adopted. Whilst the Star Chamber was in existence, in the hands of that oppressive and tyrannical court, the Stationers' Company were the monopolizers of books and the destroyers of literature.† It is, therefore, by examining the bye-laws and ordinances of that body, that we are able to arrive at the practice which existed previous to the act of Anne; and in doing so, we do not find the slightest allusion which can lead us to suppose that an author possessed any property in the books which were published by the members of the Stationers' Company. They are always spoken of as being the property, by consent, of some member. This state of things existed both under the licensing system, and in the period from 1694, when the licensing system terminated, until the statute of Anne, as may be seen by referring to the bye-laws which were agreed upon in 1681 and in 1694; and as the custom of a trading company cannot control the law, it follows that they had no law, and that they only substituted their own private trade regulations to prevent any quarrelling among themselves in the enjoyment of a monopoly which they had succeeded in creating

* "The original charter of the Stationers' Company was granted by Philip and Mary, *in the year 1556. It was the declared object of the sovereign at that time* to prevent the propagation of the Reformation; and it seems to have been thought that the most effectual means to do so, was to impose the severest restrictions on the press." To accomplish this object, ninety-seven persons were incorporated by name into a society, and to these and the other members was given the exclusive patent right of printing in England; and with power 'to search, seize, and burn all prohibited books, and to imprison any one that should exercise the art of printing contrary to this direction.' This most violent and obnoxious privilege was even confirmed by Elizabeth, and it appears to have been continued down, as we find it recognised by the Star Chamber. The object of all this was not to protect the interests of authors, but that the printing of books might be restrained as much as possible, and that Government might have a summary means of reaching at least the printer of such books as were objectionable to them. The licensing act of Charles II. 1662, had the same object in view, and it was not that he wished to serve the Stationers' Company that he prohibited the importation of any books which had been entered in their registers, but that he might have the arbitrary power of reaching the printers and publishers, if any thing were printed which was offensive to him or his ministers.—See *Maughan*, p. 12. We are surprised that any author who could collect such information could strain it so as to suit his own views and defend its arbitrary principle.

† *Godson.*

and maintaining; but in this they were not always successful, for we find them constantly complaining that their bye-laws had been evaded by "evil-minded men," who sought to abuse trade by violating their regulations; and yet we have the assertion of Mr. Talfourd, that the claim of an author to perpetual copyright was never disputed until 1760. As these "ordinances" of the Stationers' Company are rather a curiosity, and furnish a sample of city legislation in the olden time for the wholesome object of protecting their own interests, we shall give the one which appears to have been the last issued by that body:

"At an assembly of the master, keepers or wardens, and commonalty, of the mystery or art of Stationers of the city of London, held on the 14th day of May, 1694, the several laws, ordinances, and oath, hereafter following, were then made, enacted and ordained:

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

"Wherefore, for the better preservation of the said ancient usage from being *invaded by evil-minded men, and to prevent the abuse of trade by violating the same*,* it is ordained, that after any entry or entries is or are, or shall be, duly made of any copy or copies, book or books, or part of any such copy or copies, book or books, whereof such due entry hath been made in the register book of this Company, to or for such other member of this Company, or shall sell, bind, stitch, or expose the same, or any part or parts thereof, to sale, without such licence,—that then such member and members so offending shall forfeit and pay to the master, and keepers or wardens, and commonalty, of the mystery or art of Stationers of the city of London, the sum of *twelve pence* for every such copy or copies, book or books, part or parts of every such copy or copies, book or books, imprinted, imported, sold, bound, stitched, or exposed to sale, without such license or consent as aforesaid."

It must be evident from the reading of such a document that the Stationers' Company had no law beyond their own regulations to maintain the right which they claimed; in it the word author is never mentioned, nor is it inferred that any one, unless a member of the Company, can be the proprietor of any copyright whatever. This is placed beyond all doubt

* In the ordinance of 1681, this is differently expressed, as "which privilege and interest is now of late often violated and abused."

from its also "being the practice to register in the same manner foreign books," to which no subject of England could pretend to an original right.

"To prevent the inconvenience of different persons engaging (perhaps unknown to one another) in printing the same work (which might prove the ruin of both), the person who first resolved on it, and entered his design in that register, became thereby the legal proprietor of such work, and had the sole right of printing it;* so that there has scarce ever been a book published in England, but it belonged to some author or proprietor, exclusive of all other persons. This is evident to every one that hath ever viewed the Stationers' Register, from the erection of that Company down to the year 1710, when the act of 8 Anne was passed, which refers to this as an usual practice."

In this account of the matter by Carte, as quoted by Maughan, p. 16, we have the whole circumstance explained; and it is evident that it was not because there was any common-law right, but simply because it was a Stationers' Company regulation, "to prevent the inconvenience of different persons engaging in printing the same work, which might prove the ruin of both."

Mr. Talfourd must bear in mind that, in the special verdict case, Miller *v.* Taylor (1769), upon which he lays so much weight, it was only found as a *fact*, and not as the *law*, "that before the reign of Queen Anne, it was usual for members of the Company of Stationers to purchase from authors (what they considered) the perpetual copyright of their books, and to assign the same from hand to hand, for valuable considerations, and to make them the subject of family settlements." Had Mr. Talfourd not been carried away by his desire "to declare the law," instead of investigating the law, on this subject, he would have found on inquiry, that the old practice, as stated in Miller *v.* Taylor, is still continued, and that shares of books are frequently sold, and pass from hand to hand, which have ceased to have any legal copyright for the last fifty years. Monopolies have invariably been found to be injurious, and it is fortunate for the public that there always have been men of the highest respectability who are not interested in maintaining them; and we are informed that some members of the Stationers' Company have still to complain, like their brethren of the olden time, that *evil-minded men* do arise to disturb them in the enjoyment of what they *would wish to consider* as their property, but which the law has declared to be the property of the public.

* Such a claim is not even pretended to have been sanctioned by the common or statute law.

Whatever might have been the state of the common law, it is evident that, after the expiration of the licensing system, neither the law as it was, nor the ordinances and bye-laws of the Stationers' Company, were able to prevent the reprinting and publishing of works without the consent of the authors or proprietors; and therefore we find that in the years 1703, 1706, and 1709, the booksellers petitioned the House of Commons, "that leave might be given to bring in a bill to secure a property in such books as have been, or shall be, purchased from the authors;" which clearly shews, that a perpetual copyright was not only not recognised, but that the claim was successfully resisted. Accordingly, a bill was introduced in February, 1706, and after having been read a second time, and reported with amendments, it was dropped; and nothing farther was done in the matter until December, 1709; which at least is a proof that Parliament did not recognise a common-law right in literary property, or they certainly would have provided a remedy against an open breach of the law before 1710.

I. 3. Therefore it would appear that the "fatal act," which destroyed the assumed claims of authors and booksellers, was obtained on the repeated applications of the latter. For we find that, on a petition being presented to the House of Commons in December 1709, leave was given to bring in a bill, which, after various amendments had been made, was passed into a law in the April following, 1710. The statute which had thus been obtained has every appearance of having been drawn up with the greatest care, and in it the intentions of the legislature are so clearly expressed as not to be mistaken. We have the authority of the journals of the House of Commons to shew that it was expressly the intention of the House to destroy such a monopoly as that which had been claimed by the Stationers' Company (a perpetual common-law right in books); and therefore we find that the bill when it passed the Commons limited the duration of copyright *to fourteen years and no longer*, and that it also contained a clause which conferred a summary power on the Archbishop of Canterbury and various other high functionaries to regulate the price of books, without any appeal, on complaint being made to them. In the House of Lords various alterations were made and an additional clause was added (section XI.), which granted the contingent fourteen years, provided the author were alive at the expiration of the first term; and they also omitted the clause which conferred a summary power to regulate the price of books. The first was agreed to by the Commons, but they refused to pass the bill if the other were insisted upon, which furnishes an unquestionable proof of the importance which was then attached to that provision; and in a conference with

the Lords they submitted the following reasons for the objection which they entertained:—

"First, because authors and booksellers having the sole copies of printed books *secured to them by this bill*, the Commons think it desirable that some provision should be made that they do not set an extravagant price on useful books.

"Second, because the provision made for this purpose by the statute 25 H. VIII. c. 15, having been found to be ineffectual, and not extending to that part of Great Britain called Scotland, it is necessary to make such a provision as may be effectual, and which may extend to the whole United Kingdom."

To the objections of the Commons the Lords replied by a message that they would not insist upon their amendments.*

From what has been said it must appear evident that it was the intention of the framers of the Bill to guard against the possibility of authors and publishers abusing the power which Parliament had secured to them by this Bill, by affixing "*an extravagant price on useful books;*" and in this they shewed a greater desire to promote the diffusion of cheap literature, than either Mr. Talfourd, Mr. Spring Rice, Lord Mahon, or Sir R. H. Inglis.

In the preamble to the Bill, which is sufficiently explanatory, it is not even asserted that it had been unlawful to print any book without the consent of the author, although the practice is admitted to have been common. It is in these words:

"Whereas printers, booksellers, and other persons, have of late frequently taken the liberty of printing, reprinting, and publishing, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families—for preventing, therefore, such practices for the future, and for the encouragement of learned men to compose and write useful books, may it please your Majesty that it may be enacted," &c.

This act had no retrospective operation beyond that of enacting that the authors of books already published (the authors being alive), or the booksellers to whom the copies had been sold, should have the sole right of printing such books for the term of twenty-one years, and no longer; but to such works as might be published after the act came into operation the term of fourteen years, and *no longer*, was given; but to this, as we have stated, the Lords added a farther contingent fourteen years, provided the author were alive at the expiration of the first term.†

If the enactments of such a bill, in which the intentions of the legislature are so clearly expressed, were not made

* See Journals of the House of Commons, vol. xvi. p. 396.

† See the act of Anne printed in full at the end.

available for the public good, by permitting a competition in the supply of literature, it in evident that it arose in the limited demand which then existed, and from the fact, that the trade of publishing was then confined to a few members of the Stationers' Company, who were interested in maintaining the monopoly which had previously existed. It was therefore not to be wondered at that the London publishers should have endeavoured to resist the operation of any law which was intended to break up a monopoly which had continued from the time of Philip and Mary; and it was not until every legal opposition had failed, and until it was determined in the celebrated appeal case of Donaldson* *v.* Becket (1774,) that such opposition was finally abandoned.

In that case it was decided in the court of King's Bench in favour of the common-law right, merely in order that it might immediately be carried by writ of error into the House of Lords, where it was settled, that *if the right contended for ever existed*, it had been abrogated by the statute of Anne.†

On that occasion Dr. Johnson strongly expressed his opinion in favour of the principle upon which the decision of the House of Lords was founded, that there was no common-law right in literary property after it had once been published; and the reasons assigned, as recorded by Boswell, are deserving of great attention:

"There seems to be in authors a stronger right of property than that by occupancy; a metaphysical right, a right as it were by creation, which should, from its very nature, be perpetual; *but the consent of nations is against it;* for were it to be perpetual, no book, however useful, could be universally diffused among mankind, should the proprietor take it in his head to restrain its circulation.‡ For the good of the world, therefore, whatever individual work has once been created by an author, and issued out by him, should be understood as no longer in his power, but as belonging to the public; at the same time the author is entitled to an adequate reward. This he should have by an exclusive right to his work for a considerable number of years."

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* Donaldson was a bookseller in Edinburgh, who commenced printing and publishing cheap editions of books which had hitherto only been printed in London, which naturally gave great offence to those who considered that they had a perpetual patent right, and who wished to establish their *Company law* above the *statute law.*

† *Godson.*

‡ Mr. Talfourd in anticipation that such a case might occur under his Bill, or that the proprietors might affix an extravagant price to their publications, proposes to give individuals who might consider themselves aggrieved a right to apply to the Courts of Law for redress! But what individual would be foolish enough to put himself to the trouble and expense of £200. or £300. for such a purpose? Such legislation is ridiculous. An individual ought either to have a property in an article, or he ought not. If it be his own property, he ought to be at liberty to sell it or not, as he pleases.

In this opinion of Dr. Johnson the question is fairly stated between the public and individuals, and we think that there are very few who will question its correctness.—We trust that we have now adduced sufficient evidence to shew that a perpetual common-law right in authorship was never recognised; and that it is impossible to suppose that the intentions of the act of Anne were not "to limit the right of authors to the term during which its remedies were to operate."

II. 1. It is an admitted principle in legislation, that it is unjust to the public to permit the continuance of a monopoly or patent right, of any kind, for a longer period than is required to secure to individuals a reasonable remuneration for useful discoveries and inventions; and it never has been a principle of law to grant a patent right for the benefit of descendants. Authorship is more a matter of business than many are inclined to admit; and publishers are undoubtedly its most liberal promoters, and are as much the absolute purchasers of the labour of an author as they are of an engraver, a painter, a paper maker, a printer, or a bookbinder; and as they have given it in evidence, that authorship does not even require its present protection, and that they would willingly relinquish a portion of it to be relieved of, in many cases a very trifling, but in all a very unjust, fiscal regulation, it is evident that no legislation for the benefit of the descendants of authors would be of the slightest encouragement to literature.

The descendants of authors can have no right to reclaim any successful authorship which may have been produced by a deceased relative, and formerly sold at its marketable value, and published at the expense and risk of another. Such legislation would be no more just than it would be to call upon descendants to pay any loss which might have been sustained by the publication of a relative's work. Do all publications yield a profit? We have it in evidence that very severe losses are sustained by the publishers, and that only one book in four yields any profit;* and that not more than one in a hundred is of any value after the first fourteen years have expired.† In the face of such evidence, can it be believed that any legislator could be found to propose that the descendants of authors should have all the chance of success, and that the descendants of publishers should have none? What, we ask, is there in authorship, to entitle a descendant to make such an extravagant claim, and to assume a precedence over all other descendants of men of genius? Are not the authors of the great discoveries and

* Mr. Baldwin.

† Mr. Murray, p. 16.

inventions which have enriched the nation more entitled to a nation's bounty, than the authors of such works as would be benefited by an extension of copyright? Are the authors of some popular tale, or even of some of our most successful dramas, to be compared to the great in science? Mr. Talfourd may consider that they are, but he may be assured that the world will never agree with him.

We believe that some authors of "great poetic feeling" will think that we are incapable of estimating the value of their "divine inspirations;" but what men of genius are so unreasonable as authors?* —are not our great painters, and sculptors equally gifted with that divine inspiration "which impresses thoughtful minds with the sense of truth, made visible in the severest forms of beauty;" and will not some of their works live as long as true taste is appreciated by the human mind; and yet can it be believed that any law would be proposed in our time that would create a patent right to limit for generations the diffusion of works which might be adapted "to delight the lowliest conditions of humanity, and to create the taste by which they shall be appreciated?" A picture, a statue, an engraving, a book, are all equally efforts of genius, of mind, and of labour,—but are they the only efforts of genius, or are they any thing more, except in degree, than that of any other labour and skill? The Deity, in the infinitude of his wisdom, has created every diversity of intellect, that the happiness of his creatures may be promoted to the greatest extent. But some men wish to claim for authors the most absurd and preposterous right to national sympathy; and stigmatize their fellow-men as destitute of an "honourable spirit, not to say of a liberal one, who can hesitate on the propriety of giving unlimited copyright to

* As an illustration of the unreasonableness of some authors, we have only to direct attention to Mr. Dickens's dedication of the *Pickwick Papers* to his friend, Mr. Sergeant Talfourd, which we are informed was conferred "as a slight and most inadequate acknowledgment of the invaluable services which Mr. Talfourd has rendered to the literature of the country, and of the lasting benefits which will be conferred upon authors of *this* and *succeeding* generations, by securing to them and their descendants a permanent interest in the copyright of their works."

From this feeling acknowledgment of the services of Mr. Talfourd, we might be led to suppose that the author of *Pickwick* and *Oliver Twist* had had occasion to *feel* that, as his *laborious* and *protracted* literary exertion had not been adequately rewarded, there was now some prospect, at least, that he might be creating an "inheritance" for his descendants. But, as we have said, what reward will satisfy some authors? Mr. Dickens has probably derived *twenty-fold* more pecuniary profit from the sale of the 35,000 copies of his *Pickwick Papers*, than the Rev. W. Whewell will ever receive from the sale of his elaborate and splendid *History of the Inductive Sciences*; and we shall be very much mistaken if the copyright of the *Pickwick Papers* will possess any mercantile value even at the distance of fourteen years.

authors;" and with ingratitude, because the descendants of literary men, even at the distance of *two hundred years*, are not supported by the public bounty.* The sooner that such claims are disallowed the better; the pensioning of descendants never did, and never will, do any public good. When it is abandoned, we shall have a succession of men who will seek to depend upon their own industry for support, and who will labour to create a fame of their own, and not consider that they have a right to be supported in indolence at the public expense, because their ancestor was a man of genius and of industry.

II. 2. No one will object to copyright being treated as personal property, but surely in doing so it is absurd to seek to "declare a law" which will prevent it from being considered as such. What could be more arbitrary and unjust, than to deprive an individual of the right to dispose of the productions of his own mind, and to compel him to leave it to descendants or representatives, to be disposed of as they may think proper? Does the law deal with any other property in that manner? We think not. Without establishing the principle of entail in literature—and not even then, unless the Mosaic law (Lev. xxv.) is specially applied to that description of property—Mr. Talfourd would not succeed in preserving copyright as an "inheritance" to the descendants of authors. Mr. Talfourd's scheme of preventing an author from selling his labour does not appear to be an original idea, as we are enabled to furnish the important evidence of Mr. Sharon Turner, who is one of the most distinguished historical writers of the present age, upon this very point, to shew the absurdity of such a principle.

Mr. Turner was asked,

"Are you aware of any custom, or pretended custom, in the book trade, which operates to the disadvantage of authors in their dealings with booksellers?—*I am aware of none at all.*

"Are you of opinion, that any advantage would result to authors from a division of the term of copyright into two portions, and *from an enactment*

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* Mr. Talfourd and Mr. Maughan pour out their invective because the great-grand-daughter of Milton was reduced to distress about 1775. Now Milton's Paradise Lost was first published in 1667; and as we are told, by Mr. Talfourd, that the claim to perpetual copyright was never disputed till 1760, how is it then that such a long copyright did not benefit his descendant?—is it because it had passed into the hands of the bookseller?—could any law prevent it from doing so? We are also favoured with the same expression of indignation because a descendant of Shakspeare, a few years ago, was allowed to work as a day-labourer on the roads of Warwickshire. We have seen in our own day the descendants of public men, who were ennobled *long* after these great men, and whose ancestors had princely endowments conferred upon them, who are now reduced to poverty by their own misconduct;—are they also to be relieved as often as they fall?

that no sale of the second portion should take place, till after the expiration of the first?—I think no benefit would result to the authors; I think it would be desirable that all contracts for copyright should be in writing, and that the term for which the author disposes of it should be expressed.

"Do you conceive it would be no advantage to an author if he alienated the subsequent part of his copyright, after a certain time had elapsed, five, six, or seven years, which might enable him to judge a little of the demand for, and the value of, his work?—I give two answers to that question; in some *rare* cases it would be much more to his advantage to make a contract after the experience of one or two editions; but in the *great majority* of cases not, because in the great majority of cases books do not sell."*

We shall leave Mr. Talfourd to establish the justice of the scheme which he has proposed for the benefit of descendants, and also to shew that, if such a principle were recognised, it would be calculated either to benefit society, or to promote the literature of his country.

III. In the Bill which has been proposed by Mr. Talfourd, it is with regret that we state that there is not one clause which is calculated to effect any improvement in the law of copyright. The objections to it are—

1. That no extension of copyright would have the effect of increasing the mercantile value of authorship; as is fully established by the evidence of Messrs. Longman, Rees, Murray, Baldwin, &c.

2. That it is given in evidence, that few expensive works require any copyright, and that authors and publishers would prefer to abandon the claim to a portion of the copyright of many works rather than be obliged to deliver twelve copies, as the law formerly required them to do—eleven to the Universities, and one to the printer. Also, that many works which might have tended to promote literature have been withheld from publication on that ground; but we have no evidence that any literary undertaking was ever abandoned because only fourteen years' copyright was absolutely secured to it. The most eminent publishers have also given it in evidence, that the value of a copyright for twenty-eight years is not more than one for fourteen years, in consequence of the extreme uncertainty of literary success.

3. That such books as require the greatest labour, and which deserve the greatest protection, require it the least—as, works on Science, Law,† Medicine, Geography, Com-

* See *Minutes of Evidence*, p. 33, No. 341, 1813.

† Sir T. E. Tomlins, barrister, gave it in evidence, That the extending the copyright from fourteen to twenty-eight years certain was of no actual value at all, inasmuch as Law works are undergoing repeated additions and alterations. See p. 38, of his Evidence, No. 280, 1818.

merce,* &c.; and that an extended term of copyright would only be calculated to benefit the proprietors of works of imagination, which generally yield the quickest return, and which are the least valuable to society.

4. That even the present law of copyright has been found to act injuriously to the diffusion of cheap literature, by continuing the patent right so long that the author and his work become forgot before the public are at liberty to reprint. In this way much valuable literature is annually lost to the country, without the authors or proprietors being benefited in the slightest degree; for the eminent publishers have generally declined the reprinting of works in a cheap form, from the trifling profit that they are calculated to yield.

5. That the present law creates in many instances a copyright of forty years; and that Mr. Talfourd's bill, which proposes to continue it for the author's life, and for sixty years after his death, would create a monopoly which might exist for *one hundred years*, or for three or four generations.

6. That if such a law should ever be permitted to prevail in this country, it would have the effect of continuing a patent right in literature until nearly every author had become obsolete, and therefore unprofitable for publication. There is not one author in FIVE THOUSAND whose works at the distance of fifty years would possess any mercantile value, or which could be reprinted without loss.

7. That the remedy which Mr. Talfourd provides to prevent any book from being suppressed, or allowed to continue out of print, is not conceived in justice; for if any book is private property, the proprietor ought to be permitted to print it or not, as he pleases: besides, the plan which he proposes is deceptive, for in the first place he does not permit any interference until the work has been published for thirty-three years; and secondly, he requires that an individual should subject himself to the trouble and expense of risking an application to the Lord Chancellor, who should have the power to refuse it or grant it upon any terms he might think proper! The right of property ought to be defined, and not subject to the interference of individuals.

8. That Mr. Talfourd proposes still to continue "one of those blessings of the legislature" which exacts "a forced contribution" of six copies of every book which is published to be delivered to parties who are not required to pay any

* Mr. Macculloch's Dictionary of Commerce is, perhaps, the work of greatest labour which has been published for many years. In three years it has been requisite to publish two large supplements, and in less than twenty years the work will require to be rewritten.

thing for them. This abuse is termed the Library Tax, and has long been denounced as an unjust and arbitrary impost, and one of those enactments which profess to be intended to promote the advancement of learning, "by frequently tending to swallow up the entire reward of the labour of the most deserving persons." As an illustration of the operation of this tax, which Mr. Talfourd is willing to be continued, we give an extract from the evidence of the late Samuel Lysons, Esq. the author of Reliquiæ Britannia Romanæ (4 vols. folio, price £18 : 6 : 0) :

"For *twenty-five* years I have been preparing for publication an extensive work on the Roman Antiquities of England, entitled "Reliquiæ Britannia Romanæ," consisting of more than one hundred and sixty plates in folio, many of them 10 inches by 23, on which work I have already expended £6,000. From the nature of this work, which requires that the greater part of the plates should be coloured to render them intelligible, it is not probable that more than a hundred copies will ever be completed, and if the whole of that number of copies should be sold at fifty guineas a copy, I should not be reimbursed my expenses. In the two first volumes of this work, already published, I have given a short letter-press description of the plates, but finding that, under the last act of Parliament for the encouragement of learning, my continuing to give such printed explanations would subject me to the heavy tax of eleven copies [now reduced to six] of my work for the public libraries, and deprive me of several of my purchasers, some of those libraries having bought my two first volumes, I have determined to omit my letter-press, and have engraved my title-pages and list of plates. I am convinced that few books of Antiquities or Natural History, consisting chiefly of plates, which are attended with a very heavy expense, and especially those which require to be coloured, can be published in this country with letter-press, if the editors are thereby liable to be taxed with the delivery of eleven copies for the public libraries, and that the publishers will be under the necessity either of omitting any printed description, or having them printed on the continent, where much would be saved in the article of paper alone, the price of the larger sorts of which in this country is extremely high, in consequence of the heavy duty on them."*

In addition to the above illustration of the oppressive operation of the Library tax, we have it in evidence that many works have been declined by the publishers in consequence; even although they were not to have been at any expense for authorship—and in this way the literature of the country has been seriously injured.

9. That it is inexpedient and unjust to the public to create a foreign patent right in literature in this country; inexpedient, because it is opposed to the principle of the law of copyright, which is only intended to secure to our own authors a reasonable protection for the labour they have been sub-

* See Evidence, p. 48, No. 280, 1818.

jected to; and unjust, because it would deprive the country of the benefit which it has a right to expect from the rapid progress which is now making in science and literature in the United States of America, where the language and habits of the people are nearly the same as our own.

10. That, judging from the spirit of Mr. Talfourd's bill, it appears to be his wish to create restrictions in every possible way to limit the supply of a cheap literature, which may be required to meet the demand from the spread of education among the poorer classes of society. Therefore, to complete the working out of his principle, he proposes to prohibit "the printing any book in which there shall be subsisting copyright, or any book containing *any portion of a book in which there shall be such copyright*, without the consent of the proprietor—unless the extracts are fairly and *bona fide* made for the purpose of criticism, observation, or argument, or to any translation into another language, or abridgement fairly made of any book." The operation of such an enactment it is impossible to mistake. It would prevent the compilation of all books of extracts, such as the 'Book of Gems,' selections of Sacred Poetry, and many School books, which consist entirely of selections, which have been made with great judgment, and which are much calculated to create a taste for literature in the Young. The impolicy and injustice of such legislation would be, that it would inflict a serious injury, without benefiting the authors or publishers in the slightest degree.

11. That to establish the monopoly principle to the extreme extent, Mr. Talfourd states, that "as a doubt has arisen whether a spiritual person, having or holding any dignity, prebend, canonry, benefice, stipendiary, curacy, or lectureship, and being the author of any book, may lawfully sell and dispose of the copyright thereof;" he proposes to declare, that they may be permitted to do so, "any law or usage to the contrary notwithstanding." Now if it is the law that spiritual persons are not permitted to do so, it is at least a proof that our ancestors were desirous to promote the diffusion of useful learning, by avoiding to create the least difficulty in the free circulation of the knowledge of that divine truth, which is so much calculated to promote the best interests of mankind, and to convey to millions the benefit of that instruction, which could not be conveyed by the sound of the voice. The wisdom of such legislation would be obvious—it recognises, that clergymen are partly educated at the public expense, and when beneficed that they are maintained at the public expense—and that therefore the public have a claim to the produce of their literary industry. If we are to understand that

such is the law, it is to be regretted that some publisher, who has the benefit of society at heart, has not been led to try the experiment of benefiting himself and the public, by the discovery of Mr. Talfourd - for certainly no books are more frequently published at an extravagant price than volumes of sermons by clergymen of the Church of England.

12. That as another proof of Mr. Talfourd's desire to restrict the liberty of the press, he proposes to continue to the Universities their copyrights in perpetuity; which privilege has long been felt as a serious evil; so much so, that in place of enabling the Universities to publish their books at the cheapest rate, and thereby promote their more extensive diffusion, it has had exactly the contrary effect. This may be clearly established by the circumstances connected with Clarendon's History of the Rebellion, which has long been greatly admired for the elegance of its composition, and for the correctness of its information, and which was more calculated to have an extensive sale than any other work which has ever been printed at the University press: and yet the only edition which could be obtained by the public in 1818 sold at the extravagant price of £7 : 17 : 6, small paper—and 15 Guineas for the large paper.* At the present time, in 1838, a better edition in 8 vols. 8vo. is sold for £3. 10s. in boards, and we are informed by Mr. Tegg, who has done more to promote the literature of his country, so far as paper and printing are concerned, than the Clarendon Press has done since it was established, that if such a law had not existed, he would have published the said Clarendon's History at one-fifth of its present price, or at one-thirteenth of the cheapest price at which it was published in 1818. We shall leave Mr. Talfourd and his supporters to satisfy the House of Commons that literature is best promoted by enacting such restrictions as will prevent the supply of books at a cheap rate. It has hitherto been supposed, that the more extensively a book is diffused the greater is the chance that its contents will become known —but if it is not the wish of the legislature that the progress of education shall be promoted, then they have only to allow Mr. Talfourd to be permitted to "declare the law" in the manner he has proposed.

13. Lastly, That as the Stationers' Company is a private body, or City Company, it is impolitic to connect it with National legislation in any way whatever; it would, therefore, be much better that the national registry of books should be intrusted to an officer of the Crown in connexion with the British Museum, and that every book, when so registered,

* See evidence of Mr. Harding, p. 31, Report 280, 1818.

should be bound in a substantial manner, and deposited for the general purposes of legislation, and for the benefit of the public; and by such a principle as this being recognised, it would enable the legislature to give a proof to the country that they really were desirous to promote literature by relieving it of the unpopular Library tax.

We have now stated our objections generally to the arguments which have been brought forward by Mr. Talfourd, and supplied some information on the subject of copyright, which we trust will be sufficient to establish, that there was no common-law right in literary property, and that the protection which existed previous to the statute of Anne was only secured to the author or bookseller under the licensing system, "which prohibited the printing of any book without the consent of the owner, as well as without a license." It would be absurd to assert that the licensing system was adopted to protect the interests of authors, when it is admitted by every writer that it was devised for the purpose of restraining the liberty of the press. The bye-laws and regulations of the Stationers' Company also establish the fact, that their regulations were only adopted for their own convenience, and not in conformity with any law, for in these documents the name author is never mentioned in connexion with proprietorship; but on the contrary, it is always stated, that "by ancient usage of this Company, when any copy or book is registered to any *member or members* of this Company, such person, to whom such entry is made, is, and always hath been, reputed and taken to be the proprietor of such book or copy." Now, as this was the practice in 1681, as established by the above extract from a bye-law passed in that year,* it follows, that such must have been the practice under the licensing system, which did not finally expire until 1694. If such was the state of the law, we do not defend it, we merely state the fact in opposition to the assertion of Mr. Talfourd, that authors did possess a common-law right in literary property previous to the statute of Anne. Every one will admit that it would have been unjust to have allowed the law to have continued in that state, and therefore the statute of Anne was passed, which defined the law in the most clear and intelligible language, and which continued to be the law of copyright, with some modifications, down to 1814. We agree with Mr. Macculloch, that the defect of the statute of Anne consisted in its limiting the copyright to fourteen years, and granting a contingent fourteen years provided the author was alive at the expiration of that period.

* See p. 18, *Maughan*.

Now the law, to be just, ought to have declared a fixed period without reference to the life of the author.

Mr. Talfourd would have us to believe that authors have constantly complained of injustice, and that the statute of 1814 was considered by them as an approach to a fairer adjustment of their claims than had as yet been recognised; but the public will be surprised to be told, upon the authority of Edward Christian, Esq. Professor of Law in the University of Cambridge, that no author was consulted on the subject, and that the interest of the public was proposed to be abandoned, on condition that the booksellers should continue to submit to the Library tax, which had virtually been got rid of by Lord Kenyon having decided, that an author had a copyright in his own work, though the book was not entered at Stationers' Hall.

Mr. Christian's account of the way in which this bill of 1814 was obtained, is so graphic that we shall give it in his own words:

"When I read lectures on law at Cambridge, I frequently wanted a book to read a quotation of Lord Hardwicke's or Lord Kenyon's decision; and sometimes when I sent for a book, the librarian returned, that the book was not in the library,—the continuation of Vesey's Reports, and East's Reports, were not there; such books as for many years I had constantly found there. That induced me to inquire why those books did not come as usual; when I found it was on account of Lord Kenyon's decision, that the author had a copyright in his work though the books were not entered at Stationers' Hall; and I found upon inquiry, that attention to this subject had been paid by the British Museum, and that they had taken the opinion of counsel, and that their counsel had advised them, that the libraries had no right to the books unless the author entered the work. I thought it strange, and I sat down to write a lecture on the subject. I examined the subject for many days and weeks, and drew up all I could find upon the subject on both sides, and my conclusion was, that we were entitled to the privilege under the statute of Anne, though the books were not entered at Stationers' Hall; I printed this, though not for sale; I gave it away among my friends. The Honourable Mr. Villiers happened to be at Cambridge, and I gave him one; he wrote to me in a few days, that he was glad I had paid attention to so important a subject;* that he considered it of great importance, and he would bring it before Parliament, and try to have it amicably settled. I communicated that to the University of Cambridge, and all the friends of the University and libraries were glad of it.† I communicated it afterwards to the booksellers. I said, 'We used to have every book—you do not send them now; I am convinced we have the same right to the books as if they were entered;' that produced some inquiry; and *I suggested this*: 'If there is any difficulty upon this, or if you consider it any hardship, in-

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* To compel authors and publishers to deliver gratuitously eleven copies of every book published.

† Because they expected again to get their books for nothing.

crease the extent of copyright, let it be twenty-eight years certain—it is now fourteen, with a contingency if the author lives.' They were all delighted with it; Mr. Butterworth and others were highly pleased with it. I attended several of their meetings at the London Coffee-house, and Mr Villiers' house, and Mr. Villiers undertook to bring in a Bill that it should be amicably settled; we were all then agreed, if the Universities could induce the House, by the influence of their members, and their representatives, to get an increase of copyright; the booksellers undertook never to disturb us again, but that we should have a copy of every book which they published, whether it was large or small, no distinction whatever, nor no opposition whatever. Mr. Villiers brought in the Bill; he was in a bad state of health, and was obliged to bring it in late in the session—the booksellers and the Universities were all agreed—but *unfortunately*, before it could pass through the House of Commons, the *printers petitioned* the House, stating, that there was going to be an increase of copyright, giving a *monopoly to booksellers*—that the copyright would thereby be kept out of the market as common property, and therefore there would be less printing. This was so late in the session, that, as they desired to be heard by counsel, it was obliged to be put off till the next session; but I can say certainly, all the most respectable booksellers consented. Mr. Villiers thinks there were some that objected, but I have no recollection of a single one—I am quite satisfied, that almost all of them were agreed; and one reason they gave was, not only on account of the value, but they stated this as a reason—when an author comes near the end of the fourteen years, we are then in a difficulty, because we are in doubt, if he has lived twelve years, whether he will live the other two, and therefore we do not know what extent of impression to make; because if he dies within fourteen years, all the world are competitors with us, and we are in doubt what number we should print: that was one of the reasons they stated; but they all agreed, if you do but get an extent of copyright, we shall never disturb the Universities again. They were the most respectable and opulent booksellers in London; I did not take down the names, but it appeared to be the approbation of the whole trade. *I was the first person who proposed it*, and I never was so caressed for any suggestion I made, as that of *extending the copyright*, and it was put off that year merely by the petition of the printers, that there might be no increase of copyright."*

Now after this straightforward account of his learned brother, we call upon Mr. Talfourd to state whether the last act of Parliament, which doubled the period of exclusive protection, and continued the copyright of all works during the author's life, was obtained to give additional protection to the interests of authors, or intended to promote the advancement of learning? Certainly not. Mr. Christian has informed us the authors were not consulted; "the booksellers purchase the work, and he did not know that the authors had any more interest in it than a man purchasing an estate subject to tithes." We are also informed by the most eminent publishers, that they were opposed to the *job*; therefore we must admit that it

* See Mr. Christian's Evidence, p. 84, No. 280, 1818.

was the influence of the Universities which obtained the bill, on the terms negotiated by Mr. Christian. Mr. Talfourd and every member of Parliament ought to blush at the deception which was practised upon the House of Commons. We have the admission of an eminent lawyer, that he recommended the University of Cambridge, which is one of the guardians of the literature of England, to use her influence to obtain a statute to create a monopoly in literature for twenty-eight years, and during the life of the author, on condition, that one copy of every book which might be published should be gratuitously delivered to her! We are told, "the friends of the University and the libraries were glad of it." Glad that there was the prospect that a gratuitous supply of books would be continued to them; but disregarding the injury which the general interests of literature would sustain by a *monopoly* in books being secured to the booksellers. The Universities have lately preferred the claim that they are entitled to copies of every American work which is reprinted in this country: but this has hitherto been justly resisted by the publishers; and are we to believe that Mr. Talfourd has put himself forward, as did his learned brother Christian, to bring about an amicable settlement of this question, by offering, in conjunction with the Universities and their representatives, to obtain a copyright in American reprints, on condition that the booksellers would not refuse to give the paltry gratuity of five copies of every such reprint? Is it thus that the interests of this great country are to be sacrificed?

That we may not be accused of blaming the conduct of the "great nurseries of learning" without cause, we shall supply a few additional extracts from the evidence of those who have the best opportunities of judging, and who were expressly examined on the effect which "Mr. Christian's bill" would and did have on the general interests of literature—to shew that the Universities did abuse the power which they possess, and that the claims which they assumed were injurious to national literature.

Mr. Mawman examined:

"What effect in your opinion will the delivery (of eleven copies) have upon the literature of the country,---to prevent publications or not?—I think in some few instances it may suppress a book altogether, where the book is very expensive, and where it is of a *very scientific nature.* An author has declared, though he has a work already in the press, and which he prints with a view to profit, if this legislative regulation should take place for the delivery of eleven copies, he will destroy what he has already printed, and suppress the work altogether."—See *Evidence*, p. 16, 341, 1813.

Mr. J. G. Cochrane examined:

"Have you any reason to believe that the delivery of these eleven copies will prevent the publication of future works?—To judge from past experience, I say, it

will; I have a letter from the Rev. Mr. Ruding, who is printing a work upon the 'English Coinage,' in which the idea is completely expressed. He says, that upon the decision of the House it will *possibly* depend whether he is able to print at all, with so serious a deduction as eleven copies from a very small impression."—See *Evidence*, p. 20, 341, 1813.

Mr. Owen Rees examined:

"Have you in consequence of the burden of this delivery, declined printing any works which you otherwise would have undertaken?—Yes, we have declined printing some works, particularly a work on 'Nondescript Plants,' by Baron Humboldt, from South America; being obliged to deliver eleven copies has also weighed very strongly with us in declining other works."—See *Evidence*, p. 1, 280, 1818.

Mr. Joseph Harding examined:

"Have you declined publishing any works from the pressure of delivering eleven copies, besides Mr. Ruding's 'History of the Coinage?'—Yes, we have.

"Is there any inconvenience in stating what they are?—We have declined publishing Alexander Barclay's 'Ship of Fools,' a work of great rarity; and also, a 'Series of Views, relating to the Architectural Antiquities of Normandy.'"—See *Evidence*, p. 31, 288, 1818.

Sir T. E. Tomlins,* Knt. examined:

"What is your opinion as to the effect of the claim on the part of the public libraries of eleven copies of all works from authors and publishers of such works?—My opinion certainly is, that it is very unfavourable to authors and to literature; and I cannot help saying (if I am at liberty to express my opinion), that every author, and every man who undertakes a valuable work, would rather, in the execution of it (independent of any special law), be looking to the libraries for encouragement, than expect that he should be called upon to deliver eleven copies for nothing."—See *Evidence*, p. 36, 280, 1818.

Mr. John Clarke examined:

"Have you lately declined the publication of any law books, with the improvement of notes?—I have.

"Why did you do so?—Because, if I had added the notes, I should have been necessarily obliged to deliver the eleven copies to the public libraries.

"How does the delivery of the eleven copies operate upon the smaller editions of your law books?—In a great measure in preventing the reprint of them."—See *Evidence*, p. 40, 280, 1818.

Mr. Robert Baldwin examined:

"Do you think that many valuable works, of which a limited number only could be printed, are abandoned on this account?—I believe they are."—See *Evidence*, p. 43, 280, 1818.

Mr. Murray examined:

"Should you have hesitated to publish 'The Costumes' of various Countries,

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* The author of many law works, and the counsel employed by the Speaker of the House of Commons (Abbott) to draw up the Copyright Bill of 1801, which assimilated the law in the United Kingdom, by extending for the first time the statute to Ireland. How was it, may we ask Mr. Talfourd, if the common law was the same in Ireland as it was in England, that the common law could not prevent the reprinting of English copyright works in that country?

knowing that you would be compelled to deliver eleven copies to the libraries? . Certainly, I would.

"Do you consider the compulsory delivery of eleven copies a very heavy tax? . Very much indeed." -See *Evidence*, p. 61, 280, 1818.

It has been made use of as an argument in favour of perpetual copyright, that the Universities have long enjoyed such a right without abusing it, but we think that the case of Clarendon's History will completely destroy that assumption; for it truly may be called "the celebrated history" which many have heard of, but which few have seen, and still fewer have read. It will be asked, how has this happened? We shall explain it. It is a work which we have stated before is published in eight volumes 8vo., and sells at £3. 10s. in boards, and to the circumstance which we are now to relate the public are perhaps indebted for being able to obtain it even at that high price. In 1818, Mr. Joseph Harding, bookseller and publisher, was examined before the Committee of the House of Commons on the subject of copyright, when it was asked,

"What is the price of Lord Clarendon's History of the Rebellion, taking with you that the book belongs to the University of Oxford, and cannot be printed by any other than the University printer?—The London price of the only edition which the Clarendon press has printed for the market (that is, for sale), amounts to £7. 17s. 6d. small, and £15. 15s. large. There is not a small edition of the work to sell, *though greatly demanded.* The price of an octavo edition, consisting of twelve volumes, printed on the continent, sells abroad *for 36 francs, or about £1. 10s.*"—See his Evidence, p. 31.

Now after reading this answer of Mr. Harding, can any one admit that it is "for the advancement of learning" that such a state of things should be permitted to continue? In the first place we are told, that the only edition that was to be had costs £7. 17s. 6d., and that an edition which was printed abroad, in twelve volumes 8vo., not for the advancement of learning, but as a mercantile speculation for individual profit, was to be bought for £1. 10s., which is less than *one-fifth* of the price of the edition which was published by a public body, which is splendidly endowed for the sole purpose of advancing learning. Surely such absurdity will not be permitted to continue for many years. We are also told, that "a small edition was greatly demanded:" but have the public got it? no, they have not. We may suppose that the University came to the following decision, on observing that the above evidence *was published:* That "we will not print this work in any other way than that it shall be considered as a gentleman's book; it must be in eight volumes octavo; but as we have been exposed in this manner we *must consent* to give the public a better book for seventy shillings than that which we have for-

merly charged one hundred and fifty-seven shillings and six-pence." But even if the University has reduced the price of the work to £3. 10s., what concession or what sacrifice is that on the part of the University for the advancement of literature, when we are told that an edition, printed in twelve volumes octavo,* for private profit, is sold at only thirty shillings? Surely the University can have very little desire that the public shall have at least Clarendon's Rebellion at such a price as will enable it to circulate extensively, which we presume was the original object for which it was given. This state of things cannot last for ever, however much Mr. Talfourd may desire it.

Indeed, so little is Clarendon's History of the Rebellion to be met with in this country, that we have known many men of considerable scholarship and standing in society, who have never seen even the outside of the book—such an influence have monopoly and high prices in limiting the demand for the most valuable and useful commodities! We can state farther upon undoubted authority, that in fifty, or even more, of the principal towns of England not one *new copy* of this celebrated History will be found in any of the booksellers' shops, and at this moment that there are upwards of five hundred of the principal booksellers in England that do not keep a copy of the work for sale upon their shelves. We invite any gentleman to test this statement by personal inquiry. We may farther state that it is a matter of doubt with us, whether the University of Oxford has sold at the rate of one hundred copies, in each year, on the average of the last twenty years; and we suspect that the profit, if any, which they have derived from it is very trifling. But as this is a question of some importance, we trust that Mr. Talfourd will move for a return of the sale and profit of that work for the last fifty years. If such have been the fatal mismanagement of that great work, what would have been the fate of many others of less character? Had that work not been specially protected (or rather interdicted) we are satisfied that the sale of it would have been increased tenfold, and the price might have been reduced to twelve or fifteen shillings, or about one-fifth of the reduced monopoly price. We gravely ask Mr. Talfourd, or any other person, whether he considers that such a state of things is favourable to the advancement of literature? and if the bill as proposed by Mr. Talfourd were ever to become a law, we should have many such cases. Will the public now admit that the Universities ought to be en-

* We have not seen the edition alluded to, but we presume that it was at least equal to the Clarendon Press edition of that time.

trusted with the perpetual copyright in any book which is calculated to promote the interests of literature?*

Literature obeys the same law that governs every other production. If it is the wish of government to give the greatest benefit to the greatest number, they have only to remove every restriction which is not required to protect the individual interests of those who create it.

We presume we have said enough to induce those who have the power of legislating to pause before they give their consent to any additional restrictions being imposed on the literature of the country. We cannot believe that Mr. Talfourd could have any wish to restrain the liberty of the press, and we entreat that he will abandon his obnoxious bill—for it is painful for us to have stated, that had he been specially retained to devise a scheme for the checking of that mighty power which is now beginning to develope itself in this great country, and to retard, for a limited period, the developement of that mind which is calculated to civilize, to Christianize, and to popularize, every institution in the country, he could not have proposed a fitter plan to accomplish his object. We sincerely hope that such a feeling never entered the mind of one, who has raised himself from the crowd by cultivating and employing those talents which a beneficent Creator has conferred upon him—not for his own benefit alone, or for the creation of wealth to provide for a succession of idle descendants—but as a trustee for the good of his fellow-men.

Mr. Talfourd must be aware that to confine any work to the few, the proprietor has only to attach an extravagant price to it, and then the many must wait until the price is adapted to their incomes. Until then, the many hardly know that such a poet as Coleridge ever lived; but had his poetry been published twenty years ago in as cheap a form as it has lately

* Our attention having thus been specially directed to the Universities, we beg humbly to state that the principle upon which they are permitted to hold copyrights at all is very injurious to literature. No university or public body whatever should have any such right—they will only abuse it, as has been clearly proved in the case of Clarendon's Rebellion. We should suggest that such a privilege should be abolished immediately; and that the Vice-chancellors of these splendid seats of learning should be authorized to direct the application of a part of the funds of the university to reward literary men for the composition of such useful works in the various departments of human learning, as are required to promote the spread of knowledge among all classes of society—and that such works should not only be published at the expense of the University, but that they ought to be sold at the mere expense of paper and printing; and farther, that every printer in the kingdom should be permitted to reprint them in any shape or form he pleased—simply on condition that they should be printed correctly. We leave the public to determine, whether learning would not be more advanced by such a common-sense policy being introduced, than that the exclusive system, which has been exhibited in the case of Clarendon, should be permitted to be continued.

been done, then many would have been permitted to pick up "the seeds of beauty and of wisdom," which he scattered abroad, and have transferred to their own minds a portion of that "vast intellectual treasure, which he had derived from a boundless research, and coloured by a glorious imagination." This single illustration from the Poems of Coleridge ought to convince Mr. Talfourd that the measure which he has proposed would increase the evil in a tenfold degree. We are sure that he who has displayed so much poetry of feeling will easily understand us, when we remind him, that there is great danger lest, in our respect for the authors of our literature—for those who have given us so much delight—and for those to whom we owe so much for the information which we possess—we may be carried too far in attempting to legislate for their benefit. When our feeling gets the better of our judgment, we are sure to err.

We can excuse the sympathy which Mr. Talfourd has expressed for Coleridge and Wordsworth. The first was careless of his fame, and careless of the benefit which his writings might have conferred on society; and if they contained that "divine philosophy" which his friend so much admires, it is to be regretted that their author permitted, whilst he lived, "that portion of his writings which was all he desired of the world that it should recognise as his," to remain out of print for so many years; and even now they cannot be obtained in an authorized form except at an extravagant price.

The poetry of Wordsworth must submit to the same law—the many can never afford to gratify their taste by forming an acquaintance with "Peter Bell" at his present price. They must wait until "Peter Bell," and his other poetical works, which now sell for forty-five shillings, are reduced to the more plebeian sum of five shillings, or to the price of that poet who has received an invitation to every house in the kingdom whose occupier has any pretension to a taste for "divine poesy"—we mean COWPER.

It must have been evident to every one that the many never derive the full benefit from the writings of any of our standard authors, until competition has reduced them to the lowest price; and this may be illustrated by four well-known books—Blair's Sermons, Walker's Dictionary, Cowper's Poems, and Kirke White's Poems. All of these authors have had an extensive sale within the last fifteen years, perhaps amounting in each case to nearly 100,000 copies, which probably may be estimated at more than ten times the sale of the previous fifteen years; and why?—because Blair's Sermons had been reduced in price from £1. 2s. 6d. to 7s. 6d.; Walker's Dictionary, from 14s. to 5s.; Cowper's Poems, from 14s. to 2s. 6d.; and Kirke White, from 21s. to 3s.

We think Mr. Talfourd has been particularly unhappy in pressing Sir Walter Scott into his list of unfortunate authors. No author that ever lived derived a more splendid return for his literary exertions; and who has ever complained that he was not richly entitled to all the wealth which he created? Did that great man ever complain that the world did not hold him in sufficient esteem, or that his reward was not ample in the extreme? He has not left us to doubt what were his feelings, for he has told us that his success often surprised himself. No one can read his life without being satisfied that his object was neither to delight his contemporaries, nor to leave an inheritance to his descendants. No, his object was to make money; and we may be assured, if his immediate gains had been less, and his future gains more, that the world would never have obtained from him the extraordinary literary exertion by which it has been enriched. We do not complain of this--we only mention the fact. If his literary exertions have yielded a profit of nearly half a million of money to himself and his publishers, surely the public cannot be blamed for being illiberal patrons. If Sir Walter engaged in pursuits and speculations which stripped him of his fortune, he is not the only man of genius who has been subjected to the same misfortune. We may have sincere sympathy for him, but the public are not to blame; and if they liberally paid him once for his labour, we do not see that, because he lost the money that was paid to him, they should be called upon to pay it a second time: and even after all that Sir Walter has done, what benefit has he conferred upon his country in comparison to many an humble individual who has employed his genius in improving the arts and sciences? We do not name the great in science, the comparison would be out of place. Poetry and romance sink into insignificance when compared with such discoveries as are calculated to benefit mankind in every quarter of the globe, and so long as civilization exists.

During the whole period of our history, from the Norman conquest down to our own day, we have found that the highest honours that the Crown could bestow have almost exclusively been conferred upon men whose services to their country admit of but a doubtful investigation. We lament with Mr. Talfourd, that very few of nature's nobility, those gifted minds who have extended the boundaries of human knowledge, and who benefited the age in which they lived, and the results of whose genius will benefit society until the latest time, have been considered deserving of any reward,—such men have been deemed unworthy to wear the feudal badge of honour—the coronet; and the endowments conferred at the expense of the public have generally been given to men,

whose names and whose history, or whose public services, have already been forgot.

To the great in literature we are deeply indebted for the splendid efforts of genius which have assisted to civilize and improve mankind; but authors are not the only men of genius, nor are they the only men who have benefited society. Their works are often confined to narrow boundaries, and it is only a few that are charmed by the sound of their voice, or are instructed by their genius or their philosophy--and after a time their names and their works are forgot: and even this short-lived fame is sought to be cut shorter by such legislation as would render their works unavailable to the masses of society. What English author is to be compared to Watt, or to Arkwright? These authors have written in a language which can be read and understood in every nation of the world, and will continue to be read so long as civilization endures. Their genius was such, that it has changed the moral and political state of society, by augmenting the means of public comfort and individual luxury; and whilst they have civilized man, they have also taught him to employ agents that will enable him to provide for every human comfort, to an extent which can only be bounded by his own industry, and which will provide the means of protecting and sustaining the civilization to which he has been raised; and whilst they did all this, how little did we leave to them of all the wealth which they have created, and for how short a period did we allow them to maintain an exclusive monopoly of that property which was more exclusively their own than that of almost any author whatever?—and "yet in stripping their children of the splendid inheritance which they had a right to claim, have we ever concentrated a nation's gratitude and pride into the form of an endowment, to teach other ages what we thought, and what they ought to think, of their genius, by the substantial memorials of our praise? Would the example be less inspiring if we permitted them to enjoy even a very trifling part of the spoils of their peaceful victories—if we allowed to their descendants, not the tax assessed by present gratitude, and charged on the future, but the amount which that future would be delighted to pay?"

Mr. Talfourd will pardon us for having borrowed so much of his beautiful imagery to adorn the illustrious names of Watt and Arkwright, because we entertain the belief, that a nation's gratitude is more justly due to them than to Milton, Shakspeare, or Coleridge; or even to Marlborough, Nelson, or Wellington: and yet a coronet has never been conferred on any of their descendants; nor has a Blenheim or a Strath-

fieldsaye been entailed to descend as a national memorial of their achievements.*

But it is not too late: we now suggest that a limited order of Literary Associates should be created for life, with the reversion of a moiety of their endowment to any widow or children which they may leave behind—to the widow during her life, and to the children, until the youngest had reached the age of twenty-one, and then to cease. We trust it is in anticipation of providing for some such honorary institution that her Majesty's ministers have sought and obtained so liberal an addition to the Civil List; and if we may judge from the discussion which took place on that occasion, we may have reason to believe that such is the case, and that the new reign will be distinguished by the encouragement which it will extend to such as have laboured to benefit posterity without receiving the recompence of popular favour.

Such an act on the part of our youthful and most gracious Queen would endear her name to the latest posterity, and teach other nations that they had too long neglected to distinguish and reward the men who are the greatest benefactors to their country and to the world. The endowment for such a noble object would be trifling, when compared to the splendid national benefit which might be derived from it. The order might be divided into four classes of ten in each, with graduated endowments, so as to adapt itself to provide for different degrees of talent and industry: say,

Class I.	10 Associates at	£300 a year	£3,000
II.	10	200 . . .	2,000
III.	10	150 . . .	1,500
IV.	10	100 . . .	1,000
			£7,500

It might also be an important regulation to prevent abuse, that every Associate should commence at the fourth class, and only be entitled to graduate upwards, after having enjoyed each grade for at least two years. It would also be important, that the literary production for which the author had been appointed an Associate, should be gazetted along with the fact of his being so. The nomination to be vested in the Crown as the fountain of honour, and the patron of national

* Mr. Talfourd will perceive that it is improper to attempt to carry away the judgment by the extravagance of poetic comparison: it would have been opposed to the interests of society to have continued to Watt or Arkwright a patent in their inventions for any lengthened period. Society has a claim upon every individual for all the benefit which he can throw into the common fund; those of the present day have derived benefits from those that preceded them, and why should those who come after not be required to contribute for those that are to follow?

literature. Fifty Associates, with a provision for a limited increase in the number, would be sufficient to include every author of acknowledged reputation, and the limited endowment would be found fully sufficient to indemnify an author for any sacrifice of copyright which he might be called upon to make. If some such plan as that which has been proposed could be carried into effect, it would do more to promote literary enterprise in this country than any measure which has ever been devised; and we should suggest that all copyright should be limited to *twenty-one years*, and then to cease, and to form a portion of the public property. By such a limitation of copyright much valuable literary property would be saved to the nation, which is now wasted, without benefiting in the least degree either the author, the publisher, or the descendants of either; and we have only farther to request that Mr. Talfourd will use his influence with the Chancellor of the Exchequer to induce him to remove all fiscal exactions, and to call the attention of the President of the Board of Trade to the prohibitory duties which have been imposed by the United States to exclude the importation of British printed books. Let such restrictions only be removed, and Mr. Talfourd may live to see the literature of his country spreading itself over every land which is capable of appreciating it, in the same way that the other products of the genius and industry of his countrymen do find their way to every quarter of the world.

P. S. We are just informed that, in consequence of the opposition which the bill of Mr. Talfourd was likely to encounter from the leading Publishers of London, he has offered to make a compromise, on condition that they abandon such opposition. We understand it is now proposed to give up to the proprietors of existing copyright, in place of "the descendants of authors," the extravagant extension of sixty years from the death of the author.

It is evident that the interests of the public and the advancement of learning have had no more to do with the present measure, which has been concocted by Mr. Talfourd, than they had with the last bill, which was "*suggested and negotiated*" by his learned brother Christian, and the Universities, for the acknowledged object of inducing the London Publishers to submit to continue the gratuitous delivery of eleven copies of every new publication, "whether large or small, no distinction whatever, nor no opposition whatever." We trust that an enlightened House of Commons will never again permit its dignity and justice to be compromised by such jobbing on the part of any of its members as would inflict a death-blow on the future diffusion of English literature.

January 25, 1838.

THE ACT OF ANNE.

As it has been asserted by Mr. Talfourd, that until the year 1760 no one had suggested that the effect of the statute of Anne had been to repeal the common-law right of authors, and to limit the protection of the legislature to the term during which its remedies were to operate; we reprint the statute itself, to shew how unreasonable any such assumption must be, in the face of a more than clear and distinct enactment to the contrary.

8 ANNE, Cap. 19.

An Act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.

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

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

And that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times granted and limited by this act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid; then such offender or offenders

shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste-paper of them: and farther, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the Queen's most excellent Majerty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same; to be recovered in any of her Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

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

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

IV.—Provided nevertheless, and it is hereby further enacted by the authority aforesaid, that if any bookseller or booksellers, printer or printers, shall, after the said five-and-twentieth day of March, one thousand seven hundred and ten, set a price upon, or sell or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too *high and unreasonable*; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of Canterbury for the time being; the Lord Chancellor, or Lord

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

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

V.—The fifth section relates to the delivery of nine copies of each book to the public libraries.

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

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

VIII.—And be it further enacted by the authority aforesaid, that if any action or

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

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

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

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

THE END.

3/19/31 HAB.