

which he shall employ or dispose of it: with respect to this, he can only be accountable to his own mind, and subject to the natural restrictions of prudence and moral obligation. To which we may add, that without this right to dispose of what we possess, the possession would often be of little advantage, and the principal ends of property would be frustrated. For what is it which chiefly encourages men to employ their labour and ingenuity in giving an additional value to the productions of nature, but the power which they have of disposing of the works of their hands to others, for some valuable consideration? What but this power is the foundation of all the labours and benefits of commerce?

ON the general principles of property it is then evident, that an author may dispose of his right to his own work as he thinks proper, either by donation or sale; and that any one who claims it to himself, and takes the benefit of it, without such a grant, is an iniquitous invader of private property. The only point that will admit of dispute here, is, whether an author has a natural right to dispose of his property after his death. It is generally laid down as an axiom in the present question, that no man can dispose of any thing for a longer term than he could himself have possessed it; and from hence it is inferred, that no such thing as a natural right of disposing of property

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for a longer time than the owner's life, can subsist. *Barbeyrac*,* maintains the contrary opinion: Speaking of property he says, "dont le caractere distinctif consiste dans l'exclusion d'autrui POUR TOUJOURS." And there appears to be some ground for this opinion, at least with respect to such property as rises out of labour. In the present case, for instance, a literary work, having been created by the author, has never belonged to the common stock. The public at large having therefore no claim upon it, after it has lost its present owner, it should seem that the person who gave it being has a kind of natural right to determine to whom it shall belong after his death. If this reasoning, however, be not allowed conclusive; the disposal of literary property after death will rest upon the same ground with that of every other kind of possession. The power of disposing of property after death, furnishing one of the most powerful motives to industry in acquiring it; all well-regulated states have thought it expedient, in a variety of instances, to establish and secure this power by the authority of legislation. Now, where this testamentary right is granted or confirmed by law in all similar cases, literary property is entitled to the same privilege, unless some satisfactory reason, derived from public utility, can be assigned for excepting it.

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* See his Notes on Puffendorf, Book IV. Chap. IV. § 2.

THE preceding observations are, I apprehend, sufficient to establish the natural right of authors to their own works; and to show, that upon the plain and fundamental principles of property in general, the writer of any work has an exclusive property in it, at least as long as he lives; and that no person whatever can have a right to multiply copies of it, or by any other means appropriate to himself any part of the profits arising from it, without the consent of the author.

NOR does it at all invalidate the evidence on which this conclusion rests, to urge that the same reasoning will hold good with respect to Sermons or Lectures which are delivered to an audience, and even with respect to the words which a man utters in common conversation. For it is granted, that any discourse which a man delivers *extempore* or *memoriter*, is as much his own, as a book which he writes; and for the hearer to commit it to writing or print for sale, or to make any other use of it, than the author, from the nature of the discourse and the manner in which it was delivered plainly intended to allow, would be not only ungenerous, but dishonest; especially if the speaker expressly precludes his hearers from some particular use of his discourse, as public repetition, or taking copies by writing or printing.

ON the whole, then, copy-right, resting upon the same foundation
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with the right of property in all other cases, is as real and substantial a right as that which a man hath to his houses and lands, and have an equal claim to protection and security from the civil power. If a merchant hath a right to the profits of his trade; if every man hath a right to personal liberty and safety; the author hath a right to the exclusive benefit of his own works: in the enjoyment of this right he may reasonably expect the protection of government; and nothing but the certain prospect of some important advantage to the public can justify the invasion of it.

It was for the security of their natural rights that men first subjected themselves to the restraints of civil government. It must therefore be the duty of governors, from the nature of their office, in general to support the natural rights of individuals; and to limit or suspend them in particular instances, only so far as shall be necessary to the safety and well being of the state. If then it be in itself reasonable that authors should have their copy-right secured to them; if it be practicable for government to give them this security; and if the interests of the public do not require that a sacrifice should be made of this valuable right; it follows, that authors may justly expect the interposition of the civil power, to secure to them the full and permanent possession of their literary property. The objections which have been raised on these grounds, we shall next proceed to examine.

THOSE who deny the right of authors to perpetual property in their own works, readily allow that they are, in equity, entitled to some reward from the public for their labours. Few are so unreasonable as to expect that an author should be so far raised above the level of vulgar mortals, as to feel no cravings after his daily bread. Though it will be confessed that glory is the reward of science; few will assert that it is the only reward, or that those who deserve it scorn all meaner views. That an author has a right to live as well as another man, and that he may without degrading his dignity endeavour by his honest labours to provide for himself and his connections, will not be disputed. But it will be said, that he has a sufficient reward in the first sale of his work, especially if this be secured to him for a certain number of years; that this may be considered as a premium allowed him by the public for his services; and that this premium ought to content him.

THIS, however, is by no means a fair state of the case, if the view which hath before been given of the nature and foundation of property in general, and of literary property in particular, be just. The author of a literary composition is under no necessity to cast himself upon the generosity of the public, or to place his dependence on the patronage of the great: he asks not for a reward, which no
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individual being obliged to bestow, he may perhaps never receive ; or which, in whatever manner it is granted, must have somewhat of the appearance of an eleemosynary donation. He has a work which his own genius and labour have produced, copies of which he offers to public sale. From every one who purchases a copy of this work, he has a right to expect a fair price ; and he only desires to be protected in his natural right of disposing of his own property in what manner and on what terms he pleases. Why should it be thought that the husbandman who brings his corn to market has a better right to the profits of sale, than the author who is willing to dispose of the fruits of his mental abilities ? Or why should the latter be expected to sit down satisfied with a general recompense or gratuity, which it would be deemed unreasonable and ridiculous to offer to the former ? Who would be contented with a vague and indeterminate advantage, under the humiliating idea of a reward, when he has a right to the regular and certain profits of sale ? If authors had no better dependence than private patronage or public generosity ; if they had not a more certain resource in their right to sell their works to booksellers, they would probably sometimes be obliged to feed on the insubstantial breath of fame ; as *Juvenal** tells us the Poet *Statius* must have

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* Sat. VIII. 87.

done, if he could not have sold the property of a new play to the manager of the theatre :

— Sed cum fregit subsellia versu,
Esurit, intactam Paridi nisi vendat Agaven.

It is farther objected, that, however desirable it might be to authors, that the perpetual possession of their literary compositions should be secured to them by law ; it would be so difficult to define and ascertain the offence of invading copy-right, that it would be impracticable to grant them this security, in any manner which would be consistent with the spirit of a free state.

To this objection it might seem sufficient to answer, that the possibility of ascertaining and securing copy-right is supposed in the statute which is made for this purpose, and has been, in a considerable degree at least, experienced by those who have put their works under its protection. But let us examine the matter more closely, and observe the several stages of literary piracy, from the most bold and open, to the most artful and disguised invasions of the rights of authors.

THE first and most daring attack upon these rights, is, that of re-
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printing and selling a work, identically the same in sentiment, method, and expression, with one already published. Now, nothing can be more easy than to detect and punish the offence in this form. For this purpose, it will only be necessary to produce and compare copies of each publication, and to prove the sale of the pirated edition.

THE next form in which surreptitious copies of books appear, is, with some trifling variations in the method or expression, or some inconsiderable omission or addition; just sufficient to prove in a court of law, that the work is not identically the same with that from which it is supposed to be copied; but not enough, however, to prevent the sale of this altered edition instead of the original publication, or to lessen the injury which is done to the true proprietor. The offence in this case is somewhat more difficult to be defined than the former; but it is by no means impracticable. The benefit of the sale of works thus reprinted must generally depend upon their being known to the world, and purchased, as in effect the same with those from which they are pirated. If the variations were so great as to prevent this, the bookseller's chief end would be frustrated. Now, if the altered edition be advertised and sold as the original publication, it would be as easy to prove the sale in this case as the former; and the injury to
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the original proprietor would be as apparent. Nor, so long as it passes upon the world, and is sold, as in the main the same work, can there be any difficulty in deciding it to be, to all intents and purposes, a pirated publication, notwithstanding any small variations in the title page, the omission of any superfluous paragraph, or the addition of a few notes. If the sale of it, under the name and in the stead of the original work can be proved, which it will generally be easy to do, the offence is clear and unquestionable, and the evidence amounts to a direct proof of damages sustained by the author. And where such proof cannot be obtained, it may safely be left with a jury to determine whether the work in question is, in the main, the same with that from which it is supposed to be copied, and whether the sale of it is likely to interfere with that of the original.

POINTS of much greater difficulty often come under the consideration of juries: when, for instance, they are to determine disputes concerning nuisances, or to decide in cases of scandal and defamation; with respect to the latter of which, an action on the case may be had, without proving any particular damage to have happened, but merely upon a probability that it might happen. If the affair be attended with particular difficulty, it may be determined, in perfect consistency with the spirit of a free country, and without any great danger of an
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unfair or oppressive decision, by a *special jury*. Thus far, then, the nature of the offence, and the manner in which redress is to be had, may be clearly ascertained.

NOR is the affair attended with much greater difficulty, when pirated publications assume the form of magazines, dictionaries, abridgments and compilations. In all these cases, the single question is, whether the main body of any work is republished in such a manner, that the pirated copy supercedes, or becomes a substitute for the original. In whatever form any work is offered to the public, it will be very practicable to judge, whether the republication be to all the purposes of gain, the same work with the original, and will interfere with the sale of it. And such extracts or quotations as are incidently inserted as parts of a general plan, in useful compilations, may be easily distinguished from such entire republications as supercede the original work. While the latter are an open invasion of the author's right, the former are so far from interfering with his sale, that they serve to make his work more known and attended to, and therefore are in reality beneficial to him.

THE most difficult cases are those which occur, when a work, the chief merit of which consists in the ideas independently of the expres-
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tion, is pirated by copying the thoughts, and cloathing them in different words. But this is a case which will not frequently happen, because by this kind of plagiarism the publisher loses, what is in most cases the principal advantage, the power of passing the pirated edition upon the world for the original work; and because there are few works which have a sufficient degree of originality of thought, to give the author a right of property merely on this account. The works which principally come under this class, are descriptions of new discoveries in mathematics, natural philosophy, and the arts. And all such works as these have a claim to the right of property founded solely on the invention of the author, and therefore stand on the same ground with all mechanical discoveries and inventions.

In these, the inventors have doubtless a natural and original right of property, which no individual ought to take from them without their consent, and of which even government cannot deprive them, unless the general good of the community renders it expedient. But since it is often of great importance that such inventions should not only be generally known, but freely used and applied to practice; it seems desirable, that the property in such inventions should be purchased from the inventor by the state: and if he should be exorbitant in his demands, or unreasonably tenacious of his invention, the general power,

power, which government has received from the people, of obliging individuals to part with their private rights for the good of the public, will enable them to take his invention into the public stock, allowing, on fair arbitration, (as in the case of lands through which navigable canals are cut) an equivalent for his property. And such an equivalent it is perhaps more advisable for the inventor of a machine to receive from the public, than to retain it in his own hands; considering how difficult it is, even with the protection of law, for the inventor of any useful art to keep the profits of the invention to himself, after the nature and principles of it are once made public.

IN like manner, with respect to those literary works, the value of which solely consists in the ideas, and which may be pirated without retaining the form of expression; the advantage of them to their authors would perhaps be best secured by an immediate grant of some equivalent from the state.

IN each of these species of literary piracy, then, it appears that redress is practicable: in those which are most usual and most injurious to authors, it is easy. However, if, after all the security which law can give to literary property, it must be exposed to some invasions; this is an inconvenience to which it is liable in common with all

other kinds of property : and if government grants to authors all the protection and security in its power, they would be unreasonable indeed if they desired more.

LET us, in the last place, consider the objections to the perpetual security of copy-right which respect public utility. It is here urged that great pecuniary encouragement to literary publications creates a number of needy writers, who without genius, taste, or judgment, obtrude their works upon the public, and rather retard than assist the progress of science and literature ; and that it is injurious to true genius, by diverting its attention from its proper object, and debasing its views.

WITH respect to those plodding authors who write merely for bread, as long as there are readers to be found whose understanding and taste are on the same scale with their own, their works will find purchasers, and no regulations respecting literary property will lessen their number. Nay, to deprive authors of their property in their literary productions, would be so far from discouraging these labourers at the quill, that it would place them upon a level with, or rather give them an advantage over, the most favoured sons of genius and philosophy. For, after such a determination, this inferior class of writers would still re-
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tain the profits of the first publication of their works, which is generally as much as they at present enjoy; and authors of the most distinguished merit could have no more. Thus the most valuable writers, whose genius entitles them to immortality, or whose unwearied labours in philosophical investigation have given birth to works which will afford instruction and improvement to distant ages, are classed with the Ephemera of Literature who are born and die in a day; and a kind of Agrarian law is introduced into the common-wealth of letters, which will leave no room to distinguish and reward eminent merit.

WITH respect to such writers as deserve protection and encouragement, the effect which the increase of their pecuniary advantages would have upon them in rendering them mercenary and avaritious, is doubtful and perhaps imaginary: but the effects of limiting and diminishing these advantages are obvious and certain. It could not fail of subjecting them to those hardships which would damp the ardor of their genius, and lay them under a necessity of sending forth hasty and unfinished productions. From whom are we to expect the most perfect work? from the poet who writes verses only to obtain a present supply for the cravings of nature; or from him, who, expect-

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ing a perpetual property in the productions of his genius, labours to give them all the perfection he is able?

ON the whole, while authors have the common feelings and wants of men, the prospect of a permanent possession of the benefit arising from their works, will always be favourable to science and literature. The public interest, therefore, in this view, rather requires than forbids the legal security of their rights.

THE only remaining objection against perpetual copy-right, is grounded on an idea that it would be injurious to the public, by encouraging a monopoly in the sale of books, which would raise the price of them to an exorbitant height. The odious appellation of monopolizer has been freely bestowed upon authors, and the book-fellers whom they appoint their assigns: but a little attention to the nature of monopoly will shew that this term has been very improperly employed in the present question.

A MONOPOLY only takes place, when the whole sale of any particular article of merchandize is by some unnatural artifice collected into one hand, or confined to a number of individuals, who combine to destroy all competition, by purchasing the whole quantity at market
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of any article, and selling it out at their own price. If a private merchant collects all the salt-petre in the kingdom into his hands, he carries on a private monopoly. If a company have a grant from the crown for the exclusive buying and selling of the commodities of the East, they are chartered monopolizers. When Charles I. appointed that all tobacco and salt-petre should be sold for the benefit of the crown, and when he bought up the whole stock of playing cards and sold them out again at a much higher price, he became a royal monopolist. But no one would think of calling the farmer a monopolizer of corn, who only stores up in his granary and brings to market the fruit of his own grounds; or charge a clothier with monopolizing, while he only offers to sale the goods which he himself has manufactured. The one may sell his corn, and the other his cloth at his own price, and in whatever manner he thinks proper, without incurring the charge of monopolizing; and no one would be so absurd as to expect that to avoid this charge, they should throw the fruits of their labour into the public stock. Yet an author, who, in the person of his assign retains his property and makes his advantage of it, is called a monopolizer.

WHEN authors keep to themselves the profits of any particular work, they only make use of their natural right of property in the
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fruits of their labour, and cannot with any reason be stiled monopolizers, for not chusing to resign their property in order to create a competition against themselves. The only real monopoly that can be supposed to take place with respect to copy-right is, that one bookseller should purchase all the manuscripts that come to market; but this is too large a scale of business to come within the compass of any private fortune.

DISMISSING, then, the idea of authors being monopolizers of their own works; let us examine how far the securing to them the perpetual possession of their right would injure the public, by raising the prices of books to an exorbitant height. It is a general principle in commerce, that, *cæteris paribus*, when demand increases, prices must rise: the increasing taste for literature must therefore give the bookseller an opportunity of raising the price of books; that is, it must give authors an opportunity of disposing of their labours to greater advantage. But there can be no reason to complain that the encouragement hereby given to letters, brings an insupportable burden on the public, while a taste for reading may be gratified at an easier expence than a taste for the fine arts, or even for amusements and diversions; while the advance upon the price of books scarcely keeps pace with that which may be observed in most other articles of trade; and
while

authors with all the advantages arising from these advanced prices are seldom able to make any considerable addition to their fortunes by the sale of their works, but are often so poorly indemnified for their labour, as to be obliged to give up the execution of noble and useful designs.* While the public can afford to gratify a taste for elegance in a thousand other instances, why should they not be supplied with elegant libraries? And why should a gentleman who can afford to grace his library with a splendid edition of a favourite author, be obliged to content himself with a paltry one?

If books are dearer in England than in some other countries, it is

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* THE truth of this remark the public severely feels in the loss which is sustained by the determination which Dr. Priestley has formed, of suspending, for the present, his important and useful design of writing the *History and Present State of all the Branches of Experimental Philosophy*. No one who is acquainted with the indefatigable industry with which this great Philosopher hath pursued his researches into nature, the ardor with which he engages in every undertaking which can serve the interests of science, and the liberal and manly sentiments which govern him in all his pursuits, will suspect him of being improperly influenced by lucrative motives. Yet in the Preface to his *Experiments and Observations on Air*, he says: "This determination hath arisen, not from any dislike of the undertaking, but, in truth, because I see no prospect of being reasonably indemnified for so much labour and expence; notwithstanding the specimens I have already given of that work (in the *History of Electricity*, and of the *Discoveries relating to Vision, Light, and Colours*) have met with a much more favourable reception from the best judges, both at home and abroad, than I expected. Immortality, if I should have any view to it, is not the proper price of such works as these."

partly because the articles of printing are at a higher price; partly because our country is better disposed to give encouragement to authors; but chiefly because we excel most other nations in the elegance of our publications: but this elegance can only be preserved by giving book-sellers that secure possession of their property which will enable them to undertake expensive publications. Nor will this taste for elegance ever raise the price of books to such an height, as to be injurious to learning, or oppressive to the public. For, since the book-sellers can never find it their interest to preclude by far the most numerous class of their readers from purchasing books, by publishing only such editions as do not come within their compass; when they have gratified the wealthy with more elegant and expensive editions, they will of course provide cheaper copies for those purchasers with whom cheapness is an important consideration; as hath lately been done in many instances, notwithstanding all the complaints of the dearness of books.

To this we may add, that time of course reduces the price of books, so that after a few years publication the most valuable works may often be purchased at a cheap rate. In some instances indeed, time will add to the value of a work, and when it becomes extremely scarce, as is the case with respect to all other articles of trade, its price will rise in proportion. But this happens in so few instances

as not to be worthy of notice ; and when a case of this kind occurs, it is perhaps almost universally, not because the proprietor of the work declines reprinting it, and no one else is at liberty to do it, but because the risque attending the republication would be greater than the prospect of advantage. This is well known to be the case with respect to those Greek and Roman classics which are not usually read in schools : and it is not because Euripides's Tragedies are private property, but because no bookseller chooses to be at the expence of reprinting them, that a good edition of them sells for three guineas and a half.

THE sum of the preceding observations is this. The right of authors to the exclusive possession of their own works is founded in nature ; and unless any sufficient cause appears for depriving them of it, ought to be secured and guarded by law. To grant them this security, is neither impracticable in the nature of the thing, nor inconsistent with the interests of the public. The inconveniences which are apprehended from a perpetual exclusive right, are trifling, and in a great measure imaginary. The advantages which would arise from the encouragement which such a security would give to philosophical and literary pursuits, are obvious and important. Since no good reason can be assigned, why authors should be deprived of their right of property,

property, they have a just claim upon government for protection and security in the enjoyment of this right. The interests of the public, instead of opposing, concur with this claim. On the same principles, therefore, that a perpetual right to any other kind of estate, real or personal, is secured to individuals, an author may reasonably expect that his property in his own work should be secured to him and his posterity. Such security is, by no means, at present enjoyed. The provision which hath been already made for a temporary security, in the statute of Queen Anne, and the favourable attention which is at present paid to this subject by the Legislature, do however afford encouragement to hope, that authors will at length obtain a legal grant of perpetual Copy-right: a grant, which, if the reasoning in the preceding pages be just, they have sufficient ground to request. When authors desire permission to communicate their thoughts to the public with freedom on every subject which is of importance to individuals or society, and the secure possession of the fruits of their own genius and labour, "they ask nothing of government, but what every Englishman hath a right to expect from it, LIBERTY and PROPERTY."

T H E E N D.