

college-press; but allows the college to sell their copyrights.

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

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

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

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

SECOND PART.**OF THE LIBRARY TAX.**

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

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

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

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

1st. *On public grounds,*

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

2nd. *On private grounds,*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Ib.*

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

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

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

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

SECTION II.

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

1st. By the University of Cambridge.

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

(1) Reasons for a farther Amendment. 1817.

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

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

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

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

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

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

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

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

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

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

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

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

(2) 4 Burr. 2417.

(3) Ib. 2401.

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

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

(a) Vol. I. p. 528, note on Essay from the Anthology, 1696.

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

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

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

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

2nd. As to the Oxford University.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) 4 Burrow's Rep. 2313.

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

CHAP. II.

FROM THE ACT OF ANNE, TO THE YEAR 1814.

SECT. I.—*Of the Statutes.*

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

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

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

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

(2) Page 33 *Ante*.

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

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

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

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

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

SECTION II.

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

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

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

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

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

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

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

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

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

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

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

It appears that the books entered in the registry of

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

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

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

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

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

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

(1) Page 351.

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

SECTION III.

Of the Legal Decisions relating to Unregistered Books.

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

(1) 16 East, 317.

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

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

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

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

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

This determination was founded on the construction put by the court on the 8th Anne, chap. 19, and is admitted to be a construction opposed to the provisions of the subsequent sta-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On a question which seems to depend rather on the technical constructions of lawyers, than on the rational grounds of the subject, it may not be unimportant, on the authority of Mr. Sharon Turner⁽¹⁾, to state, that when the action was brought by the University of Cambridge, the opinion of the then Attorney General⁽²⁾ was taken on behalf of the printer;

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

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

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

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

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

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

Mr. MARRYAT---Yes, my lord.

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

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

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

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

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

(2) Sir Vicary Gibbs.

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

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

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

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

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

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

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

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

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

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

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

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

BOOK II.

THE

PRESENT STATE

OF

THE LAW.

THE HISTORY OF THE STATE OF NEW YORK
FROM THE FIRST SETTLEMENT TO THE PRESENT TIME
BY JOHN BRANT, ESQ. OF ALBANY
IN TWO VOLUMES. VOL. II.
ALBANY: PRINTED BY G. B. RILEY, 1825.

THE HISTORY OF THE STATE OF NEW YORK
FROM THE FIRST SETTLEMENT TO THE PRESENT TIME
BY JOHN BRANT, ESQ. OF ALBANY
IN TWO VOLUMES. VOL. II.
ALBANY: PRINTED BY G. B. RILEY, 1825.

THE HISTORY OF THE STATE OF NEW YORK
FROM THE FIRST SETTLEMENT TO THE PRESENT TIME
BY JOHN BRANT, ESQ. OF ALBANY
IN TWO VOLUMES. VOL. II.
ALBANY: PRINTED BY G. B. RILEY, 1825.

BOOK II.

The Present State of the Law.

FIRST PART.

OF THE DURATION AND EXTENT OF COPYRIGHT.

CHAP. I.—OF THE DURATION OF COPYRIGHT IN BOOKS,
GENERALLY.SECT. I.—*Analysis of the Statute 54 Geo. III. cap. 156.*1st. *Its general scope.*

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

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

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

(1) Godson on Patents and Copyright, 208.

(2) Vide Part II. of the Second Book.

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

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

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

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

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

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

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

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

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

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

3rd. Of the Penalties for Pirating Copyright.

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

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

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

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

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

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

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

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

The following is the section in full:—

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

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

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

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

The wording of the act is as follows:—

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

6th. Limitation of Proceedings under the Act.

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

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

SECTION II.

Digest of Cases relating to the Duration of Copyright.

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

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

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

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

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