# CHAP. V.

## OF PIRATING THE COPYRIGHT IN ENGRAVINGS, ETCHINGS, PRINTS, MAPS, CHARTS, AND PLANS.

### SECT I.——*Of Engravings, Etchings, and Prints.*

It has been well expressed by Mr. *Godson*, that upon the same principles, and for the same reasons, that the legislature have protected the SCHOLAR in the enjoyment of the fruits of his knowledge and industry; so it has provided that the ARTIST shall not exert his skill and ingenuity without a hope of reward from the result of his labors(1).

There would appear to be a greater difficulty in detecting the piracy of an engraving or print, than in that of the language and sentiments of a literary composition, and the means of concealing the piracy appear somewhat easier in the former than the latter case. Still the subject is capable of ascertainment. And it is clearly decided, that where a print is a copy *in part* of an original, by varying in some trifling respects only from the main design, the vendor is liable to an action by the proprietor of the original; and this liability exists, although the vendor did not know it to be a pirated copy.

Thus in the case of *West* v. *Francis*, it appeared at the trial that the plaintiff was the proprietor of the prints described in the declaration; and that the defendant, who was a print-seller, had sold copies of the same, all varying from the original in some respect, but preserving generally the design of the original. There was no evidence to shew that the defendant knew the prints he sold to be copied from the plaintiff's prints. It was objected for the defendant, that the action was not maintainable under the 17th Geo. III. c. 57, for merely selling a varied copy of a print. The Lord Chief Justice reserved the point, and the plaintiff having obtained a verdict, a rule nisi was obtained for entering a non-suit. On the motion to make it absolute, the court pronounced the following judgment.

ABBOTT, C. J. This Act of Parliament was intended to preserve to artists the property of their works. The question is, what is the meaning of the word "copy" of a print? Now in common parlance there may be a copy of a print where there exist small variations from the original; and the question is, whether the words are used in that popular sense in this Act of Parliament. That is to be collected from looking at the whole clause, by which it is provided, that if any one shall engrave &c., or in any other manner copy in the whole or in part, by varying, adding to, or diminishing from, the main design, or shall print, or reprint, or import for sale, or publish, or sell, or otherwise dispose of any copy of any print, he shall be liable to an action. Now if the selling of a copy with colorable variations is not within the Act

(1) Godson, page 287.

of Parliament, the printing or importing for sale such copies will not be prohibited. The whole must be taken as one sentence; and the sale of any copy of a print, although there may be some colorable alteration, is within the Act of Parliament. The case of Gahagan v. Cooper proceeded upon a different Act of Parliament. In this case I am satisfied the verdict is right, and therefore this rule must be discharged.

Bayley, J. I am of the same opinion. The provisions of the 8th Geo. II. c. 13, are entitled to great weight in the construction of this latter Act of Parliament. That act imposes first a penalty upon any persons who shall engrave, copy, and sell, or cause to be copied and sold, in the whole or in part, by varying, adding to, or diminishing from, the main design; and secondly, upon persons selling the same knowing the same to be so printed or reprinted. The act of the 17th Geo. III. c. 57, was passed to remedy the same mischief, and the words "knowing the same to be so printed" are omitted. It may therefore be fairly inferred that the legislature meant to make a seller liable, who did not even know that they were copies. The former part of the 17th Geo. III. c. 57, s. 1, applies to persons who actually make the copy, and who therefore must know that it is a copy. But the latter branch applies to all persons who shall import for sale or sell any copy of a print. Every person, therefore, who sells a copy which comes so near the original as this, is thereby made liable to an action. There can be no reason why a person should not be liable where he sells a copy with a mere collusive variation; and I think we should put a narrow construction on the statute, if we held such a collusive variation from the original, not to be a copy. A copy is, that which comes so near to the original, as to give to every person seeing it the idea created by the original. For these reasons I think the plaintiff is entitled to recover; and consequently that the rule must be discharged.

Holroyd, J. I am of the same opinion. We should be careful not to give too extensive a construction to this Act of Parliament, but at the same time one sufficient to remedy the mischiefs intended to be guarded against. The question is, what is the meaning of the word "copy." Now in the preceding part of the clause, the legislature, have called that a copy which is not strictly so in all its parts, being one varying from the main design, and I think that the word must have the same construction in the latter part. Gahagan v. Cooper was decided upon another Act of Parliament, and Lord Ellenborough's judgment proceeded upon the particular mode in which the counts of the declaration were framed.

Best, J. concurred.

In treating of the *duration* and *extent* of copyright(1), we have already adverted to the "degree of originality," which entitles the inventor to the protection of the law.

In Blackwell v. Harper, it was held, that the statute was not confined merely to invention, as, for instance, an allegorical or fabulous representation, nor to historical only, as the design of a battle;

(1) Vide page 82, *ante*.

but it means the designing or engraving anything that is already in nature; even a print published of any building, house, or garden, falls within the act(1).

A person *procuring* a drawing or design to be made is not entitled to protection.

Lord HARDWICKE said, the case is not within the statute, which was made for encouragement of genius and art. If it was, any person who employs a printer or engraver would be so too. The statute is in this respect like the one of new inventions. If there can be no claim of property, there can be no title to relief(2).

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## SECTION II.

### *Of Pirating Maps, Charts, and Plans.*

The general principles which regulate other kinds of copyright, are equally applicable to maps, charts, and plans. They are indeed expressly protected by the statute 7th Geo. III. cap. 38. Lord MANSFIELD, in a case tried before him in the year 1785, said, "the rule of decision in this case is a matter of great consequence to the country. In deciding it, we must take care to guard against two extremes equally prejudicial; the one, that men of ability who have employed their time for the service of the community may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded. The act that secures copyright to authors, guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subject. In all these cases the question of fact to come before a jury is, whether the alteration be colorable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of prints, no doubt different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here any more than in the other instances; but upon any question of this nature the jury will decide whether it be a servile imitation or not.

The charts in question were four in number, which the defendant had made into one large map.

(1) 2 Atk. 93. (2) Jeffery's v. Baldwin, Amb. 164.

It appeared in evidence, that the defendant had taken the body of his publication from the work of the plaintiffs, but that he had made many alterations and improvements thereupon. It was also proved, that the plaintiffs had originally been at a great expence in procuring materials for these maps. Delarochett, an eminent geographer and engraver, had been employed by the plaintiffs in the engraving of them. He said, that the present charts of the plaintiffs were such an improvement on those before in use, as made them an original work. Besides their having been laid down from all the charts and maps extant, they were improved by many manuscript journals and printed books, and manuscript relations of travellers: he had no doubt the materials must have cost the plaintiffs between £3000 and £4000, and that the defendant's chart was taken from those of the plaintiffs, with a few alterations. In answer to a question from the court, whether the defendant had pirated from the drawings and papers, or from the engravings? He answered, from the engravings. Winterfelt, an engraver, said he was actually employed by the defendant to take a draft of the Gulph Passage (in the West Indies) from the plaintiffs' map.

Many witnesses were called on behalf the defendant, amongst others a Mr. Stephenson and Admiral Campbell. Mr. Stephenson said, he had carefully examined the two publications; that there were very important differences between them, much in favor of the defendants. That the plaintiff's maps were founded upon no principle; neither upon the principle of the Mercator, nor the plain chart, but upon a corruption of both. That near the equator the plain chart would do very well, but that as you go further from the equator, there you must have recourse to the Mercator. That there were very material errors in the plaintiffs' maps. That they were in many places defective in pointing out the latitude and longitude, which is extremely essential in navigating. That most of these, as well errors in the soundings, were corrected by the defendant. Admiral Campbell observed that there were only two kinds of charts, one called a plain chart, which was now very little used, the other, which is the best, called the Mercator, and which is very accurate in the degrees of latitude and longitude. That this distinction was very necessary in the higher latitudes, but in places near the equator it made little or no difference. That the plaintiffs' maps were upon no principle recognized among seamen, and no rules of navigation would be applied to them; and they were therefore entirely useless.

Lord MANSFIELD, in addition to the general observation already quoted, said, "If an erroneous chart be made, God forbid it should not be corrected even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here there are various and very material alterations. This chart of the plaintiffs is upon a wrong principle, inapplicable to navigation. The defendant has therefore been correcting errors, and not servilely copying." And he directed the jury, if they thought so, to find

for the defendant; if they thought it was a mere servile imitation and pirated from the other, they would find for the plaintiffs. A verdict was accordingly found for the defendant(1).

In the case of a map of the island of St Domingo, made by Mr. Bryan Edwards, and which was pirated,

The Lord Chancellor said, it might be asked, how is it possible to have a copyright in a map of the Island of St. Domingo? Must not the mountains have the same position, the rivers the same course? Must not the points of land, the coast connecting them, the names given by the inhabitants, every thing constituting a map, be the same? The answer was, that the subject of the plaintiff's claim was a map, made at great expence, from actual surveys: distinguished from former maps by improvements that were manifest: the defendants map was a servile imitation, requiring no expence, no ingenuity; possessing nothing that could confer copyright(2).

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# CHAP. VI.

## OF THE REMEDIES FOR PIRACY.

The statutes having vested the right of property in the author, there must be a remedy by the principles of the common law in order to preserve it. It is accordingly clearly settled, that the action for penalties given to a common informer as an additional protection to the copyright of an author, does not oust the common law right of property so conferred(3).

The modes of procedure in obtaining redress for injuries to copyright, are

1st. By action on the case for damages.

2nd. By action under the statute for penalties.

3rd. By a suit in Equity to restrain the publication, and compel an account of the profits.

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### SECTION I.

### *Of the remedy by action on the Case for Damages.*

It is not deemed necessary to the completion of the design of this treatise, to enter upon the technical description of the *pleadings* either at law or in equity(4); but the general

(1) Sayre v. Moore, 1 East, 361, *note.* (2) Cited, 12 Vesey, 274.
(3) Beckford v. Hood, 7 T. R. 620.
(4) For observations on the pleadings, vide 6 Petersdorff's Abr. 574.

nature of the EVIDENCE required at the trial, it will be material to point out.

For the PLAINTIFF it must of course be proved, if the action be brought by him, that he is the author or proprietor of the work.

As the best species of evidence, he should produce the manuscript where the action is brought for pirating a book, and prove his hand writing, or the hand writing of his amanuensis. Hence it is always important to preserve the original.

If the manuscript should have been lost or destroyed, the fact of loss or destruction it should seem must be proved before evidence can be received of its composition by the author, or by his dictation.

In an action for pirating engravings, it is sufficient to produce one of the prints taken from the original plate—the production of the original itself not being required(1).

Where the action is brought by the *assignee* of the author, he must, in addition to the proof of the original title of the author, deduce his own title by legal assignment from him(2).

The same species of evidence will of course be required when the subject matter of the action consists of *notes* or *additions* to a former work.

It will next be necessary to produce a copy of the work complained of, and prove the injury sustained according to the specific allegations in the pleadings; whether by printing and publishing, or by exposing to sale, or importing.

Proof is often given, that parts of the first work were used at the press when the second was printed, and that the alterations supplied in the MSS. were merely colorable. The prevalence of errors in the second work identical with those in the first, is likewise good evidence of piracy, since it can scarcely have happened that two persons would fall into precisely the same mistakes in repeated instances.

The extent of the damages may be proved by the number of copies sold by the defendant, or by any other facts incident to the nature of the work.

The allegations in the pleadings of the title of the book pirated, and the time (if set forth) of the first publications should be carefully made, lest the defendant avail himself of the error by shewing a variance from the fact

For the DEFENDANT, the evidence will of course vary according to the nature of the defence.

It may be shewn that the plaintiff is not the author of

(1) 5 T. R. 41.
(2) For the mode of transfer vide the next part of this book.

the composition alleged to be pirated, by proving who was the real author.

If the defence be a publication of the second work by the *consent* of the author of the first, such consent must be strictly proved, and in conformity to all the statutes it must be given in *writing*.

According to the statutes previous to the 54th Geo. III. c. 156, it was requisite that the consent in writing should be signed in the presence of two or more credible witnesses, but in the last act, this clause of attestation is omitted.

The transfer of engravings and sculpture must be attested by two witnesses.

The next question at the trial will be, whether the defendant's work is *substantially* the same as that of the plaintiff, so as to leave no doubt that, however varied in some particulars, it is a fraudulent imitation.

It would be competent for the defendant to shew that the work which he had published, was compiled from the original authorities, and entitled therefore to be considered as a new work(1).

It would also be a good defence, as we have seen(2), if the work of the plaintiff were of an illegal or immoral nature.

So also if the period limited by the statute for the protection of the copyright had actually expired, or the action were not commenced within the time prescribed by the statutes.

On the latter point it is material to observe, that for pirating the copyright of BOOKS, the proceedings must be commenced within *twelve* months. For the piracy of ENGRAVINGS, etchings, prints, maps, and charts, as well as original SCULPTURE, models, and casts, the remedy is limited to *six* months.

In all the instances, whether for pirating the copyright of books, engravings, or sculpture, the plaintiff, if he recover a verdict, is entitled to *double the costs of the suit*, whether in the English or the Scottish Courts.

If the action be discontinued or the plaintiff should be nonsuited, the defendant is entitled to the ordinary costs.

We have already adverted to the conflicting decisions

(1) It is not a piracy to make another engraving from the same original picture.

Where an artist was employed to make engravings of two pictures, and after he had completed them, made two sketches from the same original without using the engravings, and sold them for the use of the Sporting Magazine,

Lord Chief Justice ABBOTT said, it would destroy all competition in the art to extend the monopoly to the painting itself. After quoting the words of the statute, his Lordship added, "in this case the defendant's engraving was made from the original picture, and not from the plaintiff's print. *De Berenger* v. *Wheble*, 2 Stark, 548.

(2) Page, 89, *ante*.

relating to the date of the publication of engravings, &c(1). In a late case, the Court of Common Pleas, after noticing these opposite opinions, and looking through the statutes, held, that it was the intention of the legislature that the public should be protected against the continuance of the monopoly beyond the prescribed term, which might be the case if the date had not been required to appear on the face of the prints(2).

But it was also held by the same court that the plaintiff need not describe himself *as proprietor*.

The words on the print were *Newton, del.* 1*st May*, 1826, *Gladwin, sculp.* The court said it was not usual, nor did they think it necessary that it should be stated on the print, in terms, that a particular person is the proprietor. The uniform practice is to place the names of the designer and engraver alone, and a decision questioning its propriety would have the effect of destroying much valuable property(3).

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## SECTION II.

### *Of the remedy by Penalties under the Statutes.*

The author or proprietor of a work which has been pirated, or *any other person*, may maintain an action of debt to recover the penalties inflicted by the several statutes for the protection of literary compositions.

The clauses containing the penalties have been already stated. The following is a summary of their amount.

#### *As to* BOOKS.

1st. The forfeiture of pirated books, printed, published, or exposed to sale, and every sheet thereof, to be delivered to the author or proprietor, and by him (on the order of the court) forthwith damasked or made waste paper of.

2nd. A fine of three pence for every sheet printed, published, or exposed to sale, one moiety to the King and the other to the plaintiff.

Two penalties may be incurred on the same day for selling books, the originals of which have been written and published here, and afterwards reprinted abroad, and imported into this country, *if the acts of sale be distinct*(4).

#### *As to* ENGRAVINGS, *&c.*

1st. A forfeiture of the pirated plates and prints to the proprietor of the original to be forthwith destroyed and damasked.

(1) Page, 82. (2) Newton v. Cowie, 5 Law Journal, p. 161. Easter T. 1827.
(3) Ibid. In Thompson v. Symonds it was doubted whether in an assignment the name of the inventor or the assignee should appear. 5, T. R. 41.
(4) Brooke v. Milliken. 3 T. R. 509.

2nd. A fine of five shillings for every print found in the defendant's possession, either printed or published, or exposed to sale: the one moiety to the King, and the other to the plaintiff.

*As to* SCULPTURE.

The remedy for pirating sculpture, models, and casts, seems confined to an action for damages, or a suit for an injunction and account. No penalties are specified in either of the acts on this subject.

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It would seem that the EVIDENCE necessary to support an action for the penalties must be as complete in all respects as that which is required for the recovery of damages. Indeed it is reasonable that the informer should be held, if possible, to a stricter degree of proof than the party really injured; and if the latter were to sue for the penalties, he must still be bound by the strict construction applicable to cases under penal statutes.

The LIMITATION of the time within which the penalties must be sued for, is the same as that prescribed for the commencement of an action for damages; namely, in regard to the copyright of books, *twelve* months, and of engravings, sculpture, &c. *six* months.

Though it is still doubtful whether the name and date are essential to the recovery of damages in an action for piracy, it is clear they are both necessary in an action for *penalties* under the statute(1).

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## SECTION III.

### *Of the remedy by Injunction in Equity.*

The most usual and expeditious means of obtaining redress for piracy, and preventing the continuance of the injury, are to be found in a Court of Equity, where, by the preliminary process of injunction, justice is more readily administered than in a Court of Law, where the evil may continue until the final decision of the cause, and from the circumstances of the case may then be irremediable.

In order to obtain this summary relief, the title of the plaintiff must be founded on the possession of a legal copyright; or at all events there must be a strong *prima facie* case of legal title. Where the plaintiff's right is doubtful, a Court of Equity will not interpose in the first instance, but

(1) 2 Atkins, 92. 5 T. R. 41. 1 Camp. 94.

leave the party to establish his right by an action at law. After which, he will of course be entitled to the additional aid of an injunction in equity.

The question regarding the date of engravings, has also occurred in the Court of Chancery.

In Harrison v. Hogg, the *Master of the Rolls* said, he was glad that he was relieved from determining upon the act, for *at present* he was inclined to differ from Lord Hardwicke. He must believe that it is essential to the plaintiff's right to insert the date. Many good reasons, which it was not then necessary to mention, require that the date should be upon the plate. But, he said, as Courts of Law have permitted plaintiffs to make this sort of general allegation (on the pleadings), it would be strange for Equity to be more strict(1).

The *mode of procedure* to obtain an injunction, is simple and expeditious. A bill is filed by the proprietor, stating his title to the original work, the nature of the piracy, and the consequent injury.

The particular facts are next to be verified by affidavit, and a special motion may then be made to restrain the publication. The whole question may thus be brought before the court; and an injunction will either be granted forthwith, or an issue directed to try the question before a jury in a Court of Law, unless the work be apparently excluded from legal protection on the ground of its mischievous tendency, or for other reasons be of a description in which no legal proprietorship can exist; and then the plaintiff is left to seek such remedy as he may be entitled to in another court.

In injunction cases, it appears that no affidavit as to the title of an author or proprietor will be received after the defendant's answer has been filed, though affidavits in opposition to the answer may be read as to facts(2).

Though it is clear that the proceeding by injunction is thus the most ready and effectual remedy which can be resorted to on the part of the plaintiff; a great degree of caution, in the application of that proceeding, in the first instance, is requisite for preventing injustice to the defendant, whose loss does not from the nature of it admit of reparation, if the injunction should, upon further investigation, be found to have been erroneously applied, and the judges in Courts of Equity have in many cases expressed a strong sense of the importance of this principle(3).

(1) 2 Vesey, 327.
(2) Cited in Platt v. Button, 19 Ves. 448, and see Norway v. Rowe, ib. 144.
(3) 2 Evans's Coll. Stat. 630.

## *FOURTH PART.*

# OF THE TRANSFER OF COPYRIGHT, THE CONTRACTS OF AUTHORS AND BOOKSELLERS, AND OTHER INCIDENTS OF LITERARY PROPERTY.

### SECT. 1.——*Of the Transfer of Copyright generally.*

The transfer of every kind of copyright, according to the several provisions in the statutes, must be *in writing*. There does not appear to be any reason for making a distinction between the copyright of books, and that of engravings, of maps, or of sculpture. But the last statute has made a distinction which it is necessary to point out.

The statutes of 8 Anne, c. 19 and 41 Geo. 3. c. 107, required the consent of the authors or proprietors for printing, reprinting, or importing books of which they possessed the copyright to be in writing, "signed in the presence of *two* or more credible witnesses." The 54 Geo. III. cap. 156, does not contain this requisition, and the mode of attestation, therefore, appears to be immaterial in giving effect to the transfer.

In the acts relating to engravings, etchings, prints, maps, and charts, it is required that there should be an "express consent of the proprietor or proprietors, first had and obtained *in writing*, signed by him, her, or them respectively, with his, her, or their *own hand* or hands, in the presence of, and attested by *two or more credible witnesses*(1)."

In the case of *original sculpture, models, and casts,* the requirements of the act proceed still further, for though in the second section the same language is used as in the case of engravings, &c.; in the 4th section it is provided, that persons who purchase the right or property in original sculpture, &c. from the proprietors, expressed in a *deed* in writing, signed and attested as in the former case, shall not be subject to any action under the statute(2).

It would appear, therefore, that the right of exclusively printing and publishing books may be transferred by a con-

(1) The 7th section of 7 Geo. III. c. 38, by which the copyright in engravings, &c. is extended to twenty-eight years, gives no additional term in case the author survives that period.

(2) By the 6th section of 54 Geo. III. c. 56, the artist is entitled to a second term of fourteen years, if he survives the first, but it does not continue during his life beyond he second period.

sent in writing, without attestation---the right of publishing prints and maps by a consent in writing, attested by two witnesses---and for the right of making models and casts, the consent must be given by deed, also attested by two witnesses.

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## SECTION II.

### *Of particular Contracts between Authors and Booksellers.*

Although the transactions between authors and booksellers must evidently be very numerous, and greatly diversified in their nature, there are few cases reported in the authentic law books of any disputes which have existed between them.

We shall presently refer to the particular points which have undergone judicial investigation, but have previously to notice a peculiar species of literary property which has become of vast importance to its proprietors in recent times. We allude to the articles or *contributions* supplied *to periodical works and encyclopedias.*

Some distinction appears to exist between *entire works* completed by the author, and sold to the publisher, and those *partial contributions* which are composed at the request of the proprietor, and originally intended to form part of larger works under the editorship of a person distinct from the author. There seems here some analogy to the principle by which an exception is allowed in the law of debtor and creditor; for although no one is answerable for the debt of another, unless the engagement be in writing, yet an original credit may be given to one person, and the goods supplied to another. So here, it may be said, the bookseller is the *proprietor of the work at large,* and engages different persons to supply different portions of the undertaking. When these are delivered, they appear to be the property of the owner of the general work, more especially as the several articles are wrought into their appropriate form by the literary agent of the proprietor. They seem thus to lose their separate identity after leaving the hands of the author.

Transactions of this kind between publishers and authors resemble contracts for so much work and labor towards a general undertaking, and are different from the sale of a complete copyright, which requires an assignment in the exact terms of the act—as there may be various engagements (all verbal) with the several artificers to the building of a house; but the edifice itself cannot be conveyed on account of the *land* on which it is situated, unless the transfer be in writing.

It may also be urged, that a composition of this sort is *not a book* in the language of the statute, *nor any volume thereof,* and cannot be comprised within its provisions. All contracts therefore, relating to such compositions, can be limited only by the ordinary principles of law, and a *verbal* agreement, (distinctly proved,) would be sufficient to pass all the interest which an author can possess in such works. This view of the subject, is somewhat supported by a very recent decision in the Appeal Court of the Exchequer Chamber, in which it was held that the public libraries are not entitled to copies of works which are not within the ordinary signification of a "book" or a "volume," and that *parts* of a volume published at uncertain intervals, are not within the meaning of the act(1).

*On the other hand,* it is evident from all the cases which have been decided on the subject of the transfer of copyright, that the interests of authors are favorably regarded, and the requirements of the statutes on their behalf strictly enforced. This rule of construction is important not only to authors themselves but to those who derive their title by assignment for them. We have seen, in treating of the extent of copyright, that the law protects it from piracy, however small or insignificant the composition may be. Every original work, though consisting merely of a single sheet of paper, or the music of a single song, has been considered a book within the meaning of the Act of Parliament(2). And it is not improbable, therefore, that an express assignment would be held necessary to deprive the author of the right of republishing the article himself in a separate form, although evidently it would be a breach of contract to dispose of it again for the use of another compilation(3).

The communications, however, from correspondents to the editors or proprietors of periodical publications, are said to be the property of the person to whom they are directed; and cannot be published by any other person, who by chance may have obtained possession of them(4).

But these communications, it would appear, must be

(1) British Museum v. Payne and Foss, 2 Younge and J. 166. (2) Pages, 74-5-6.

(3) Supposing, that the proprietor of an encyclopædia, or periodical publication, possess such a property in the articles contributed for his work, that the author can make no other use of them without the consent of the proprietor, still it is questionable whether the right be *limited to the purpose for which the composition was written,* or may be extended, so as to enable the proprietor of the encyclopœdia to publish it as a *separate book,* without a new agreement with the author. The copyright in such case would probably be considered as a *special* one---not *general* and unlimited;---and for the purpose of separate publication a consent must be given by the author in writing, according to the terms prescribed in the Act of Parliament.

(4) 8 Vesey, 215.

such as are sent implied or expressly for the purpose of publication; but on the principle that an author has an absolute control over his manuscripts, it seems they may be reclaimed at any time before publication.

Under the *general* assignment by an author of all his right in a work, the assignee has the benefit of the resulting term for the life of the author, in case the latter should survive the twenty-eight years from the day of publication (1).

It has been questioned whether, in the case of a *joint authorship*, the copyright would continue to the end of the life of the survivor, supposing both of them outlived the twenty-eight years from the day of publication? And whether there would be any resulting term, supposing one of the authors died within the twenty-eight years ?(2).

It would appear, however, that so much as had been actually composed by the survivor, must evidently be protected to the end of his life. And we do not see how any part of the work could be safely pirated, unless the extent were precisely known of the contribution of the deceased author. It seems also that the benefit of the resulting term to the survivor could not depend on *both* of them outliving the twenty-eight years.

If an author engage to furnish a bookseller with a transcript, he must answer in damages for not fulfilling his contract(3).

And Lord ELDON held, that a covenant in articles of agreement, by which a dramatic writer undertook not to compose pieces for any other than the Haymarket Theatre, was a legal covenant(4).

But where a gentleman had contracted to supply a bookseller with reports of the cases argued in the Court of Exchequer upon certain terms, and afterwards sold them to another bookseller, the Lord CHANCELLOR would not grant an injunction to restrain the publication, and force him to report and give his manuscript to the bookseller, observing that he could not grant an injunction whereby *the person* of the defendant would not be at liberty(5).

It is not necessary for an author to put his name in the title page in order to preserve it(6).

Lord ELDON, however, on one occasion, doubted how far he could relieve the publisher of a work with a fictitious name(7), but he granted an injunction until answer or further

(1) 2 Brown, C. R. 80. (2) Godson, 311.
(3) Gale v. Leckie, 2 Stark, 107. (4) Morris v. Colman, 18 Vesey, 437.
(5) Clarke v. Price, 2 Wils. 157. (6) 4 Burr. 2367. (7) 8 Vesey, 226.

order to restrain the publication of a work in the name of Lord BYRON, who was abroad, upon an affidavit of his Lordship's agent of circumstances, making it highly probable that it was not a work by his Lordship, and on the refusal of the defendant to swear as to his belief that it was written by him(1).

In Storace v. Longman, the plaintiff was the composer of a musical air, tune and writing, which was reprinted by the defendant within the fourteen years limited by the act.

*Erskine* for the defendant examined the plaintiff's sister, to shew that the song was composed to be sung by her at the Italian Opera, and that all compositions so performed were the property of the house, not of the composer. But,

Lord KENYON said, that this defence could not be supported; that the statute vests the property in the author, and that no such private regulation could interfere with the public right(2).

In *Power v. Walker*(3), at the trial before Lord Ellenborough, the plaintiff, in order to establish his title, proved, that Mr. Moore, the author of a work entitled "A Selection of Irish Melodies," of which this song was one, transferred the copyright of the work by *verbal* agreement to R. Power of Dublin, who agreed also by *parole* with the plaintiff that the latter should have the exclusive right of publishing and selling the work in England, reserving to himself the right of selling it in Ireland. It was objected for the defendant, first, that by stat 8th Anne, c. 19, every assignment of copyright must be in writing, and secondly, that the right conveyed to the plaintiff by Power, (supposing it to be well conveyed) did not amount to an assignment of the copyright, such as would sustain this action, but was a mere *licence* to the plaintiff for the publication and sale in England.

Lord ELLENBOROUGH said, that the statute having required that the consent of the proprietor, in order to authorize the printing or reprinting of any book by any other person, shall be in writing, that the conclusion from it seemed almost irresistible, but that the assignment, must also be in writing, for if the licence which is the lesser thing must be in writing, a fortiori, the assignment which is the greater thing must also be so.

DAMPIER, J. expressed himself to the same effect, and

(1) Lord Byron v. Johnson, 2 Meriv. 29.

(2) 2 Camp. 27, *note*. But *quere*, as to the accuracy of this opinion, as authors frequently dispose of MS. and copyright, and a general usage upon the subject may be evidence of such a disposition. 2 Evans's Coll. Stat. 627.

(3) 3 Maule and S. 7.

said, that the assignment could only be under the statute, and therefore the plaintiff must shew that he was such an assignee as the statute required.

The construction of the statute is so strict, that though the author of a musical composition acquiesced for six years in the defendant's publication of it; this was held insufficient evidence of the transfer of his interest in the copyright.

Nor will a receipt given by the plaintiff for money received by him as the price of the copyright, preclude him from maintaining the action.

The facts were as follows: the piece of music in question "Le Retour de Windsor," had been composed by the plaintiff in the year 1801, and it appeared that in 1812, and previously, the defendants had sold copies bearing Latour's name as the composer, and that this had been done with his acquiescence. It was also proved, that ten years ago the plaintiff had given a receipt (which had since been destroyed) to the defendants for thirty guineas, as the consideration of the purchase of the copyright, but that there was no other writing than the receipt; and that the plaintiff had afterwards said that he ought to have had more for the copyright.

ABBOTT, J. was of opinion, that there had not been any assignment. In the case of *Moore v. Walker*(1), the author had admitted that he had assigned his interest; but here it appeared in evidence that there had not been any assignment such as the statute required. By the act of Anne, which was made for the encouragement of genius and learning, an exclusive right had been given to the author of any work for the term of fourteen years; and he might during that term assign his interest to another, and if he died without assigning his copyright, the interest would go to his executors. If he survived the term of fourteen years, he would be entitled to the enjoyment of the copyright for fourteen years more. A question might perhaps be made, whether an assignment within the first fourteen years would carry the contingent interest; but here no such question arose, since there had been no assignmeut according to the mode pointed out by the statute(2).

Where, however, a copyright in music was not asserted against violation by several persons for *fifteen years*, the Court of Chancery refused an injunction until the right should be established at law.

The LORD CHANCELLOR said, I admit this to be the

(1) 4 Camp. 9, *note*.

(2) Latour v. Bland, 2 Stark. R. 382.

subject of copyright. But the plaintiff has permitted several people to publish these dances, some of them for fifteen years: thus encouraging others to do so. That, it is true, is *not a justification;* but under these circumstances a Court of Equity will not interfere in the first instance. If, as is represented, some of them were published only last year, and one two months ago; the bill ought to have been confined to those. You may bring your action, and then apply for an injunction(1).

## SECTION III.

### *Of the Bequest of Copyright.*

We have seen that it was usual from the earliest period after the invention of printing not only to sell copyrights (at that time in perpetuity), but that they were made the subject of family settlements for the provision of wives and children(2); and where they were not included in such settlements, of course the proprietors disposed of them by their wills, or they passed to the administrator in the same manner as other goods and chattels.

It does not appear that there is any case reported in which the title to a copyright depended upon a bequest; but there can be no doubt that an author has the power of bequeathing it. A patentee may bequeath his interest in a *patent*(3), and if he die intestate, it will be assets in the hands of his administrator(4). It must clearly follow, therefore, that the author or proprietor of a book may transfer his copyright by a testamentary disposition, and in the absence of which it will pass in the same way as other kinds of personal property. Its limited duration has naturally prevented the occurrence of many instances in which copyright has been *specifically* bequeathed. The only case reported on the subject is that of the interest in a *newspaper*. The property in question on that occasion, however, consisted rather in *printing* the work and the implements of trade necessary to conduct it, than in the copyright of the composition.

In Keene v. Harris, the printer of a newspaper, the *Bath Chronicle,* bequeathed to his widow the benefit of that trade, subject to the trust of maintaining and educating her family. Having formed an attachment for the person who had been employed as foreman in conducting that business, she assisted him in setting up the same paper giving him the use of the

(1) Platt v. Button. 19, Ves. 447. (2) Page 16.
(3) Godson, 168. (4) 1 Vesey, Jun. 118. and 3 B. and P. 573.

letter press, &c., on the premises. A bill was filed by the executors, and an injunction was granted(1).

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## SECTION IV.

### *Of the rights of Creditors, under an Execution or a Commission of Bankruptcy.*

The unpublished *manuscript* of an author cannot, it seems, be taken in execution at the suit of creditors(2). Such a seizure would be contrary to the established principle of law, that until an actual publication has taken place, the author has an uncontrolled right to, and dominion over his manuscripts(3).

It would also be contrary to the principle by which the instruments of a man's trade or profession, whilst in use, are protected from the process of distraint. The *books of a scholar* are enumerated in the old authorities as exempt from distress; and *a fortiori*, if his books generally are protected, the manuscript on which he is at work, which being unpublished may be presumed incomplete, is that kind of property, which the policy of the law has wisely protected from seizure.

Neither are the assignees under a Commission of Bankruptcy, entitled to the manuscripts of an author, although the copyright of a book which has been printed and published will legally pass for the benefit of the creditors(4).

(1) Cited 17 Vesey, 338. There is a distinction between the right to publish a similar work, or set up a similar trade, and the fraud of identifying it with the work or trade of another. *Ib.* 342.

(2) 4 Burr. 2,311. (3) Amb. 695.

(4) Longman v. Tripp, 3 New. rep. 67. It is questionable whether a book not completely printed and consequently unpublished, could be claimed by the creditors.

# BOOK III.

# DISQUISITIONS

ON THE

# PRINCIPLES OF THE LAWS.

AND THEIR

# EFFECT ON LITERATURE.

# BOOK III.

## On the Principles of the Laws.

### *FIRST PART.*

### OF THE LIMITATION OF COPYRIGHT TO TWENTY-EIGHT YEARS.

#### CHAP. I.——THE OBJECTIONS TO A PERPETUITY IN COPYRIGHT CONSIDERED.

I. It has been objected that, although the invention and labor, by which literary compositions are produced, entitle the author to the exclusive use of his manuscript, *the right cannot be extended to* IDEAS, because they are not objects of property.

In the commencement of our historical view, we have considered the nature and foundation of the rights of literary property, and shewn that it was equally entitled with any other production whether depending upon *occupancy* or *labor*, to the full protection of the laws—that if it came not within the *literal* definition of "property," as laid down of old, it was assuredly within its *spirit*---that the general interests of society, as well as the comprehensive principles of justice, required the protection of copyright, and to exclude it would be a violation of the boasted maxim of the English Law, that *redress is provided for every injury*.

In further reply to this objection, "that there can be no *property* in ideas," it must be observed, that an author does not claim a copyright in the *subject* on which he has written, but in *the composition which he has produced* on that subject. In the cases which have been decided regarding the piracy of copyright, it is repeatedly laid down, that "the subject" of literary compositions is open to all writers; but that no one must seize and appropriate to himself the labor bestowed by another. He may avail himself of it as a guide to the sources from whence the result was derived---to the mines where the raw material may be found, but he cannot lawfully take the manufactured article. A lively image has been used to explain the extent of the right. *The wells of*

*literature are open to all, but no one has a right to use the bucket of another.*

The objection, indeed, resolves itself entirely into the supposed difficulty of ascertaining whether the later author has drawn his materials from the original sources, to which the first must have resorted, or has availed himself of his predecessor's ingenuity and labor, without exerting his own.

But the same difficulty prevails in the present limited state of legal protection. The same questions arise *within* the twenty-eight years, as would arise after they had expired. The argument, therefore, if it be worth anything, should lead to the abolition of all protection whatever.

II. It has also been urged, that as it is every man's natural right to follow a lawful employment, and printing and bookselling are of that kind, *every monopoly that would intrench upon these lawful employments, is a restraint upon the liberty of the subject*. And if the printing and selling of every book that comes out may be confined to a few, and for ever withheld from all the rest of the trade, it is asked, what provision will the bulk of them be able to make for their respective families?

It is curious, that this objection should have occurred to the learned judge who advanced it; for, if it be well founded, then the holding of any kind of property exclusively and for ever is also a monopoly.

It is obvious there could be no monopoly in this case more then prevails in the possession of a plot of land or a herd of cattle. It is not a monopoly of *all* books, of all kinds —such as the prerogative claim was formerly made; nor of all books upon *one subject*—it is the mere appropriation of the property in *one book*, the produce of *individual* invention and labor. Not only is every subject of literature open to the exertion of the talents and industry of all; but every trader in literary works has the same opportunity as others to purchase the existing copyright of authors, by offering a sufficient price, or of engaging literary men to write new works on the same or on other subjects, of which there is a boundless and exhaustless number.

Further, this objection to a supposed undue restraint on plagiarists and pirates, like the former one, should extend, if it be tenable, to the abolition of the law altogether, and therefore annihilates itself.

III. But it said---*others, may arrive at similar conclusions.*

*It would be difficult to a ascertain the right owner, and inconveniently increase litigation.*

There is here an unfounded assumption: No two minds being alike, it is impossible for any two men to compose a work precisely similar. They may arrive indeed at the same "conclusions"—Thinking upon the same subject, the truth may be apparent to both; but each will proceed by different methods, and those who are skilled in criticism would have no difficulty in determining which of the two was the plagiarist, and an intelligent jury, aided by competent witnesses and the learning of the bar, and the experience and wisdom of the bench, would surely be able to determine whether the work was colorably pirated from another, or an original and *bona fide* production.

But, admitting that there might be occasional *difficulty in identifying* the works of one author from another. Such cases would be rare. Are we to abandon the property in general because it sometimes may be troublesome to ascertain it? There is frequent difficulty in identifying other species of property—nay, even, of identifying persons; but no one has yet been wild enough to propose the abolition of the laws of property or personal protection, because the evidence of ownership and identity is sometimes doubtful. We do not conceive the difficulty would be greater in this than in many other kinds of property, There are no insuperable obstacles in identifying a literary work within the time already limited by the statute, and the same rules might be applied if the time were extended.

That *it will give rise to litigation* so long as men are dishonest cannot be doubted; but the same occasional evil prevails in every kind of property. He who prints and publishes another man's copy, or makes such voluminous extracts from it as to injure its sale, knows as well as the depredator of any thing else, that it is not his own, and if he has no sense of rectitude, he should be taught by the law that it is wrong, and punished either in purse or person for his transgresssion. There would be no greater degree of litigation than in proportion to the number of violations of the law of copyright, and the inclination of the injured to seek redress. Let the experiment be tried and there will be no difficulty in providing remedies for any evil that may casually arise in the execution of the law.

IV. *The composition is the property of the writer whilst in manuscript, but the act of publishing gives it to the world.* If there be any force in mere *legal* reasoning, in this objection,

there is, none in reason or common sense. By the publication the author *gives* nothing whatever. He *sells* each copy for its price, and the purchaser may do what he pleases with the copy *except* printing other copies. He may make use of the language and sentiments it contains in any way he thinks proper, *except* to the injury of the author. He may quote or abridge passages to improve his own works, provided his extracts be not of unreasonable length, and have the effect of injuring the sale of the original. He may also lend or sell his copy, and may make a profit by the loan or sale. But he cannot appropriate to himself the profit derivable from the sale of *other copies* the right to print which was never sold. The purchase he has made is for his own use, not the use of the public, and he must abide by the reasonable conditions of his bargain. It may be compared to the case of a proprietor of a theatre, who grants for a certain price a ticket of admission, which, if transferrable, the purchaser may lend or let on hire; but whoever supposed, that he had a consequent right to multiply copies and sell them to the injury of the proprietor? So, in the instance of a public Water Company, the contract includes the unlimited use by the person who pays for it, but conveys no right to vend the smallest portion. By analogy, therefore, to other kinds of limited sales; as well as from the reason of the case, it is clear that the act of publishing is no dedication to the public, so as to make the property common to all.

V. Another objection is, that the *Patentees of Mechanical inventions possess but a limited term,* and therefore, that the authors of literary or scientific works should be satisfied with the same measure of legal protection.

We shall not enter into the argument of the distinction between the nature of new machinery and that of literary compositions, for we are not entirely satisfied that it is well founded(1). But we rest on this, if there is a distinction, in fact, we are glad the patentees suffer less wrong: If not, they are common sufferers, and should take part in seeking redress. It is a proof of the straits to which our opponents are driven when they excuse one act of injustice by another.

VI. It is objected that it would prolong the power of the owner to deal with the public as he chose, and that he might *either suppress a valuable work or put an exorbitant price upon it;* in both of which events the public would be injured.

The fear of *suppression* may be easily provided against. If the proprietor does not re-print the work when required within a reasonable time, there would be no injustice in con-

(1) The best comment on this point seems to be made by Mr. *Hargrave.*—vide NOTES.

sidering the copyright as abandoned. It is replied, that there would be a difficulty in proving an abandonment. We do not perceive the difficulty, at least, in the majority of instances, and regulations which experience would suggest, might be adapted to circumstances. Generally speaking, if it were worth while to reprint a work, the copies of which were exhausted, it would not be abandoned. Where it was out of print, notice might be given to the last publisher and entered in the registry of the Stationers' Company, and if at the expiration of a certain length of time (perhaps proportioned to the magnitude of the work) it were not reprinted, it might then become common property.

There is no probability that the *price* of literature will be enhanced more than the price of land. Some ages ago a large price might have been required, and as the demand was then limited, a higher price was not unjustifiable. But since the development of the true principles of trade, there can be no apprehension of such a result. Every publisher now knows that the cheaper he sells his books, the greater is the sale, and a small profit, upon a rapid and extensive sale is in the result more advantageous, than a larger profit upon a slow and limited one. The more generally useful the work, the cheaper it might be sold, on account of the greater number of purchasers. It is only of works which are little demanded that a high price could be necessary. So that the evil cures itself, and both the cause of literature and the interest of the public, would be promoted by enabling the proprietors of this kind of property to deal with it as unreservedly as with any thing else. And surely, if the principle of free trade should any where be acted upon, it ought to prevail in favor of the press—that great instrument of national knowledge and improvement, and by which all other improvements are so much extended and promoted.

Besides the price might be restrained by a jury. Compensation for property is settled on many occasions under Acts of Parliament for roads and canals. It would be competent for an author or proprietor to prove the *capital* invested and learned men might be called to estimate the *skill*, and publishers to prove what would be a fair or liberal remunerating price.

But then it is said, if there be an actual *right*, it is improper to restrain it. Now we have no wish that it should be restrained: we do not apply for the restraint. We think it not only *needless* but *objectionable* and unjust.—We conceive that every man's own interest will be the best protection to

the public for the fair exercise of the right. It is so in all other arts and trades and why should it not be the same in those of printing and publishing? But if we cannot have the right without the restraint, we will submit to it.—It is an odd objection that denies a right, because if exercised without the restraint it may be injurious, and then rejects the restraint because all restraints are reprehensible.

VII. The advocates of *limited* copyright further contend, that "*glory is the reward of science, and those who deserve it, scorn all meaner views.*" It was not for gain that Bacon, Newton, Locke, &c. instructed the world. There are various unanswerable replies to this piece of rhetoric.

*First,* the question is not what are the motives of an author—Glory or Gain—but what is due in justice from the public to those who have conferred benefits upon it? What is *right?* If the benefit be perpetual, why should not the reward? If Shakespeare has left us volumes of intellectual gratification which can die only (nay, not even then) with the language in which they are written, why should not his decendants (long reduced to poverty) derive the benefit which justice demands, and which gratitude would cheerfully pay. Granting that Nelson and Wellington were stimulated to their immortal exertions by glory alone, do we owe them nothing, because they have received their reward? Were the titles and the wealth that were bestowed upon them needless? Besides, it may be asked, how do the national rewards of *substantial* property act in the way of excitement upon the conduct of others. Has the perpetual entailment of Blenheim had no influence upon the minds of subsequent warriors?

2ndly. Different men possess different propensities and feelings. The objection supposes all men alike, and that they are alone influenced by the predominant passion of ambition. It is an objection founded in utter ignorance of human nature. A very large class certainly are desirous of renown. But there are *other classes besides the ambitious.* Many men love their parents, wives, children, and kindred, and to that intense degree that they will exert their powers more eminently for them than for the empty buzz of strangers or of distant posterity. Do these lawyer-like reasoners suppose that all men of warm affections are deficient in ingenuity, and that the stern and cold man of ambition is the only inheritor of genius and greatness? Now a man of this kindly nature may care but little for "gain," so far as he is personally concerned; but for the sake of those who are dearer to him even than "glory," he may bestow more labor

than the mere ambitious man, and wherefore should not he be permitted to receive that, which the public would readily and gladly pay? Who is there that has read the "Paradise Lost," that would not be delighted whilst paying its price to know, that he had contributed his mite to avert the penury in which had died the last descendant of its author?

It is any thing but philosophical to talk of men, in general, as exerting themselves *disinterestedly*, and "scorning all mean views." Small must be the knowledge of human nature which ventures upon such declamation. There are men of the strictest integrity, who far surpass the generous and the ambitious in acts of justice, and yet are influenced by motives of gain. Are all men, who desire to be paid for the services they perform, "mean?"

Authors are not a peculiar race of men---able to live on the air, "glory crammed." Neither we suspect were those who reasoned with such loftiness able to live on the renown, either of framing or administering the laws with impartiality.

There is yet another class of men, the most numerous of all, who are not actuated by any *single* predominant motive, to whom neither glory, nor gain, are master passions; but who are influenced by mixed motives, and who would bestow greater exertions, if their social, as well as selfish feelings were equally gratified. Why should we not use all the means which justice permits, to excite men to the exertion of their best faculties?

He who can, by his works, obtain not only the prospect of future fame, but the substantial advantage of immediate recompense, with a provision for his family after his death, will labor with greater diligence than those who are incited only by the desire of posthumous renown.

The reward of glory may, indeed, stimulate the production of works of pure genius, and the more especially as the exercise of the imagination is so peculiarly delightful; but this cannot be the case, in an equal degree, in the department of philosophy. Great, persevering, and often painful labor, is necessary to the accomplishment of many works of science, and therefore every possible inducement should be added, instead of being diminished, that may tend to encourage the prosecution of such labors.

Besides, an author, who wished for no other reward than renown, might still exercise his liberality, and either present his labors gratuitously to the public, or bestow them on some meritorious object. He can do so now in favour of the Uni-

versities; and the glory of the bequest would be the greater because it would be more rare and generous.

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## CHAP. II.

### ON THE INJUSTICE AND IMPOLICY OF THE LIMITATION.

In the previous part of the work we have considered the reasons and foundation on which the claim to an extension of copyright depends, and the unlimited protection to which it is entitled, under the general laws which apply to all kinds of *property*. It will not be necessary in this place to enter into an examination of the subtilties, by which it was attempted to exclude literary compositions from the guardianship of our courts of justice. In the *Introductory Dissertation*, and the sections on the nature and *definition of literary property*, and its claim to a perpetuity by the *common law*, which commence the Historical View, we have endeavoured to establish a foundation for the property in question, which we conceive to be consistent, equally with the laws of civilized communities in general, and with those of this country in particular.

Referring to those previous parts of the Treatise, for the preliminary consideration of the basis on which the right is founded, we shall proceed, in this place, to discuss the *policy*, as well as the *justice*, of extending to the Scholar and the Artist the provisions which guard the property of all other classes of the community.

It is one of the most indisputable principles of justice, that THE LAWS SHOULD BE EQUAL.

This golden rule is violated in the distinction created between the copyright of individual authors, and the copyrights held by the Crown and the Universities, in both of which instances it endures without limitation.

The several cases reported in the law-books, for violating patents for printing prerogative copies, after the expiration of the period limited by the statute, prove that a copyright was acknowledged by the common law: since if the king had not the right, he could not grant it to the patentee. It is clear that the king, by his prerogative, has no power to *restrain* printing, which is a trade and manufacture; or to grant an *exclusive* privilege of printing any book whatsoever, *except* as a subject might; by reason of the copyright being his property. It is now clearly settled, that the king is owner of such books or writings only, as he had the sole right originally to publish,

consisting of acts of parliament, orders of council, proclamations, English translations of the Bible, and the Common Prayer-Book. These are his *own* works, as he represents the state, and, according to the constitution, is head of the church.

There seems to be no principle on which the exclusive privilege thus established in favour of the Crown, should be denied to private authors. If there be any sufficient reason for appropriating the acts of state and the ordinances of the church, the same reason would extend to the case of all other copyright;---if it be thought necessary, in order to secure correct copies of the statutes and ordinances, that no one but the king's printer should be permitted to publish them; it is in a comparative degree important, that the author of a literary work should retain the superintendence of its publication; since it may otherwise be incorrectly printed, or he may be deprived of the power of amending or improving it---of correcting errors on the one hand, or extending the illustration of truths on the other.

So far, indeed, from there being any solid reason for the exercise of the prerogative, whilst the ordinary rights of property are denied to individuals, it is manifest that here there ought to be no copyright whatever, beyond the printing of such copies as are necessary for judicial proof, or other public purposes. For all other objects there ought to be no restraint, since it must be the interest, as it ought to be the duty of government, to diffuse a knowledge, as extensively as possible, of the regulations both of church and state; and there is a sufficient guarantee, that the unofficial copies of these acts of state will be adequately faithful, for any blunders in them would be soon detected, and the publication which came recommended by its accuracy, would be the most extensively circulated.

The other instance in which the right claimed by authors has been granted to others, whilst it was denied to them, is that of the *Universities* of England and Scotland, and the *Colleges* of Eton, Westminster, and Winchester, and that of Trinity-College, Dublin.

It is difficult to conjecture any reason for allowing to these public institutions a copyright in literary compositions, which does not, in a far stronger degree, belong to the individuals by whom this intellectual property was produced.

Without exhausting conjectures on the foundation of this privilege, we may resort to the Act of Parliament by which it is created, and where the basis of the claim is thus described:—

Authors, it is said, may give or bequeath the copies of books to