

these respective Universities and Colleges, and may direct the profits to be applied for the advancement of learning; lest, therefore, such useful purposes should be frustrated, the sole printing is secured to them in *perpetuity*.

Now, it is manifest, that if the Universities, as *the legatees of authors*, are entitled to this extended protection, the authors themselves are still better entitled to it. Admitting that the Universities are in possession of no more than their just rights, it is evident that private individuals, not merely for their own sakes, but for the interests of science and literature, are, at least, *equally*, if not in a higher degree, entitled to legal protection.

The Universities, in their corporate capacity, can establish no pretensions on which the exemption can be justly founded. They are not, collectively, in advance of the literary and scientific world; nor have they accelerated the progress of modern improvement. It is, indeed, often urged, that these institutions rather impede than assist the extension of science; that they follow, at no inconsiderable distance, rather than lead forward the human intellect to new fields of inquiry. Without discussing this invidious view of the subject, it may be assumed, without much fear of injustice, that the personages who compose these learned associations, have achieved nothing in their *official* character, which can justify the peculiar exemptions they possess. The distinguished writers who, in their *private and individual* capacity, have conferred honor by their works on the seats of learning to which they belonged, cannot but make common cause with their literary brethren.

It is worth observing, also, that the privilege of the Universities cannot be upheld on the ground of necessity;--- they cannot plead that it is granted in commiseration for their *poverty*, for they are unquestionably better able to bear the wrong which the laws inflict on individuals, but which the Colleges possess such effectual power to prevent. Indeed, were there any foundation for such a pretension, it would be infinitely better for the sake of justice, and the example of an equal administration of its sacred principles, that they should receive a parliamentary grant, than that so flagrant an anomaly should be permitted to exist.

THE EVASION OF THE LAWS is always a great evil, for there is not only the immediate injury to justice of the specific violation; but a general weakening of the salutary reverence which is entertained for national institutions when founded on principles of reason and equity.

Now both the authors and the publishers to whom they

have assigned their works, have a strong feeling that the limitation of copyright to the period of twenty-eight years is inconsistent with the regulations of all other arts and professions, at variance with the commonest principles of free trade, and equally injurious to authors and publishers without any correspondent benefit to the public. It is natural, therefore, that every effort should be made to elude the consequences of an arbitrary and irrational infringement of their own rights and of the property of their families—of a patrimony often earned at the expence of health, and of the abridgment of life. And whilst acting under such feelings, there are few, even of the coldest-hearted legislators, who would visit with much censure, the plan of ingenuity and contrivance which has been resorted to by the parties interested, in saving themselves, as much as possible, from injury or diminishing its magnitude.

The proprietor of the copyright prior to its expiration takes care to prepare a new edition *with notes*, and though the original work becomes common property, the notes are protected on the ground of their constituting an original composition. By a sort of combination also amongst the principal booksellers, these renewed editions “with notes,” receive a preference over others. The interpretation which the judges have put on this mode of republication is exceedingly liberal, but if it be right that publishers should resort to these expedients to protect their property, the law should allow it to be done openly instead of surreptitiously: an honorable man must revolt against a system which subjects him to lose his property or to practice devices and evasions which out of respect to the laws of his country he must dislike. And although by these means the mischief is somewhat practically diminished, much of it unavoidably remains. The work may not really require any notes either of explanation or addition or they may be such as the humblest talents can supply. There are, it is true, some subjects which are undergoing continual change and the publications which treat of them require proportionate alterations. But if not so, the work is incumbered with useless comments, or the name of some eminent author is appended to a new edition which an ordinary writer might equally well supply.

Not only individual publishers would gain by the extension, but it would promote the interest of publishers in general, if the property in a work were vested perpetually in the author and his assigns. Suppose that the moment a valuable book were published, every one had a right to pirate it, the effect would be, that a general scramble would ensue to

reprint cheaper editions than the original. A great number of persons would be engaged in doing the same thing. The market would be over stocked. None would be sufficiently remunerated and all would be more or less injured. It would be analagous to permitting the land of a deceased person to be retained by any one who could by stratagem or force obtain possession. A riot would then succeed the death of every landed proprietor. Now something of the same kind must take place, though in a less degree, at the expiration of the statutory period, and although the evil is partially subdued by the evasions and combination before adverted to, still it cannot be generally avoided.

It has been urged by those who maintain the sufficiency of the present system, that the extension of the term would produce *no good* to the public. But the question ought to be, *what evil will it occasion?* For if there be no evil, there ought to be no restraint. It is happily clear that right and expediency are as inseparable in this as in all other cases, for by the extension of the term the public would receive superior and cheaper publications. Authors are at present discouraged from executing works of a standard nature because such works demand the labor of a life. It is evident that talent may be more profitably employed in the attention to works of temporary excitement. The fashion of a particular age or season is consulted instead of the general and enduring interest of the community. The question with an author who is about to select the sphere of his literary labor is not determined by any opinion of what will be beneficial to mankind at large, or ultimately ensure his own reputation, but what will sell the best in the literary market.

It is not easy to estimate the labor and expence of a work of superior utility and importance. It demands a degree of research and care which can scarcely be bestowed whilst the law continues in its present state. Besides the works which are costly in their embellishments, the scientific and literary labor which many of them demand, can only be encountered where there is no apprehension of restraint. Thus, in works of great historical scope—the investigation of ancient as well as modern manuscripts and records—of scarce documents, ill-digested and repulsive works—of conflicting evidence—all these demand not only great judgment and accuracy in the winnowing of large masses of materials, but superior skill in adopting the best arrangement, and selecting the most appropriate language and illustration—and without the devotion of much time and leisure, the

greatest talents cannot execute the work in a manner proportioned to its magnitude and importance.

Again, in works of a philosophic and scientific character—should they comprise subjects of striking originality: the invention of a new system—the task of experiment and induction may require a still wider range of exertion and longer continued perseverance, which it is vain to suppose will be often bestowed without superior recompense. It is not reasonable to expect that the public can render immediate justice to works of an entirely novel description. For whatever is at variance with established opinions and received theories is naturally liable either to neglect or opposition. Perhaps it is the safer course for the public that it should be so. There is less danger in adopting a system after it has been subjected to every kind of ordeal, than if it were favorably received upon its first hasty and insufficient investigation. But whilst the public enjoy this immunity, let no needless injustice be done to the sons of genius. If the reward of their splendid discoveries cannot be bestowed in the age they live in,—if the authors of new and ingenious systems cannot reasonably expect that justice will be done to their meritorious labors during the span of their own brief existence, let them at least possess the consolation of looking forward to that day, however distant, when posterity will make amends to their surviving family or to some future descendant.

The evil it is evident must thus fall the heaviest on the most useful authors, whom it should be the policy of the legislature in the highest degree to protect, encourage, and recompense. It has often been remarked, that the best and most original works make the slowest advances in general circulation. *Smith's Wealth of Nations* passed through two editions only in eight years. *Hume's History* fell dead-born from the press; and MILTON's immortal poem remained for many years in almost total obscurity.

It is a fact, proved by indisputable evidence before a Committee of the House of Commons, that many important works of an expensive nature have not been published owing to the hardships imposed by the law. A great part of that hardship is attributable to the heavy tax of the eleven presentation copies for the public libraries (which we shall presently examine) but much also of disadvantage arises, even as regards these costly publications, from the limitation of time, because the splendid engravings, which occasion the chief expence of many of these works are equally

doomed to common depredation after the end of twenty-eight years.

It must be recollected that, authors are generally dependent on circumstances of a very uncertain nature for the notice their productions receive from the public. A great name will often do much and so may a great subject. Reviewers also are able to accomplish not a little in favor of a new publication, yet criticism is not infallible nor always well intentioned. It may suit the taste or the interest of the critic to cry down the subject, or to affix the "branding iron," upon the author. Malice may purposely condemn and prejudice, or ignorance blunderingly censure.—Thus "the whole ear" of the reading public may be "abused."

It is obvious, that if the period were extended, a higher remuneration might be afforded for works of superior importance on account of the enduring nature of the property in them. The profit it is true might not be rapid but its unlimited continuance would generally in the result compensate for the advance of a larger amount of capital. We might illustrate this fact by reference to the nature of leasehold and freehold property. For all ordinary purposes, to the great bulk of mankind, long leasehold property is really as useful as freehold, and endures as long as the lives of any for whom they feel an interest, yet we may perceive that such is not the general feeling, for the price in the market is exceedingly different: men are content with about three per cent when it is ensured to them in perpetuity, but they expect seven or eight in the other case, though it may last out three generations.

The cheapness of a work would thus obviously be promoted by the just extension of the period of its protection, because the proprietor would not depend upon any sudden return of his capital, but would proportion his gain to the extent of its duration. As he would ultimately receive a better remuneration he could afford to diminish its present amount. The calculation is now made upon an immediate return: if that does not take place, the work is supposed to be condemned—no matter what may be its intrinsic merits, no further efforts are made to bring them before the notice of the public.—The legal period being so short, it is not deemed worth while to keep open the account, and it is closed as soon as possible.

It may be said, however, that this extension of copyright would not produce any very perceptible difference in the immediate price to the public of literary works. And

undoubtedly to effect a sufficient reduction, corresponding with the sale of books on the Continent, the tax in favour of the public libraries, the imposts upon paper, and the duty on advertisements should be duly moderated if not removed. It must, however, be apparent, that great good would be done by the extension of the copyright, and it would be an earnest of future improvements, that would give a great impulse to the best kind of literary undertakings.

SECOND PART.

OF THE LIBRARY TAX OF ELEVEN COPIES
OF EVERY BOOK.

CHAP. I.—THE GROUNDS OF THE LIBRARY CLAIM EXAMINED.

Having brought before the reader the state of the law with reference to the contracted period during which the rights of authors are protected, and animadverted upon the monstrous injustice of permitting the productions of intellectual labor to become the object of common plunder after twenty-eight years, whilst the fruits of ordinary industry were wisely secured in perpetuity; we now turn to the consideration of the next feature of oppression in these statutes “for the encouragement of learning.” After curtailing the duration of the right of literary property, from a perpetuity to the brief term of twenty-eight years (in return for which restraint, it might have been anticipated that some splendid boon was intended to be conferred) the Acts of Parliament proceed to impose *a tax of eleven copies* on every publication, whether the most rare and expensive, or the cheapest and most insignificant.

Although the statutes impose a penalty of three pence per sheet for pirating copyright, the old mode of redress by an action at law for damages, or an injunction and an account in equity has always been and is still preferred. So that, in truth, the statute has practically left the remedy just where it was, and in consideration of the three pence per sheet (which is rarely if ever sued for) cut down the perpetuity of right to the short span of twenty-eight years; and in return for these services to literature, this protection of learned men and their families, (which closely resembles the protection afforded by the vulture to the lambs)—the legislature imposed a new tax of six copies, and revived an old one of three others which had been levied in the time of Charles II. but had expired soon after the revolution. Thus we perceive, that the mild literary imposts of the Stuarts were not deemed sufficient in that æra which has somewhere been denominated the Augustine Age of English Literature!

The two remaining copies, which complete this measure of “encouragement,” were imposed so late as the year 1802. The purpose for which these last copies are professedly de-

signed, might be considered, at first sight, as mitigating, in some degree, the quantum of injustice, for they are imposed *for the benefit of Ireland*—constituting, it may be supposed, some little compensation for the evils to which that ill-fated province was subjected, and realizing part of the high expectations which were so flatteringly held out to its patriotic feelings, that the union of the two parliaments would be followed by the happiest effects.

Thus, for the paltry consideration of these miserable copies, wrung from the hard pittance of the ingenious men of this country; the gifted sons of Ireland, who have so long shed a lustre upon the literature of the empire, are in their turn mulct,—not in *two* copies only, but in *eleven*! Such are the notions of equal laws and equal justice, which have hitherto prevailed on this important subject.

In treating of the origin of this tax, we examined the *legal* pretensions on which it was attempted to be maintained⁽¹⁾. It was formerly contended that the art of printing had been introduced at the expense of the king, and therefore that he was entitled to impose such terms as he pleased, in granting a license for its exercise. The agreement was also adduced by which the Stationers' Company engaged to furnish a copy of every book to the University Library at Oxford. These pretensions having been exploded, we have now to examine the *general and more popular grounds*, on which the advocates of the Universities still contend for the continuance of the tax.

I. That *the law is beneficial to the Universities* need not be disputed. These gratuitous contributions to their several libraries save their funds. But is the saving necessary or just? Have they not sufficient means to purchase every useful publication? Do they really make use of the current literature of the age? These are questions which cannot be answered, except in the negative. It cannot be requisite that every work that issues from the fertility of the press should be deposited in all the libraries. The works which are esteemed in these ancient colleges are those which have long maintained their rank as standard productions. The great bulk of modern publications are not introduced, and cannot, perhaps, with propriety be introduced into the course of study pursued at the Universities. A large part of the system of education is confined to ancient authors, and to subjects which do not admit of modern improvement. Indeed, the general plan of instruction is opposed to whatever is novel and speculative.

(1) Pages 44---49.

Nothing is adopted but that which has been long tried and established, and we cannot conceive, therefore, why the heads of colleges require those valuable but modern works, which they do not permit to be used.

Even were it necessary to the welfare of the Universities, that each should possess a copy of every publication, it is iniquitous to exact them at the expense of individual authors or proprietors. The colleges of which they are composed are in general richly endowed, and if each college could not afford to possess itself of the modern publications, their united funds would certainly be amply sufficient. It may be true, that some of the Scottish colleges have but little surplus wealth to dispose of in the purchase of every kind of publication; but whatever may be thought to the contrary, we are persuaded that the intelligent people of Scotland, in general, possess too much just pride to plead the *poverty* of their Universities as a ground for unjust exactions.

II. It is said that *the Universities cannot purchase the splendid editions* of great and expensive works, and yet they are works of which they stand in the greatest need: *they give a University dignity and respectability*. And in some departments of liberal education, accurate drawings and engravings are essentially requisite.

Now, however agreeable to the eye are splendid editions, and however suited to the taste of the affluent, we exceedingly question their utility, not only to the student, but to the professed author. Fine plates and bindings are adapted to the literary idler and looker-on, but can scarcely stimulate any one to intellectual exertion. These splendid trappings are for holidays, and not for days of learned labor. They tend, like great luxuries in general, more to enervate than invigorate.

That the welfare of a college is at all dependent on splendid editions we, therefore, altogether deny. If they should be rich enough to purchase these luxuries there can be no objection, for though not necessary to the real student and man of letters, they are no doubt agreeable subjects for literary relaxation.

The "respectability" of the establishment surely cannot be promoted by robbing an author of any portion of his fair-earned reward, and drawing down upon itself the odium of the whole republic of letters. And its "dignity" can scarcely be increased by any other means than the opportunity it affords to attain sound, comprehensive, and accurate knowledge, in the highest departments of philosophy and literature. It is beneath its real dignity to owe any of its attrac-

tions to the splendid decoration of its library, in which, indeed, there should be as little as possible addressed to the external sense, and every thing adapted to excite the intellect.

It is true that the student may be assisted in his pursuits by occasional engravings, but those which are useful are of a very different class to the splendid drawings which render many works so costly. Even in architecture, we apprehend it is not necessary that the plates for purposes of study, should be very costly, and besides, it is not in a college that the education of an architect can be completed. Antiquarian works are of course expensive, but we are not aware that the Universities profess to induct their pupils in the knowledge of antiquities, the study of which may safely be left to the Antiquarian Society. So also botany and zoology may be effectually studied without the aid of magnificent plates, which, indeed, are rather calculated to excite a taste for drawing, and to encourage a love of show and splendour, than to induce philosophical and studious habits. We can see no advantage to public education in attracting the pupil to quit the hard study, which can alone render him eminent in society, for the purpose of gratifying his taste in examining splendid folios, and admiring the productions of the arts of drawing and engraving.

III. But the law is said to be beneficial to general literature, by *affording to men of literary talents and industry the means of information*, and enabling them to accomplish works of the highest merit and utility.

This is too barefaced an excuse for injustice: it is robbing Peter, not to *pay* Paul, but to enable him dishonestly to live at the expense of Peter. The men of "literary talents and industry," who *have* accomplished works of merit and ability, are to be deprived of a large part of their profit, where any exists, in order that others may avail themselves of the results of their industry gratuitously. Surely, the fellows of these learned Universities, who favor the world with their collegiate lucubrations, and who set their own price upon them, should stand on the same footing as other literary men, and purchase the materials which they require in the course of their labors. It may be very convenient, but it cannot be just, that by the aid of these Universities a writer should possess himself of the property of his predecessors, for which no remuneration whatever has been made. And after all, there is not the plea of *necessity* in favor of the injustice; for it is the common practice of an author who is

engaged on a work, in the preparation of which he has occasion to refer to a variety of books, to obtain them from his publisher; and it is part of the understanding between them, that all the books which are necessary shall be lent him. Of course there is, of all others, the least difficulty in supplying the modern publications. And we presume, no one who is tolerably acquainted with the history and circumstances of literature, can believe that it has been, or is likely to be, benefited or improved by the doctrine, for the first time laid down in 1812, that the Universities are entitled to copies of every publication. We may venture to say, that if not the *best* authors of the present age, at least, as good as any others, are unconnected with the Universities, and derive no advantage whatever from the accumulations which have been made in their libraries, either since 1812, when *every* book has been supplied, or prior to that time, when the registered books only were delivered. Indeed, it is absurd to suppose that the intellect of the country is to be advanced by such paltry means, and the true friends of academical learning are no doubt as much ashamed of the folly of such an argument, as of the dishonesty of its principle.

Supposing, however, all these considerations set aside, let us inquire what is really the use of the single copy given to any one University? In general, the books are of no use whatever to any one in any of the colleges. Of the far greater portion, not a single page is ever read. It either is utterly useless, or is so considered for all collegiate purposes. Indeed, how can it be otherwise, when the libraries indiscriminately demand their copies of every publication---of all the trash, folly, and obscenity, which find their way out of the press.

But, suppose the work to be really valuable, either for its profound philosophy or learning, or for the popularity of the subject and the talent it indicates. Then every one becomes desirous to read it. Thousands of students apply for it; and what is the consequence? As but few can possibly obtain it, the work is either purchased or borrowed from the common circulating libraries, and the copy in each of the eleven libraries has precisely the effect of preventing purchases from the author, for the sole benefit of a few individuals, who can either do without the book, or afford to pay for it.

IV. Another benefit of the law, however, is said to consist in *preserving the books from the danger of loss*, some of which are valuable, and others will to future times prove curious.

The really valuable works there is no probability will ever be destroyed. The art of printing has disposed of all reasonable apprehension of that contingency, and we think it bad morality, on the coldest application of the doctrine of expediency, to do an act of positive injustice, for the sake of preserving something which may become *curious*. Certainly, many a production, intrinsically worthless, may, from its extreme rarity or antiquity, obtain an artificial value in the estimation of those who are pleased with such things; but it is not politic, (to say nothing of honesty,) to injure and discourage the writers of the present age, in order that a biblical antiquary may, some centuries hence, feed his idle vanity with the possession of a specimen of unique absurdity!

To meet, however, the object of preserving a copy of every kind of publication, whether the offspring of the talented or the foolish, the moral or the vicious, it would be sufficient to deposit a single copy in the British Museum as the *National Library*. To this, we are sure, no author or publisher would offer an objection, and this copy, so deposited, would serve the purpose, and render unnecessary the extra copy which every printer, by the 39th Geo. III. c. 79, sec. 27. 29, is obliged to reserve of every work he prints.

CHAP. II.

OF THE EFFECT OF THE TAX ON LITERATURE.

After having thus considered the nature of the claim of these favoured libraries, and the grounds on which it rests, we proceed to notice the evils which must necessarily attend its continuance.

The law has the effect of preventing the publication, both of valuable and expensive works; of those which require in their composition great learning and talent, and those which demand expensive illustrations and embellishments. The costliness of a work necessarily diminishes the number of its purchasers, and consequently the copies published are proportionally of a limited amount. It is well known, also, that the scarcity of a book increases its value in the literary market, and it is consequently material that as accurate a calculation as possible should be made of the expected demand. The skill and capital which are embarked in these expensive undertakings, cannot be rewarded without placing a high price upon each copy, and the exaction of eleven

copies out of fifty or 100, generally absorbs the whole profit. In some instances, the eleven copies amount to a tax of upwards of 40 per cent.; in others of 20; and in a very large proportion of cases, to 10 per cent.

Even in the most ordinary publications, the tax is sufficiently oppressive. The proprietor of the work, whether author or publisher, of course, forms the best estimate in his power of the probable extent of the sale. The custom of the printing-trade, it is well known, is to make the charge on each 250 copies, and the loss on eleven copies is exactly the price for which they would sell, or if that number of extra copies were printed, the loss would be equal to the printing of 250 copies, exclusive of the expence of paper. It is futile to say, that the printer might make his charge in a different manner—the custom of the trade has been long established, and we are not aware that the printer's remuneration is higher than it ought to be, or that it can possibly be reduced. On the contrary, we understand that journeymen taylors receive higher wages than the compositors in a printing office.

We have heard it argued, that where the work is popular and the sale extensive, the exaction becomes a mere trifle and is scarcely perceptible. Further, that when the work does not sell, the eleven copies may as well be placed in the public libraries as in the lumber-room of the publisher.

In considering this point, it must be borne in mind, that the majority of publications are not sufficiently successful to pay their expence, and although the publisher might afford to pay the tax on a work which met with great good fortune, yet it is only by these occasionally successful speculations that he is enabled to bear the frequent losses which he must necessarily sustain by other publications. This tax like every other, should be imposed according to general principles and in conformity with the rights and interests of the community at large. It is the language of heartless despotism to tell an author that if his book is not sold he may as well place it in a library as a lumber-room. Would this cruel mockery be endured by other classes of the community? If a man has more corn than he can sell, may the surplus be seized? Is the manufacturer liable to this sort of confiscating process when he cannot find a market for his wares? Can the land of the lordly proprietor be taken possession of when no profitable tenant can be found? Many of our monied men have larger incomes than they think proper to consume, and more capital than they can usefully employ—may we lay

hands upon a certain proportion of the surplus? We suppose not—yet wherefore should the unsold productions of an author be subjected to a different rule? Though not saleable now, they may sell at some future time, and if not at the price demanded at a lower one.—At all events they will fetch their weight as waste paper.

It may be observed also, that if the work is to be estimated as mere lumber, it cannot be valuable to the Universities, unless indeed (as we have heard it hinted) those patrons and promoters of learning increase their sufficiently ample revenues by selling the books which they do not think proper to dignify with a place on their shelves. We may classify works into good and bad, doubtful and indifferent. Those which are really valuable are not exceedingly numerous, and the Universities ought to pay for them. They used to do so, prior to the year 1812, when it was for the first time decided that they were entitled to a copy of every publication, whether entered at Stationers' Hall or not. Of works which are worthless, these great preceptors of the rising generation, surely need no copies; and such as are of a doubtful or indifferent character they ought not to require. Life is short—the season of youth is brief, and should not be wasted in the perusal of idle or questionable productions. Looking at the ample endowments of many, if not all, of the Colleges which constitute the several Universities, one should think that their funds could not be better employed than in bestowing part of them in the encouragement of valuable works, upon the publication of which, indeed, depends that great object of intellectual improvement, for the furtherance of which, the Colleges themselves were established.

Amongst other arguments, or rather pretences, in support of the policy, if not the justice, of the law, it has been strangely contended that the sale of valuable publications is favored by an opportunity being afforded by seeing such works in the public libraries, and thus awakening a relish for them! Nothing can exceed the puerility, untruthfulness, or misapprehension of such a suggestion. We take it, that, if the knowledge of the public with respect to new publications, were restricted to such information as they could obtain from their deposit in the libraries named in the Act of Parliament, very few of them would find purchasers. Indeed, a single advertisement or notice in a periodical work of extensive circulation, will evidently effect more in behalf of the work, than if it were bestowed upon every College in the Empire. We may be sure there is no lack of inclination to purchase able and useful publications, and if the supply

could be made at a cheap rate, it is scarcely possible to estimate the extent of the demand. It is perfectly childish to talk of the excitement produced by seeing books in a public library, when compared with the effect of their exhibition in the shops of the booksellers. In London there is one copy deposited in the British Museum, and another, for the benefit of the clergy in Sion College: compare the number of persons who look at books of any kind in those two repositories, with those who are attracted by their exhibition in other ways, and we shall be satisfied of the fallacy of the notion. The fact is, that the British Museum (to which no one would object that a copy should be presented) is resorted to generally, not for the purpose of reading new publications, but to consult those which are old and scarce, and it is to the periodical press, and to the activity of publishers, that an author can alone look for "awaking a relish" for any production that can now be offered to the public.

Another supposed reason in excuse of the exaction, is, that it cannot affect authors or proprietors, because the amount either is, or may be, charged to the public. But in this hypothesis it is entirely forgotten, that literary works do not form a necessary of life, and especially that the higher class of them, which need the greatest encouragement, are required by comparatively a small part only of the community. The tax on the means of subsistence must be paid by the consumer, although, even in that instance, the quantity consumed varies according to the price, and when the tax is high, the tradesman, if he throws the whole amount on the consumer, necessarily suffers by the diminution of his custom. Literary works are of the class of luxuries and the smaller the price, the more extensive the sale. There is a certain quantum of money expended in articles of this class—a taste for literature is fashionable—it excites admiration and gratifies vanity, whilst it also exercises far higher and better qualities.—If the tax upon paper and advertisements, as well as this library imposition, were removed or reduced, and the period of copyright extended, so that books might be published and made known, as they should be, for two-thirds of the present expence, the sale of them would then increase, not only in the proportion of that third, which is now consumed in preliminary expenditure, but in a much greater degree; for not only the same sum would naturally be expended, which has hitherto been applied in the purchase of literary works, and therefore the sale increased upwards of 30 per. cent; but the reduced price would as naturally

induce a still greater number to become purchasers, who are now deterred by its present heavy amount.

It has been contended, that the University and other libraries cannot purchase expensive books, and therefore the tax does not injure the sale. Whatever may be the case with respect to some of the minor colleges, it is certainly not so in the case of others. Several of them, prior to the new construction of the statute in 1812, were in the habit of subscribing for copies of costly publications: such as Dibden's *Typographical Antiquities*, Nichols's *Leicestershire*, &c. These instances of encouragement, formerly numerous, obviously tended to increase the number of such undertakings, but the present law has clearly an opposite tendency. The names of eminent libraries in the list of subscribers, formed a strong recommendation, and probably contributed to its extension. No such inducement can now exist, and in addition to which there is the loss of profit on the copies which they were accustomed to take.

It is a *direct tax upon industry*. Nothing can be more unprincipled than this anomalous taxation of literary property. No other class than the literary was ever proposed to be so taxed. There is, indeed, no instance in which any art, trade, or profession, was ever subjected to such an imposition.

It is also an odious *restraint upon the press*. We are told by the highest authorities that they anxiously desire to promote the just liberty of the press, but then their "just liberty" has a peculiar definition, and whatever is unpalatable is branded with the name of licentiousness; but apart from these differences of opinion on the limits to be set to free discussion, we conceive that the present state of the law of copyright, and the library impost, is a direct invasion of that great palladium of our rights,—a FREE PRESS; for it cannot be said to be free whilst its publications are subjected to such grievous restraints and exactions, from which other productions are wholly exempt. It is, in effect, instead of rendering it free, *tolerating only* its existence at a certain price, and under certain odious and oppressive restraints.

It is curious in the course of the discussions on this subject, to observe the expedients to which the opponents of justice have necessarily been driven. They reason in a circle of injustice and impolicy. The inventors of novel principles in machinery, or improvements and new applications of old ones, possess an exclusive property for a short term only. Then it is said, that literary works ought not to be better protected than those which are scientific. This we may grant, but we say they are *neither* of them sufficiently protected. The

injustice inflicted upon the one class is not mitigated by its imposition on the other. In taking the account, however, of the evils endured, both by authors and scientific inventors, it must be stated that the latter are not compellable to present eleven copies or specimens of their mechanical inventions or improvements. To make the cases precisely correspondent, in the measure of injustice, the man of scientific genius should present the Royal Society, the Society of Arts, and other institutions in the metropolis or the provinces, with eleven specimens of every instrument or engine, however expensive. And we ask what would be thought by the British public of the modesty of that man, who should venture to propose an enactment, to the effect that eleven of all future implements and machinery, from a penknife to a steam-engine, should be deposited in Somerset-House? We presume he would be set down as a curious specimen of the knave and madman, who ought neither to be trusted, nor left at large.

It would be too much to say that no invention, nor any improvement, will take place, if these restrictions and acts of injustice are continued; for we well know that genius is irrepressible, and will force its triumphant way, in spite of and amidst every obstacle; yet we also know that the liberal feelings of the public are decidedly in favour of affording ample justice to men of learning, ingenuity, and talent; and it is not enough to say, that literary men still devote their days and nights to intellectual labor, notwithstanding the disadvantages by which they are surrounded. We feel assured that the laws must be altered, whenever their impolicy and injustice are sufficiently made known by those who are without the walls of parliament, because at last it must be taken up by those who are within them, if they wish to promote and maintain that influence and character, which ought to belong to the members of an enlightened senate, the representatives of a free and intelligent people.

The law in its present state is a disgrace to the country. It is an anomaly in our legislative system. Let men of letters be placed, at least, on equal terms with the commonest artizan. We think the tax on the "raw material" of paper might be diminished; but if that cannot be done, surely the manufactured article of books should be free from impost. Every principle of political economy demands it, and the more especially, when it is recollected that the tax is not imposed for the benefit of the state or the community, but in favour only of chartered bodies, whose wealth and immunities are already sufficiently abundant.

If our literature be equal to that of the continental states,

let us imitate their example : let us cease to injure and really encourage those to whom we are indebted for our eminence. If it be inferior, let us lose no time in removing every impediment from its way, and introducing every means that can facilitate its improvement, and promote its rise : let not Great Britain be the country in which literary property is burthened more oppressively, in a six-fold degree, than any other nation of the civilized world ; rather let her abolish the imposition altogether, and surpass even the republics of the new world, as she undoubtedly might the monarchies of the old.

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NOTES,
COMPRISING
AUTHORITIES
REGARDING
THE LIMITATION OF COPYRIGHT,
AND
THE LIBRARY TAX.

—◆—
ARRANGED CHRONOLOGICALLY.
—◆—

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THE LIMITATION OF COPYRIGHT

AND

THE LIBRARY TAX

ARRANGED CHRONOLOGICALLY

Notes.

IN support of the views which have been taken of the injustice and impolicy of the laws, we deem it material to introduce some statements and reasonings taken from different sources, all of which importantly tend to confirm the positions in the text.

In making the selections for this purpose, we shall arrange them, in conformity with the general plan of the work, 1st. into the authorities which relate to the *extension of the term* of copyright, and 2dly, those on the subject of the *Library Tax*.

1. ON EXTENDING THE DURATION OF COPYRIGHT.

MILTON, 1644.

Among the glosses which were used to colour this ordinance against unlicensed printing, and make it pass, was *the just retaining of each man his several copy; which, God forbid, should be gainsaid*.

For that part which *preserves justly every man's copy to himselfe*, or provides for the poor, I touch not, only wish they be not made pretences to abuse and persecute honest and painfull men, who offend not in either of these particulars.

CARTE, 1735.

It cannot be amiss to obviate an objection founded on a mistaken notion, as if this privilege for old copies concerned only the book-sellers; whereas, in fact, many authors are greatly concerned in it. Mr. Anstis and Mr. Browne Willis have printed their very laborious

collections at their own expense, and still retain the property thereof. It would be hard to let these gentlemen undergo the mortification of seeing their works (like those of Sir W. Temple) pirated and printed in the same letter and paper as Tom Thumb, besides the loss they would suffer through the hinderance given to the sale of their books, great numbers of which still lie upon their hands, and will do so for ever if they may be printed in weekly parcels, an evil which can never be effectually prevented but by securing the property of old copies as well as new, thereby depriving pirates at once of all their materials. The property of many books still remains in the heirs of the authors. Sir W. Dugdale left by his will the copy of the *Baronage of England*, and the right of reprinting the same (the best and most useful of all his works, and which points out more records serviceable to gentlemen, and relating to their estates, than all the books yet published in England) to his grandson Mr. W. Dugdale, whose son, Mr. John Dugdale, hath, in consideration of a sum of money, by a legal conveyance, assigned the same to me. In order to a new edition and continuation of that work, which Sir W. before his death had carried on to 1691, I have made various searches, and put myself to considerable expense, and particularly I have now by me receipts for sixty guineas, which I have paid for transcripts of Pipe Rolls relating to antient barons from King Stephen to Edward II. and as there are many mistakes in the marginal references, &c. in that work, they must be all examined anew with the records from which they were taken, the labour and expense whereof must be immense, and unfit for any body to undergo without a full security for his property in that old copy. It doth not lessen the unhappiness of authors to be wounded through the sides of booksellers, or out of prejudice to this last set of men (who, after all, have fairly purchased what right they have in such copies, and lose by some what they gained by others;) but it is certain that more authors are concerned in this privilege to old copies than is generally imagined, and were there fewer, they might still hope for such a privilege, if it be reasonable, in this case, to follow the Roman maxim in another—*that it is better to save one citizen, than destroy an hundred enemies.*

BISHOP WARBURTON, 1747.⁽¹⁾

It seemeth to me an odd circumstance, that, amidst the justest and safest establishment of *property*, which the best form of Government is capable of procuring, there should yet be one species of it belonging to an order of men, who have been generally esteemed the greatest ornament, and certainly are not the least support of civil policy, to which little or no regard hath been hitherto paid. I mean the *right of property in authors* to their works. And surely, if there

(1) In a collection of law tracts in the British Museum, there is *A Letter from an Author to a Member of Parliament, concerning Literary Property*, on which the following memorandum is made in the hand-writing of Mr. Hargrave:---“ This pamphlet is “ said to have been written by Dr. Warburton, now Bishop of Gloucester.---F.H.”

be degrees of *right*, that of authors seemeth to have the advantage over most others; their property being in the truest sense their *own*, as acquired by a long and painful exercise of that very faculty which denominateth us *men*. And if there be degrees of *security* for its enjoyment, here again they appear to have the fairest claim, as *fortune* hath long been in a confederacy with *ignorance*, to stop up their way, to every other kind of acquisition.

History, indeed, informeth us, that there was a time, when men in public stations thought it the duty of their office to encourage letters; and when those rewards, which the wisdom of the legislature had established for the learned in that profession deemed more immediately useful to society, were carefully distributed amongst the most deserving. While this system lasted, authors had the less occasion to be anxious about literary property, which was, perhaps, the reason why the settlement of it was so long neglected, that at length it became a question, whether they had any property at all.

But this fond regard to learning being only an indulgence to its infant age; a favor, which in these happy times of its maturity many reasons of state have induced the public wisdom to withdraw; *letters* are now left like *virtue*, to be their own reward. We may surely then be permitted to expect that so slender a pittance should at least be well secured from rapine and depredation.

The great temptation to invade this property is while the demand for it is great and frequent, which is generally on the first publication of a book, and some few years afterwards.---While this demand continues, the proprietor hath need of all additional sanctions to oppose to the force of the temptation. But when, in course of years, the demand abates, and with it the temptation, the common legal security of natural rights is then sufficient to keep offenders in order.

SIR THOMAS CLARKE, Master of the Rolls, 1761.

It is not necessary to determine, whether authors had a property in their works before the statute of Queen Anne. *If they had not, it was a reproach to the law.*

LORD MANSFIELD, Mr. Justice BLACKSTONE, Mr. Justice WILLES,
Mr. Justice ASTON, &c., 1769.

In the commencement of the Historical View⁽¹⁾, we have presented an outline of the luminous and powerful arguments by which these distinguished personages adjudged, in accordance with the principle of the common law—founded on reason and justice, experience and moral fitness—that the authors of literary compositions should have the exclusive right of publication in all time to come. We refer, therefore, to those parts of the work for the statement of the grounds on which that conclusion was established.

(1) Section I. and II. page 1 to 10.

The authorities thus referred to, are of the highest legal eminence. It may be important, however, on a question involving the interests of literature, as well as the principles of law, not to depend on professional authority alone, but to consult other writers who have investigated the nature and consequences of the present system. We shall therefore, in addition to some further legal opinions, avail ourselves of the learning and research displayed in various works of eminence; and our selections will consist, either of the lucid detail of essential facts, or the eloquent expression of important opinions.

Lord MONBODDO, 1774.

That every author has a property in his own manuscript has not been denied; and it has been admitted, that in consequence of this property, he may, as the law now stands, print it if he pleases, and so far reap the fruits of his property. Let us then suppose that the author, instead of multiplying copies by the press, makes several in writing, and that he gives the use of one of these copies to a friend. This happened in the case of Lord Clarendon's History, and it was there adjudged, that the person who got the use of the copy had not a right to print it, though it did not appear that when he got it, he was laid under any restraint or limitation as to the use of it. It is true indeed, that the person in that case got the use of the MS. for nothing. But would it have altered the case if Lord Clarendon's heir in consideration of the expence or trouble, of transcribing the MS. had made him pay something for the use of it? Or suppose, that instead of transcribing it he had taken the more expeditious way of taking copies of it by the press? It appears, therefore, that by giving the use either of MS. or book, for hire or without hire, I do not give the liberty of printing or reprinting it, even where no such condition was mentioned.

I hold it to be part of the contract of emption, when a book is sold that it shall not be multiplied. In the case of a printed book, it is not only understood that the purchaser shall not reprint it, but it is expressed. For the title page bears that it is *printed* either for the author, or for some bookseller to whom he has assigned the copy, the meaning of which cannot be, that the author or the bookseller has a right to the copies already printed (for as they are in his possession such advertisement is altogether unnecessary) but to intimate that he has the sole right of printing: so that the selling a book with such a title is in effect covenanting that the purchaser shall not reprint it.

Mr. DUNNING, 1774.

The statute of Anne, which professed to encourage learned men, was thus far realized, that so soon as protection to copyright was permanently afforded to the Courts of Justice, the price for its transfer increased. The supposed *additional security* given by the act, imme-

diately enhanced the value of copyright. After the repeated injunctions which were granted in Chancery, it seems that payments were made for copyright of an amount previously unparalleled. The instances of the sums paid for the historical works of *Hume* and *Robertson* are a sufficient proof of the important effects which follow the due protection of this kind of property.

The decision which took place in the Court of King's Bench, in the year 1769, produced a still more remarkable effect on the interests of authors. The price paid for *Dr. Hawkesworth's Voyages*, was still larger than in the former instances, and it is evident from the comparative superiority of the historical works referred to, that the increase of remuneration was occasioned by the better understood nature of the property⁽¹⁾.

We must consider the times which we examine, and the nature of the property in question. In ages wherein civility had made but small progress it would be absurd to look for litigations of a property so little valued and so seldom disputed. The want of precedents in such a case proves nothing. There are many unquestionable common law rights for which no precedent can be found so far back as Richard II. The nature of the property shews at first sight, that it would be in vain to look back for decisions in its favor, even supposing that from other circumstances the existence of it was unquestionable.

The Solicitor General WEDDERRURN, 1774.

Adverting to the application of the printers in *Prynne's* time to suppress the patents for printing the bible, he says, "that celebrated lawyer declared that the most solid objection against the printers was the *inherent common law-right* of an author to multiply copies. This he observes, is one strong proof, that in the worst of times the *jus naturale* respecting literary property was not forgot. He adds, licences in general prove, not that the common-law right did not exist, but were the universal fetters of the press, at the times in which authors were obliged to obtain them.

Authors, both from principles of natural justice and the interest of society, have the best right to the profits, accruing from a publication of their own ideas, and it is absurd to imagine, that either a sale, a loan, or a gift of a book, carries with it an implied right of multiplying copies: so much paper and print is sold, lent, or given, and an unlimited perusal is warranted from such sale, loan, or gift; but it cannot be conceived that when five shillings are paid for a book, the seller means to transfer a right of gaining one hundred pounds: very man must feel the contrary, and confess the absurdity of such an argument.

(1) We have presented the substance of this part of Mr. Dunning's speech in the case of *Donaldson v. Becket*. It is a sufficient answer to the assertion that booksellers alone would be benefited by an extension of the term. It would be equally advantageous to authors, and indeed it is manifest that nothing but justice can ever be generally beneficial to any class of persons.

Mr. HARGRAVE, 1774.

On the practicability of ascertaining the right of literary property.

I might urge that facts are conceded sufficient to render the discussion of this point wholly unnecessary; that it has been the practice to appropriate the right of printing books in all countries, ever since the invention of printing; that it subsists in some form in every part of Europe; that in foreign countries it is enjoyed under grants of privilege from the sovereign; that in our own country it is admitted to be legally exercised in perpetuity by the crown and its grantees over particular books; and even the legislature has protected such a right over books in general for a term of years, and has repeatedly called it a property, and those in whom it is vested proprietors. These facts, however inconsistent they may seem, and really are with the argument against the practicability of asserting the claim of literary property cannot be denied; but this is not the proper place for urging them. I shall therefore for the present wave the authority of examples, and shall reason wholly from the nature of the subject in which the property is claimed.

The subject of the property is a written composition; and that one written composition may be distinguished from another is a truth too evident to be much argued upon. Every man has a mode of combining and expressing his ideas peculiar to himself. The same doctrines, the same opinions never came from two persons, or even from the same person at different times, cloathed wholly in the same language. A strong resemblance of style, of sentiment, of plan and disposition, will frequently be found; but there is such an infinite variety in the modes of thinking and writing, as well in the extent and connection of ideas, as in the use and arrangement of words, that a literary work really original, like the human face, will always have some singularities, some lines, some features, to characterize it, and to fix and establish its identity: and to assert the contrary with respect to either, would be justly deemed equally opposite to reason and universal experience. Besides, though it should be allowable to suppose that there may be cases, in which, on a comparison of two literary productions, no such distinction could be made between them, as in a competition for originality to decide whether both were really original or which was the original, and which the copy; still the observation of the possibility of distinguishing in all other instances, and the arrangement in its application to them would still have the same force.

Whether publication destroys an Author's property.

It is asked, how an author, after publishing his work can confine it to himself, and exclude the world from participating of the sentiments it contains? This objection depends on this supposition, that the exclusive right claimed from an author is to the ideas and knowledge communicated in a literary composition. An attempt to appropriate

to the author and his assigns, the perpetual use of the ideas contained in a written composition, might well be deemed so absurd and impracticable, as to deserve to be treated in a Court of Justice with equal contempt and indignation; and it would be a disgrace to argue in favor of such a claim. But the claim of literary property is not of this ridiculous and unreasonable kind; and to represent it as such, however it may serve the purposes of declamation, or of wit and humour, is a fallacy too gross to be successfully disguised. What the author claims, is merely to have the sole right of printing his own works. As to the ideas conveyed, every author, when he publishes necessarily gives the full use of them to the world at large. To communicate and sell knowledge to the public, and at the same time to stipulate that none but the author or his bookseller shall make use of it, is an idea, which avarice herself has not yet suggested. But imputing this absurdity to the claim of literary property, is mere imagination; and so must be deemed, until it can be demonstrated that the printing a book cannot be appropriated without, at the same time appropriating the use of the knowledge contained in it; or in other words, that the use of the ideas communicated by an author cannot be common to all, unless the right of printing his works be also common. If the impossibility of proving such a proposition be not self-evident, I am sure, that there is not any argument I am furnished with, which would avail to evince the contrary.

On the expediency of confining the right of printing particular books to certain persons.

It is apprehended by many, that if there were not any such thing as property in the printing of books, the art of printing would be more beneficial to the public in general, as well as to those who practice the art, or are connected with it in particular. But the truth is, that the opinion, however popular it may be, is without the least foundation. How would making the right of printing every book common, be advantageous to those concerned in printing or manufacturing books, or in bookselling? Every impression of a work is attended with such great expences, that nothing less than securing the sale of a large number of copies within a certain time can bring back the money expended with a reasonable allowance for interest or profit. But is this to be effected, if immediately after the impression of a book by one man, all others are to be left at liberty to make and bend impressions of the same work? A second, by printing with an inferior type, on an inferior paper, is enabled to undersell the printer of the first impression, and defeats him of the benefit of it, either by preventing the sale of it within due time, or perhaps by totally stopping it. The second printer is exposed to the same kind of hostility; and a third person, by printing in a manner still worse, still more inferior, ruins the second; a fourth, the third; and so on it would be in progression, till experience of the disadvantages of a rivalry so general would convince all concerned, mediately or immediately, in the trade of printing, that it must be ruinous to carry it on, without an appropriation of copies to secure a reasonable profit on the sale of each impression.

Having thus explained the disadvantages, which would accrue to those concerned in printing, if copies were common, I will now ask, how making them so could produce the least benefit to the public in general? Would lessening, or rather annihilating the profits of printing, tend to encourage persons to be adventurers in the trade of printing? Would it make books cheaper? So long indeed as the least legal idea of property in copies remains, most persons will probably hold it both dishonorable and unsafe to pirate editions; and so long only can the few, who now distinguish themselves by trafficking in that way, afford to undersell the real proprietors. Such persons at present enjoy all the fruits of a concurrent property without paying any price of it; and therefore it is not to be wondered at, that they should undersell those who have paid a full and valuable consideration for the purchase of their copies. But if the right of printing books should once be declared common by a judicial opinion, the advantage which enables particular persons to undersell those who claim the property, would cease; pirating would then become general; and perhaps those who now practice it would themselves be sacrificers to their own success in the cause they support. Whilst the question of literary property is in a suspended state, they have the harvest to themselves; but if they should gain their cause, like other Samsons, they would be crushed by the fall of the building they are pulling down.

On the supposed resemblance between the Inventor of a machine and the Author of a Book.

In my opinion, the principal distinction is, that in one case the claim really is to an appropriation of ideas; but in the other, the claim leaves the use of the ideas common to the whole world.

LORD LYTTLETON, 1774.

I own I have no acquaintance with the quirks and quibbles of the law. I speak to the matter merely as a question of Equity; I cannot enter into delusive refined metaphysical argument about tangibility, the materiality, or the corporeal substance of literary property; it is sufficient for me that it is allowed such a property exists. Authors I presume will not be denied a free participation of the common rights of mankind, and their property is surely as sacred and as deserving of protection as that of any other subjects. It is of infinite importance to every country that the arts and sciences should be cultivated and encouraged. Where men of letters are best protected, the people in general will be most enlightened, and where the minds of men are enlarged, where their understandings are equally matured in perception and in judgment, there the arts and sciences will take their residence. The arts and sciences had their origin in Italy, from thence they fled to a remote corner of Asia, at length they returned companions of the all-conquering arms of the Roman Republic, and at last they were happily seated in this free country. I am of opinion that there are at present but two monarchs in Europe who are encouragers of the arts and

sciences, and are themselves men of letters, the King of Prussia and the King of England. It hath been urged that authors write for fame only ; that glory is the best reward, and that immortality of renown is an ample recompence for their labors ; they therefore do not stoop to claim a further right than that of a first communication of their ideas to the public. This is in a confined sense a proper and a noble observation, but it will not hold generally. I beg your Lordships to remember that genius is peculiar to no climate ; it belongs to no country ; it is more frequently found in the cottage than in the palace ; it rather crawls on the face of the earth than soars aloft ; when it does mount its flight should not be impeded. To damp the wing of genius is, in my mind highly impolitic, highly reprehensible, nay, somewhat criminal. If authors be allowed a perpetuity, it is a lasting encouragement ; making the right of multiplying copies a matter common to all, is like extending the course of a river so greatly as finally to dry up its sources.

Mrs. CATHERINE MACAULAY, 1774.

The Romans even in their degenerate days, had that high sense of merit in general, and of services rendered the public, that according to Pliny and other writers, in proportion to a man's character for literary abilities and virtues, in proportion to his power of rendering himself useful to his country and fellow citizens, and in proportion to his exertion of this power, he was sure of meeting from the generous hands of individuals an equal reward.

Pliny, if I remember right, in speaking of his own success in life, and that of one of his cotemporaries, mentions the leaving legacies to learned and good men, as a practice common and familiar. We were of the same age, said he ; we entered into life together, and we had the same number of legacies bequeathed us. This being the custom among the Romans, with what ardor must it inspire every youthful breast, to deserve such grateful, such useful returns of bounty !

An Englishman persuades himself he is acting with propriety, when he bequeathes the whole of his estate to a blockhead he despises in the fiftieth degree of relationship, though he leaves behind him many worthy ingenious friends, whom a small legacy would help out of very intricate circumstances.

That watchful guard selfishness, is a never failing check to any generous sally of the mind, or to any benevolent inclination in the human breast ; and the means of obtaining wealth from the good opinion of his country or his friends being thus barred from a man, whom fortune has denied to favor, yet of merit, of genius, and of virtue sufficient to instruct and enlighten mankind.—If such a man be deprived of the necessary lucrative advantage by the right of property in his own writings, is he to starve, or live in penury, whilst he is exerting, perhaps vain endeavors to serve a people who do not desire his services ? Supposing this man has a wife and children, ought he, for the mere whistling of a name, to exert those talents in