POLLARD-URQUHART, Lord NAAS, Mr. MONTAGU SMITH, Mr. SOLICITOR GENERAL, The JUDGE ADVOCATE, Sir HUGH CAIRNS, Colonel VANDELEUR, and Colonel FRENCH:—Five to be the quorum.

House adjourned at ten minutes before Six o'clock.

HOUSE OF LORDS,

Thursday, May 22, 1862.

MINUTES.]—PUBLIC BILLS.—1ª Landed Property Improvement (Ireland) Acts Amendment; Oaths of Allegiance and Supremacy Re-enactment.
2ª Copyright (Works of Art).
3ª Halifax Corporation.

COPYRIGHT (WORKS OF ART) BILL.

SECOND READING.

Order of the Day for the Second Reading read.

EARL GRANVILLE, in moving the second reading of this Bill, observed, that under the present state of the law artists, engravers and photographers were entirely without protection for works of art. The purchaser of such works was also liable to have them pirated, and inferior works of art might be passed off as the productions of masters. Besides, some change was required in our law in order to enable us to avail ourselves of the provisions of international treaties with reference to this subject. Under this Bill the artist was to have the copyright of a picture or other work of art during life, and for seven years after death. As between the artist and purchaser it was provided that the copyright passed to the purchaser with the work of art, unless it was specially reserved to the artist by written agreement. After that agreement was made, it was to be registered at Stationers' Hall in the same manner as a literary work, and assigned in the same manner. There was a provision to the effect that copyright should not in the slightest degree interfere with the reproduction or representation of scenes or objects previously represented; protection was only given to the work of art as it stood. He would not, on that occasion, go into the details of the Bill, which were matters of procedure. He should be glad in Committee to receive suggestions from any noble Lord; but as it was desirable to confer with others on the subject, he hoped notice would be given of them before going into Committee.

Moved, That the Bill be now read 2ª.

LORD OVERSTONE said, that this Bill had been on their Lordships' table for nearly two months, and it was only now that the noble Earl had taken it under his patronage. This showed that the noble Earl had at least some doubt as to the principles on which the measure was founded. This was obviously an artists' Bill, drawn up for the protection of artists only; without any reference to the interests of other parties necessarily connected with this subject, such as the interests of the general purchasers of pictures, the interests of the publishers of illustrated works, and the interests of the public at large. He had always understood that the fundamental principles upon which special privileges, or patent rights, were granted, were—first, that the work should be, in the true sense of the word, an invention—something new and creative on the part of the person seeking those privileges; and, secondly, that in consideration for granting exclusive protection for a given period, the novelty should be specifically and distinctly described; so that at the end of the period of protection there should be a special dedication of the subject to the public interest. He did not see in this Bill the slightest reference to either of those principles, and the very expression, "new and original," which had been used in all former Acts had in the present instance been carefully excluded. His main objection, however, to this Bill was, that it did not discriminate as to the position and interests and the reasonable rights of the persons interested. An artist under this Bill might produce any work, and, by reserving to himself the copyright, prevent the work from being in any shape or form copied, or anything being derived from it that might be useful to the advance of art in this country. If a man engaged an artist to paint for him a portrait of himself or a member of his family, or if he commissioned him to paint for him a picture on any given subject, the copyright of that picture ought to belong to the employer who paid for it. Possession of the work ought to carry with it the copyright, unless that be reserved by some special condition. That was the law in France, and that was the law of common sense, but it was not the law as this Bill pro-

posed to make it. Again, the Bill provided that copyright might be reserved at the time the picture was produced, but the registration of it was not necessary for a twelvemonth. The consequence would be, that there would exist a copyright unknown to the public for the whole period of one year. It was obvious, that if a copyright was to be granted, the registration of it should accompany, if not precede, the first production of the work; otherwise copies made previous to registration, and purchased in good faith by parties ignorant of the suppressed copyright, would be liable at any moment to be seized and suppressed. The Bill was drawn for the sole purpose of giving extraordinary and comprehensive powers, which were not only unnecessary, but dangerous. The various conflicting interests and circumstances of those who may in various ways become possessed of pictures are ignored by the framers of the Bill, which, moreover, is so worded in some of its provisions as to raise doubts as to its meaning, and he feared much difficulty and litigation would arise from the Bill if it passed as it now stood. Take, for instance, the clause to prevent the fraudulent imitation of marks—an object good in itself, but the phraseology by which it was proposed to be carried out was likely to create evils as great as those which it proposed to remedy. He submitted that the Bill required a much more careful consideration than had been applied in drawing it up, and suggested that it should be withdrawn, with the view of bringing forward some measure more carefully devised with reference to the delicate and complicated interests which it must affect, in a future Session.

EARL STANHOPE said, he did not think that a case of valid objection had been made out by the noble Lord (Lord Overstone), the whole of whose speech appeared to be based, if he might venture to say so, upon a fallacy. The noble Lord seemed to think the measure was intended to be retrospective in its operation, and that it would overturn all the respective relations of the artist and the proprietor of a work of art. No doubt that was also the idea of many persons when the Bill was before the other House, and he knew that some of the great publishing houses were afraid that their property in illustrated works would be destroyed. If, however, the noble Lord would look at the Bill again, he would see that the first clause clearly defined the prospective character of its operation; and if he would go through the subsequent clauses, he would see that no disturbance of the existing relations between the author of a picture and the purchaser could take place under it. It was now twenty years since he (Earl Stanhope) brought forward his Bill in the House of Commons to amend the law on literary copyright, and he well remembered that the Bill was met by precisely the same class of objections which the noble Lord had advanced against the present Bill, but which experience of the working of that measure had proved to be groundless; and he had no doubt that the present measure would be attended with the same result. During the discussions which took place on the Copyright Bill it was distinctly admitted, that though there were greater difficulties in the case of works of art, yet that the claims of the artist to a copyright in his works were quite as valid as those of the literary author in his; and if they once admitted the principle that a man should be protected in the enjoyment of his intellectual productions, and if they allowed a certain period of possession to the author for his benefit before the public were put in full and free enjoyment of the work, he did not see how Parliament could refuse the same privilege to the artist as it had already granted to the author. There was no difference in principle between a poem and a picture. In the one case Parliament had affirmed that principle, and he could not understand how they could consistently resist it in the other. There might be some slight difficulties in the case, but they arose principally from the over-eagerness of some persons connected with art to read the Bill in a retrospective sense; but supposing the Bill to be, as he contended it was, entirely prospective, there could be no ground for objection. It would be quite as open for persons to make agreements in respect to works of art, should the measure pass, as it was now and they would be equally binding. There were one or two points of difficulty, he admitted, especially as regarded photographs. It was quite possible for two or more persons to take photographs of the same scene, building, or work of art from the same spot, and under the same circumstances, and of course producing similar results; and to give a copyright in such cases he thought very likely to occasion dispute and litiga-

Lord Overstone

tion. A person, for instance, might make a photograph copy of a photograph—say of the Colisæum — originally taken by another; who could say that the copy was not an original photograph? As to photographs of living persons, the difficulty would be less, because it would be possible to ascertain who was the artist who took the original photograph, and whether the person represented had sat to any other; but in the case of photographs of scenes, buildings, and works of art, he did not see how they could find it easy to enforce a copyright. He thought the better course would be to read the Bill a second time, and consider what Amendments it would be advisable to introduce in Committee.

LORD TAUNTON said, he entertained great doubts whether the Bill was calculated to promote the true interest of art or artists, and objected, in the interests of the public, to legislative interference for the purpose of preventing the multiplication of works of high art. A good picture, he thought, should be its own protection against the art of the copyist. His noble Friend said that it was hard upon a man who purchased at a high price a valuable picture to find copies of it in the hands of others, obtainable at any picture dealer's; but he (Lord Taunton) had no sympathy with the man whose appreciation of art led to no higher result than to lead him to buy a picture for the mere purpose of boasting that he possessed something which nobody else could obtain. He believed that such a power as this Bill proposed to give would lower art in this country and depreciate the public taste. With regard to photographs, he did not see how it was practicable to give a copyright. The Bill, moreover, he was afraid, was calculated to give rise to litigation. With the exception, perhaps, of the picture-dealers, whom it might benefit, he considered the Bill as prejudicial to all concerned—to artists and to those who traded in works of art, and more especially to the cause of art itself, and to the public; and if a division were taken, he should vote against the second reading.

THE LORD CHANCELLOR, on the contrary, regarded the Bill as an act of simple justice to artists, and calculated to promote and encourage art. He was astonished to find, that while they gave a property to that which was, in the ordinary way, the work of a man's hands, and allowed a copyright in inventions and designs, it should be gravely contended that in those productions which were exclusively the creations of the mind no such right was to be admitted. They did give a copyright to literary productions; but now, when it was proposed to give a similar right to pictures, they were told that it was derogatory on the part of the jurisprudence of the country to protect the works of those who contributed by their art to the honour of the country, the elevation of the public taste, and to the amusement, instruction, and delight of the people. For his own part, he entirely agreed in the opinion of the great Lord Mansfield, that in all works of the mind the common law of the country should be regarded as giving an absolute property to the authors. Under a somewhat strained construction of the Act of Anne a very narrow and limited right had been for a long period all that was given to literary works; that evil, however, the Copyright Act introduced by his noble Friend (Earl Stanhope) had remedied; but it still left the fine arts, painting and sculpture, without adequate protection. Indeed, as regarded the painter, as the law stood, he had no protection at all. Any man might now make any number of copies of the best works of any artist—sell them, and there was no remedy. Not unfrequently these copies were sold as originals, and even the name of the original artist was sometimes forged upon them; but the artist could get no protection or reparation. There was a well-known case in which a celebrated artist sold a picture for a considerable sum: after some time a copy was produced with the name of the artist attached to it, and was passed off as an original. The person by whom that name was so attached was indicted for forgery; but it was held that he was not amenable to law. In most foreign countries, copyright in works of art was admitted, in some cases extending to twenty, thirty, or fifty years, and in others until after death; and he contended that it was due not only to ourselves, but to other nations, to afford a similar protection in this country. So far as the artists were concerned, there was no ground for refusing to them the same protection which had been given to historians and all other authors of works of literature. Then let their Lordships consider whether the Bill did not give protection to the purchaser of a picture. It was well-known that after

a person had purchased a picture the artist may make a copy and multiply it to any extent, although the purchaser might be under the impression that he had bought a picture as being the single work of the artist. Of course such a thing would not be done by any honourable man, but still the right remained to the artist to act in that manner if he thought proper. It was not a desirable thing to have a great work of art multiplied several times, and hawked about for sale. So far, then, as the artist and the purchaser were concerned, this Bill proceeded not merely upon the principle of justice, but upon the principle of great expediency. With regard to the public, what greater benefit could be granted to them than that there should be given to works of genius the largest amount of protection possible? In the same proportion as they extended protection to works of genius would they be likely to increase the works of genius. With regard to the objections which he had heard from some of their Lordships, many of them might be met when in Committee. The 4th clause of the Bill had been introduced in consequence of the evidence given before a committee of artists, from which it appeared that a number of pictures had been copied and altered by inferior artists, and had been sold again as works by the original painter. One remarkable instance was stated by Mr. Charles Landseer, the painter of a picture in which he had introduced two dogs, which had been touched up by Sir Edwin Landseer, and, as the artist himself admitted, greatly improved. This picture was sold to a dealer, who cut out the figures of the dogs, and sold them as the work of Sir Edwin Landseer; and then he filled up the hole in the original picture with two dogs painted by an inferior artist, and sold the whole picture as the work of Mr. Charles Landseer. These were some of the frauds committed on artists of celebrity, and, without being actuated by petty feelings, they might naturally manifest some sensitiveness on the score of their reputation at being so treated. A point had been raised respecting the difficulty of proving in some cases that photographs were copied, but he thought it possible that the copy of a photograph might be sufficiently detected, as it would be hardly possible for two persons to produce representations of the same object under exactly the same conditions of light, position, and other circumstances. He did not deny that there were many provisions in the Bill which would require careful consideration in Committee; but the great principle of the measure, which recognised property in works of art, and the adoption of which had been too long delayed, was in accordance with a natural feeling of justice.

On Question, Motion *agreed to;* Bill read 2ª accordingly, and *committed* to a Committee of the Whole House *to-morrow*.

House adjourned at a quarter past Six o'clock, till To-morrow, half-past Ten o'clock.

HOUSE OF COMMONS,

Thursday May 22, 1862.

MINUTES.]—PUBLIC BILLS.—1° Rifle Volunteer Grounds Act (1860) Amendment.
2° Unlawful Oaths (Ireland) Act Continuance.
3° Local Government Supplemental; Public Houses (Scotland) Acts Amendment.

UNITED KINGDOM ELECTRIC TELEGRAPH COMPANY BILL.

SECOND READING.

Order for Second Reading read.

Motion made and Question proposed, "That the Bill be now read a second time."

MR. HUMBERSTON said, that though this was a private measure, it involved considerations of public importance. It empowered the Company to lay down their poles and wires along the turnpike road, and thus to curtail its width, by merely giving fifteen days' notice. This might occasion very considerable inconvenience. There were other clauses which required consideration. He thought that further notice should be given to hon. Members, that they might become acquainted with the provisions of the measure to which they were asked to assent, and he therefore moved that the second reading be deferred for a week, in order that the public might know that it was before the House, and should be referred to a Committee, before whom they could be heard.

Amendment proposed, to leave out the word "now," and at the end of the Question to add the words "upon this day week."

Question proposed, "That the word 'now' stand part of the Question."

The Lord Chancellor