

AN
HISTORICAL SKETCH
OF THE
LAW OF COPYRIGHT;

WITH
REMARKS ON SERJEANT TALFOURD'S BILL:

AND
AN APPENDIX
OF THE COPYRIGHT LAWS OF FOREIGN COUNTRIES.

—♦—
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The Second Edition.

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TO

MR. SERJEANT TALFOURD,

&c., &c., &c.,

FOR HIS GENEROUS ADVOCACY OF THE RIGHTS OF AUTHORS,

The following Pages

ARE, WITH MUCH RESPECT, BY PERMISSION,

DEDICATED.

FRANCIS BACON

The first part of the work is a treatise on the art and mystery of judgment, which is a kind of logic or method of reasoning. It is divided into three books, the first of which is the most important. In this book, Bacon discusses the nature of the human mind, the sources of error, and the principles of a sound judgment. He argues that the mind is naturally inclined to error, and that the only way to avoid error is to follow a certain method of reasoning. This method is based on the principles of logic, and is designed to help the mind to see things as they are, without being misled by its own preconceptions or biases. The second book of the work is a treatise on the art and mystery of science, which is a kind of natural philosophy. It is divided into three books, the first of which is the most important. In this book, Bacon discusses the nature of the human mind, the sources of error, and the principles of a sound judgment. He argues that the mind is naturally inclined to error, and that the only way to avoid error is to follow a certain method of reasoning. This method is based on the principles of logic, and is designed to help the mind to see things as they are, without being misled by its own preconceptions or biases. The third book of the work is a treatise on the art and mystery of politics, which is a kind of natural philosophy. It is divided into three books, the first of which is the most important. In this book, Bacon discusses the nature of the human mind, the sources of error, and the principles of a sound judgment. He argues that the mind is naturally inclined to error, and that the only way to avoid error is to follow a certain method of reasoning. This method is based on the principles of logic, and is designed to help the mind to see things as they are, without being misled by its own preconceptions or biases.

P R E F A C E

TO THE SECOND EDITION.

SINCE the following pages were first laid before the public the able and generous advocate of the rights which they are intended, however ineffectually, to support, has retired from an arena, where high thoughts and noble aspirations unavailingly struggle with the apathy betrayed on all questions not affecting self-interest or party spirit.

Early in the month of February, 1840, the learned member for Reading, had in pursuance of his pledge, brought forward his bill for the amendment of the Law of Copyright. The motion for its introduction was resisted, but carried by a majority of twenty-two, out of a house of one hundred and twenty-eight members.

On the question of its being read a second time, a considerable opposition arose ; and Mr. Warburton and Mr. Hume sought to bring this measure within a standing order of the

House, which requires that all bills relating to trade, should first be considered in a committee of the whole House: but the similitude not being so readily perceived by other members, the objection was abandoned. Lord Mahon supported the bill in a speech of great power and ability, and the second reading was ultimately carried by a majority of *thirty*, out of *eighty-eight* members present.

The many engrossing political questions that afterwards occupied the House, prevented however any further step being taken with the Bill; and on the 8th of July, Mr. Serjeant Talfourd moved, that the order for going into committee upon it, should therefore be discharged.

These repeated disappointments and delays might have deterred a less energetic or persevering advocate; but had no effect on one who had so thoroughly the cause at heart, as the learned Serjeant. Accordingly we find the learned member again moving, on the 27th January, in the last year, for the fifth time, for leave to bring in his Bill; and the debate, in which Messrs. Warburton and Hume alone took part, being adjourned to the 29th, leave was given, by a majority of *one hundred and twelve*, out of *one hundred and seventy-two* members present, and the bill was read a first time.

But when the motion for the second reading came before the House, on the 5th of February, one of her Majesty's then ministers, the right honourable member for Edinburgh, Mr. Macaulay, who up to that time had taken no part in the discussion, in a brilliant and sparkling address, though of no very great logical power, "threw," to use the words of the

learned Serjeant, “the weight of his authority, the grace of his eloquence, and the fascination of his style, into the scale, in opposition to the measure;” and the second reading was lost, by a majority of *seven*, out of a House of *eighty-three* members.

This was at once a heavy and unlooked-for blow to those who had confidently expected a final settlement of this question: an expectation seemingly well justified by the favorable majorities which had always been obtained, whenever the House was moderately filled; as well as by the intrinsic justice of the measure itself.

And the disappointment thus created was by no means allayed, when, on the assembling of a new Parliament, it was found that the “greatest benefactors of mankind” had lost their foremost champion—that the learned member for Reading, who had so long, so perseveringly, so undauntedly fought their battles, had at last determined on retiring from the scene of contest.

But it was gratifying to learn that there was no change of his opinion on this question, that his greatest wish still remained, as it had ever been, to promote by every means in his power, some satisfactory legislation on the subject.

Nor was the cause of literature long without a new champion. From amongst that staunch body, who had ever proved the firmest support of the learned Serjeant’s measure, an able leader soon stood forth, in the person of a Nobleman, alike distinguished as an orator and an historian.

Early in the present year, Viscount Mahon introduced a Bill similar in effect to that of the learned Serjeant, but which substitutes the terms of *twenty-five years* for that of *sixty years* from the death of the author. The reception that it has met, is of too recent a date to render it necessary for any thing more to be said of it in this place.

It may be sufficient to remark, that with the support it now has, the principle of the Bill, namely, the extension of the present term of Copyright, has every probability of being passed into a law. The term as proposed by the Bill, amended in the committee, is for *forty-two years certain, or the life of the author, and seven years after his death.*

This is a great compromise of the extension proposed by the learned Serjeant's Bill; but at the same time it is, *pro tanto*, a great improvement on the present law; and, it is to be hoped, that the noble Lord, the mover of the Bill now before the House, will not suffer it to be defeated by any difference as to details, many of which have no more to do with the extension of the term, than if they were not contained in the same Bill. If this is not carefully kept in mind, difficulties may yet be thrown in the way of this long hoped for measure, and its final settlement again adjourned to another session.

It may not perhaps be altogether uninteresting to see what has been done in foreign states, with respect to the law of Copyright, since this Work was first published.

In *France*, Monsieur Villemain, the Minister of Public

Instruction, on the 19th of January, 1841, presented, by order of the King, a Bill for increasing the term of Copyright, to *thirty years from the death of the Author*; remarking, that a longer period would have been named, but that the former seemed more eligible, inasmuch as it was the term selected by several other countries, and, therefore, afforded a basis, on which a reciprocal system of protection for international Copyright might be effected.

This Bill underwent a long and tedious discussion, in which the grand principle of the measure, the extension of the term of Copyright, and the consequent justice accorded to Authors, was lost sight of; and the time occupied in discussing legal subtleties, technical difficulties, and endless details, which had better have been left to their proper tribunal, a Court of law. The consequence of this course may easily be conjectured. There was so much that displeased all sides in the Bill as amended and altered by the committee, that on its being offered for adoption to the Chambers, it was rejected by a large majority: and much time and discussion thus rendered useless, except so far as the right of Authors to some further protection seemed on all sides admitted.

The Bill has not been again brought forward in this last Session.

The last accounts from *Germany* inform us, that a commission has been appointed for the purpose of revising the laws respecting literary property; amongst those named in it are Dr. Hitzig, the author of a very learned commentary on the subject, and several eminent booksellers and publishers

from the principal cities of the Confederation. So that it is to be hoped, that some good result may shortly proceed from their united labours.

In *Wurtemberg*, a provisional law was passed on the 27th of June, 1838, extending the term *to ten years from the date of publication*, instead of *six*; and various alterations have since been proposed, one of which, in last year, originating in a committee of the Chamber of Deputies, was to extend the term *to the Author's life, and thirty years from his death*, but I do not find that any step has been taken, in consequence, to alter the existing law.

In *Austria*, however, the government has not been unmindful of one of its first and greatest duties, the encouragement and protection of learning and science. On the 22nd of May, 1840, a treaty was concluded between the Cabinets of *Vienna* and *Turin*, by which very ample protection is given to Copy-right in both States. The term is fixed *for the Author's life, and for thirty years from his death*; and in the case of post-humous works, for *forty years from the date of publication*; and for *fifty years from the date of publication*, in respect to works published by learned or scientific bodies. In the case of works published in parts, the periods to date from the last part; except where there has been a delay of more than *three* years, between each part being published.

The governments of *Tuscany* and *the Two Sicilies*, the *Dukes of Lucca* and *Modena*, have since become parties to the above Treaty. The *Papal government* has also acceded to it, as has likewise *Tessin*, one of the *Swiss Cantons*. So that a work printed

in *Italy, Austria, the Sardinian Dominions, or the Canton of Tesin*, is now alike protected in all: and a work of any merit, with the extended sale that this protection affords, will, henceforth, be a considerable property, where formerly, so barefaced was the system of piracy, the profits scarcely repaid the outlay.

In *Portugal*, a project was brought forward by M. Garrete, on the 17th January, 1840, relative to literary property; but the political affairs of that Kingdom have not been of that tranquil character to admit of a fair discussion of such questions.

In conclusion, I have only to observe, that no one need despair of seeing, ere long, a very extended system of international copyright prevailing over the continent, if as much be done towards effecting this desirable object in the next twenty, as has been in the last ten years.

I have not altered "the Remarks on Serjeant Talfourd's Bill," forming the last Chapter; as, although some of them now no longer strictly apply to the measure at present before the House: yet, as the question is still undecided, I think they may not be altogether useless, and have, therefore, preferred to throw the few observations I found it necessary to add on the subject, into the form of a Preface, which might be read separately, rather than incorporate them in the body of the Work.

J. J. L.

HARE COURT, TEMPLE,

18th April, 1842.

The first part of the paper is devoted to a general
 consideration of the subject, and to a statement of the
 objects and scope of the present inquiry. It is shown
 that the subject is of great importance, and that
 the objects of the present inquiry are of great
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P R E F A C E.

THE object of the following little treatise is to give a succinct historical account of the origin of the property known as 'Copyright,' and of the modifications and alterations it has subsequently undergone down to the present time.

The motive in laying it before the public, is to attempt to remove the misapprehensions which prevail with regard to this species of property, both as to its former existence, and as to the effect and expediency of the measure proposed by Sergeant Talfourd.

It will be seen by the Appendix, that in almost every country but Great Britain, Copyright is continued for some period after the author's death, for the benefit of his heirs; and yet a Bill for this purpose has been for three sessions before the British legislature, and each session postponed: and this, owing not so much to any opposition existing to its principle, which has been each time affirmed by respectable majorities, as to the apathy with which every question is treated, which does not awaken the spirit of party, or touch the ever-sensitive chord of self-interest; and which has thus suffered an insignificant minority to defeat it in detail.

I feel sensibly that more time and study than have been in my power to bestow, are necessary to do justice to this subject; but if, by the perusal of the following pages, the reader is convinced that such a right as that known by the name of Copyright did formerly exist at common-law, and was only taken away by a mistaken interpretation of the effect of the statute of Anne, and that the state of the present law is such as imperatively demands alteration; I shall not consider the few leisure hours I have appropriated to their composition from the severer duties of my profession, as either mispent or unprofitably employed.

J. J. L.

INNER TEMPLE,
January 31st, 1840.

HISTORICAL SKETCH
OF THE
LAW OF COPYRIGHT.

CHAPTER I.

FROM THE INVENTION OF PRINTING, TO THE FORMATION
OF THE STATIONERS' COMPANY IN 1556.

To seek the origin of Copyright in times prior to the invention of Printing, would partake more of curious research than of useful investigation, and would, at best, furnish rather matter of conjecture than of information. In the following pages, therefore, we shall confine our inquiry as to the commencement of this right, to the evidences afforded by the regulations and customs respecting the first printed books; which, seeing the scanty materials that are handed down to us, we shall find to be a work involving sufficient doubt and uncertainty, without occupying our time by a search into darker or more remote periods.

It is improbable, that even in the Augustan age, an age rich in literature and the arts, any such right ever existed.* How much more difficult then must it be to show, that in

* But copies appear to have been sold for the purpose of recital before an audience. See Prolog. in Eunuch. Terentii, 20; Mart. Epigr. i, 67, iv, 72, xiii, 3, xiv, 194; Juv. vii, 83. But this, doubtless, implied no exclusive right.

the rude and troubled times which preceded the introduction of printing into this country, a custom of Copyright obtained here. And yet Bishop Fell, in his memoir on the state of printing in the University of Oxford,* asserts, that that University possessed an exclusive right of transcribing and multiplying books by means of writing, which implies a species of Copyright.

Be this, however, as it may, our object is not to push our inquiry to so remote a period, but content ourselves with tracing from the time of the invention of printing, the first recognition of this right, and its subsequent allowance and confirmation; and we shall find, that as soon as it became valuable, it was claimed, and allowed; not only by favour of the sovereign, as in cases of privilege, or by consent among themselves, as in the by-laws of the Stationers' Company; but on principles of natural equity and justice. And though, in being minute, we may be thought tedious, we hope we shall not be considered as trifling; for the links that make up the chain of evidence, are sometimes of the slightest and most delicate texture.

It is the general opinion, that the art of printing was first brought into England by a mercer of London, of the name of Caxton, who had learned it at his own expense abroad: the first book printed by him in England being "The game and playe of the chesse," in the year 1474: § although there are not wanting some who claim for Oxford the honour of printing the first book; since a work has been discovered, entitled, "Exposicio sancti Jeronimi in simbolum apostolorum," which is expressed in the colophon to be printed at Oxford, 1468: "Jmpressa Oxonie Et finita Anno domini.

* Gutch's Collect. Curiosa. Vol I, p. 271.

§ This was the first book printed by him in England; but the first *English* book was printed three years before, "The Recuyell of the historyes of Troye, —in the holy cyte of Colen," in 1471, by this same Caxton.

M.cccc.lxviij. xvij die decembris.”* As this is, however, only a single instance, and the date may, perhaps, be a misprint, or designedly falsified; we may consider Caxton, in a practical point of view, as the first English printer.

Now Caxton, for the greater part of his printing career, being without competitors, needed no special protection for the works he published; and accordingly we do not find a single royal privilege granted for any of his works. And although Mr. Herbert appears to think he was appointed “King’s printer,” † yet it seems scarcely probable that this office would originate, when there was only a single printer,

* Connected with this book is a curious story, brought forward by Atkyns, in an action that he had as King’s patentee against the Stationers’ Company, for printing law books. He endeavoured to show by an M.S., said to have been in the Lambeth Library, that printing was first introduced into this country by Henry VI, who was moved thereto by Archbishop Bouchier; that this Oxford printer was brought over to England at the King’s expense; and that the first printers were the King’s sworn servants. From these facts he sought to derive a certain prerogative or perpetual copyright in the King, as being the first means of introducing printing into this country. Most even of those, however, who agree in thinking this book a proof of the earlier exercise of the art of printing in this country than can be adduced in favour of Caxton, and that it must have been executed by some foreigner, who found his way to England on the dispersion of the workmen of Guttenberg, Fust, and Schœffer, at the siege of Mentz; yet concur in the opinion, that as the pretended Lambeth M.S. has never been heard of since, so it never was anything but a forgery, designed solely to serve Atkyns’s purposes.

† He says, “In M.S. at the beginning of a copy of Caxton’s Chronicle, coeval with the publication, he is styled, ‘Regius impressor.’ This is further confirmed in the epilogue to ‘Thymage, or myrroure of the world.’” Herb. Typ. Ant. p. 2.

The M.S. thus referred to, is in a copy of the work that belonged to Mr. Tutet, and is as follows: “Presens Liber pertinet ad Willm Purde emptus a Willmo Caxton, Regius Impressor vicesimo Nouembris Anno Regni Rēs Edwardi quarti vicesimo secundo.” And the passage in the epilogue of “Thymage, or myrroure of the world,” is “whiche book J began first to translate the second day of Janyuer the yer of our Lord, m.cccc.lxxx. And fynysshed the viij day of Marche the same yere, And the xxj yere of the Regne of the most Crysten kyng. Kynge Edward the fourth. Vnder the shadowe of whos noble proteccion I haue emprysed and fynysshed this sayd lytyl werke and boke. Besechyng Almyghty god to be his protectour and defendour agayn alle his Enemyes,” &c.

But when we consider the very full and minute account we have of upwards of

as it could be of no value. But when several began to exercise the art of printing, it was then very natural that the king should select one out of the rest, the most expert, or the best recommended; especially to print papers of state and matters of government. And, accordingly, not long after, we find one William Faques, or Fakes, who styles himself "Regius impressor," in a proclamation against clipped money in 1504; † and from that time to the present, there has been a regular succession of persons holding that office.

The first instance that we have of an exclusive privilege for printing a book, occurs in the year 1518; and the occasion of it may be traced, not so much in the increase of printers by that time, as in the paucity of materials for the exercise of their trade; that is to say, the very few writings of immediate temporary interest which were then produced. It was printed by Richard Pynson, who succeeded Faques as "regius impressor;" and is entitled, "Oratio Richardi Pacei in Pace nuperrime composita," &c. Colophon: "Impressa Londini anno verbi incarnati M.D.XVIII. idibus Nouembris per Richardum Pynson regium impressorem *cum priuilegio* à rege indulto *ne quis hanc orationem intra biennium* in regno Angliæ *imprimat* aut alibi impressam et importatam in eodem regno Angliæ vendat." §

After this, privileges were, during the reign of Henry the Eighth, very freely granted. We find patents to several printers for seven years, for all books they may have then printed, or thereafter should print, to be computed from the date of the publication: as one to John Gowghe or Gough,

fifty productions of Caxton's press, and that never in any one of these, does he style himself "regius impressor;" although he often descends into the most minute details as to at whose cost and instigation he began to print his works, we can hardly think an M.S. note sufficient to establish the fact, contradicted as it is by his silence on the point. As to the extract from the Epilogue of "Thymage, or myrrou of the world," it is quite evident that, even as a collateral proof it is of little effect; and as a direct, is scarcely better than none at all.

† Herb. Typ. Ant. vol. i, p. 308.

§ Herb. Typ. Ant. vol. i. p. 264.

in 1540; to Thomas Berthelet, in 1538, "for sixe yeres"; and to Richard Banks, in 1540. There is also a patent to Reginald Wolfe, of the office of King's printer, in Latin, Greek, and Hebrew, with a prohibition to print such books as were therein specially assigned to him; or such books as "*propria sua industriâ, diligentâ, atque labore conquisivit.*" *

Here we meet, for the first time, with a distinct acknowledgment of the existence of property in a literary work, wholly separate from the value of the materials employed in setting it before the public; a property 'acquired,' as we are told, 'by the patentee's own industry, diligence, and labour.' That these words refer to a mental outlay on the patentee's part, or on the part of another on account of the patentee, either in composing, abridging, or translating a work, is very evident, from the use of the word "conquisivit"—that the patentee "had acquired to himself:"—how could the patentee have otherwise acquired more property in one book that he printed, than another; unless he had expended money, or mental labour in its composition? It, therefore, is a distinct proof of the recognition of literary property; and although we find it here in its infancy sheltered under the power of royal prerogative, we shall soon have to notice it as standing on firmer and surer grounds than the patronage of any prince—on the acknowledged justice and equity of its claim.

In the meantime had occurred, what may be considered as the first case of piracy of copyright on record.† Wynken de Worde had printed a Treatise on Grammar, by Robert Witinton, in 1523; which one Peter Trevers, or Treveris, had taken the liberty of re-printing; and Robert Witinton, in a subsequent edition, printed by De Worde in 1533, attacks

* Rym. Fœdera, vol. xv, p. 150.

† It was a common practice among the earlier printers, to join together in an impression of a work, and then print their own several title pages to the respective copies which they took. Thus we find many old books, purporting to be by different printers, and even of different years, and yet the body of the text is the same throughout. So that, although we may meet with works prior to the one cited in the text, which appear to have been printed by two or more printers

Trevers with great severity for this act. He indeed, seemingly lays the blame only on the incorrectness and faultiness of the edition; but it is clear, from Mr. Herbert's complete contradiction of such being the case,† that the chief crime in the eyes of the author and his publisher, was the *reprinting* the work at all. To prevent a recurrence of this, they procured a privilege from the king for the second edition.

About this time, also, we find a privilege for printing, which upon the face of it, though not in express words, is granted in consideration of the claims an author has to his copy. It is dated in 1530, and is in favour of "maistre Jehan Palsgraue Angloys natyf de Londres, et gradue de Paris," for a book to teach the French language, which he is said to have "made with a great and long continued dyligence;" and in which, "besydes his great labours, payns, and tyme there about employed, he hath also at his proper coste and charge put in prynt;" wherefore, continues the patent, "*we greatly moued and stered by dewe consyderation of his sayd long tyme and great dyligence about this good and very necessary purpose employed, and also of his sayd great costes and charges bestowed about the imprintyng of the same, haue liberally and benignely graunted vnto the sayd maister Palsgraue our fauorable letters of priuilege, concernyng his sayd boke, called, Lesclarcissement de la langue francoyse, for the space and terme of seuyn yeres next and immedyatly after the date hereof enswyng.*" &c.*

As printers improved, more books were published, and more privileges granted, as they were found to become more necessary. The following is a remonstrance contained in a letter from Grafton to Lord Cromwell, in August,

about the same time; yet the one alluded to above, is the first one we know for certainty to have been printed by one printer in opposition to another.

† Mr. Herbert even thought, that it was probable that Witinton might allude to some other edition printed by this Trevers; so little foundation did there appear to him to be for Witinton's bitter attack on this ground. Typ. Ant. vol. I, p. 187.

* Herb. Typ. Ant. vol. I, p. 470-1

1537,* respecting an apprehended attempt to reprint the bible, which he had just brought out, commonly known as "Matthew's Bible."

"And where as I wryt vnto yo^r lordship for a preuye seale to be a defence vnto the enemyes of this byble I vnderstonde that yo^r lordshipes mynde is that I shall not nede it. But now moost gracyous lorde ffor as moche as this worke hath bene brought forth to o^r moost & costly laboures & charges which charges amount aboue the some of £500 and I haue caused of these same to be prynted to the some of 1500 bookes complete, which now by reason that of many this worke is highly com̄ded, there are that will and dothe go about the pryntyng of the same worke agayne in a lesser letter, to the entent that they maye sell their lytle bookes better chepe then I can sell these gret, and so to make that I shall sell none at all, or elles very fewe, to the vtter vndoyng of me yo^r orato^r & of all those my credyto^rs that hath bene my comforters and helpers therin. And now this worke thus set forth w^t great stodye & laboures shall soch p̄sons (moued w^t a lytle couetousnes to the vndoyng of other for their awne pryuate welthe) take as a thyng done to their handes, in which halffe the charges shall not come to them that hath done to yo^r poore orato^r. And yet shall they not do yt as they fynde yt, but falsefy the texte, that I dare saye, looke how many sentences as are in the byble, euen so many fautes & erroures shalbe made therin." — "Ye and to make yt more trewer then yt is, therefore douchemen dwel-lynge wⁱⁿ this realme go about the pryntyng of ytt w^{ch} can nether speke good englyshe, ner yet wryte none, and they wilbe both the prynters & correcto^rs therof, because of a lytle couetousnes that wyl not bestow xx or xl£ to a learned man to take payne in yt to haue yt well done. It were therefore (as yo^r Lordship dothe euydently perceauē) *a thyng vnreasonable to p̄myt or suffer them (which now hath no soche busynes) to enter into the laboures of them that hath*

* Cott. M.S., Cleop. E. v. p. 325.

had bothe sore trouble & vnreasonable charges. And the truthe is this that if yt be prynted by any other before these be solde (which I thynke shall not be this iii yere at the least, that then am I yo^r poore Orato^r vtterly vndone. Therefore by yo^r moost godly fauo^r if I maye obtayne the Kynges moost gracyous priuiledge that none shall prynt them tyll these be solde, which at the least shall not be this iii yere, yo^r lordship shall not fynde me vnthankfull, but that to the vttermost of my power I wyll consyder yt," &c.

Let us now consider how the foregoing facts operate in support of a right of literary property. It may be urged, that these very privileges, which have been dwelt on as in favour of Copyright, are so many proofs that no such a right was at that time thought to exist, except by virtue of the prerogative; for that no man would have cared to secure a right, as was here done by a royal privilege, had he known it to be valid in itself; but that, even putting this very obvious objection altogether aside, the privileges themselves contradict the very view they are brought to support; for all the instances above adduced, with the exception of one alone, are for a limited number of years, and how can instances of *limited* privileges be relied on as proofs of an *unlimited* right?

To these objections we reply, first, that in the infancy of this property, it was very natural for a man to have recourse to the readiest and most effectual way of securing it, which was by the protecting shadow of the king's privilege; for at that time the king's legal prerogative was the best title that could be relied on in the courts of common law. Besides, the king and his council regulated what books should be read and what not, and it was not safe to buy every publication; therefore the king's privilege further acted as a guarantee and protecting recommendation of the book.

And, secondly, we say, that a mistake is made as to the object with which these privileges are brought forward. They are adduced simply in favour of a broad principle, and not with a view to any particular application; and more

stress is not laid on one for seven years, than on one for three. The principle recognized, namely, the protection of literary property, is all that is contended for: not the peculiar circumstances connected with it. Indeed it is most probable that the parties applying for these privileges, never looked beyond the protection of the one edition they printed; there was but one class of readers, an impression was calculated on which would supply their wants, and the only time for which a privilege was valuable, was, till it was sold off.* Second, third, and fourth editions, were not confidently looked to, with the calculating eyes of modern bibliopoles, as a means of repayment for their vast outlays at the commencement.

Therefore, the foregoing facts prove, that as soon as by the increase of printers, and the improvements in printing, it became possible for one man by printing another's copy, to avail himself of the money and labour expended by the other upon its production, without sharing in the cost, and so to undersell him; so soon was the injustice of such a proceeding on all sides proclaimed: that it was distinctly acknowledged, that by the rules of common justice and equity, a man was entitled to that which he had gained to himself either by mental labour, or by the expenditure of his money: and that this view was fully supported by the language in which the patents were couched; for, unlike other monopolies, there was no attempt to found the granting of them solely on the King's generosity; but, on the contrary, a statement was introduced of the reason for which they were conceded, namely—that the author had spent much time and labour in the composition of the work, or that the printer had laid out great sums of money, and these were the grounds on which the King was induced to grant them.

* See Grafton's Letter, ante p. 8. And if this was the case with works like the Bible, which might well be thought to afford a prospect of subsequent editions, how much more so must it have been in works of an ephemeral nature. It is evident that in these early stages of printing, the main expenses were in the mechanical part of the process, which are now transferred to the literary portion.

CHAPTER II.

FROM THE INCORPORATION OF THE STATIONER'S COMPANY
IN 1556, TO THE REBELLION IN 1640.

SUCH was the state of literary property until the reign of Philip and Mary, when it being found, that 'many false fond books, and ballads, rhymes, and other lewd treatises in the English tongue, both heretical and seditious,' were being issued from the press; it was determined to unite the printers into one body, the heads of which should be responsible for the individual members; and the general conduct of which, could thus be more easily watched, and more effectually controuled. Letters patent were therefore passed, constituting the Stationer's Company, the 4th day of May, 1556. The Stationers, it would appear, were a Company before this date, but this was the commencement of their existence as a corporation. By their charter, they were allowed to make by-laws for the guidance of their members; and *no one but a member of their society*, was to be allowed to practise or exercise the art or mystery of printing within the dominions of England.*

This was a material step, although not an immediate one, to firmly securing the right of the first publisher to the exclusive printing of any work he might undertake; for the printers now having the power to make laws among themselves on the subject, could not fail soon to recognize the justice and expediency of such a provision. Accordingly,

* Luckombe's hist. of printing, p. 176.

we find them, within two or three years after the formation of their Company, requiring every one who printed a work to first enter it in their register-book, for which they paid a certain sum as for a license ; and any one omitting to do so, or printing a *book belonging to another member*, was fined.*

Patents which till then had been for particular books, and were but a proper protection to the patentees in securing them the due fruits of their labour, began in the succeeding reign of Queen Elizabeth to be greatly abused. On one person was sometimes conferred an exclusive right to print all books of a particular class : thus, the right of printing all books of common-law was secured to one man ; all A. B. C's. and Catechisms to another ; all almanacs and prognostications to a third ; all music-books to a fourth ; besides patents of particular books to individuals who did not belong to the company, and were not printers, but farmed the right to such as were, at exorbitant sums.†

These monopolies pressed so hard upon the poorer sort of printers, that they petitioned the Queen against them ; and this expedient meeting with little success, they, being driven by the desperate state of their circumstances, not only began to question the right of the Queen to grant them, but even proceeded to print works in defiance of the patents.

They did not, however, stop here, for emboldened by their present success, they began, says Strype, even to print books, *the copies whereof had been bought of the authors for their money*, or else given to those that had the property in them to make their benefit of. They set at defiance the power of their own Company ; and although complaint was made to the Privy Council, and the matter being referred to commissioners, was settled for a time ; yet it soon again broke out, and the Privy Council was again petitioned that these disorders might be put a stop to. Among other reasons urged,

* Register Book, *passim*.

† Strype, *Herb. Typ. Ant.*, &c.

‘No books at all,’ it was said, ‘would be printed within a short time. For commonly *the first printer was at charge for the author’s pains*, and some other such like extraordinary cost; whereas any other that would print it after him, came to the copy gratis, and so he might sell cheaper, better than the first printer, and the first printer should never utter his books. Besides, the second printer might better the first impression by notes, tables, difference in paper, or volume, (as it is easier to amend than to first invent), which would also hinder the sale of the first printer’s books to his utter undoing. These inconveniences seen, *every man would strain courtesy who should begin*; so far that in the end all printing would decay in the realm, to the utter undoing of the whole Company of Stationers.’ *

That these irregularities and contempts of authority should have occurred, was not from want of ordinances and decrees on the subject; but from the liberty and license taken, owing to the troubles and jealousies that were fomented and kept alive in this reign, both by enemies at home and abroad, and which by fully occupying the attention of the government, prevented them from attending to matters wholly of a civil nature. For the Queen, directly on her coming to the throne, had issued injunctions† in which she positively prohibited any one from printing “any maner of booke or paper, of what sort, nature, or in what language soeuer it be, *except the same be first licenced* by her Maiestie, by expresse woordes in writing, or by six of her priuie Councill: or be perused & licenced by the Archbishops of Canterburie and Yorke, the Bishop of London, the Chauncelors of both Universities, the Bishop being Ordinarie, and the Archdeacon also of the place where any such shall be printed, or by two of them, whereof the Ordinarie of the place to be alwayes one;” on pain, “that the partie shall be punished by order

* Strype.

† “Injunctions given by the Queen’s Maiestie. Anno domini. 1559.” in Brit. Mus.

of the sayde Commissioners, as to the quality of the fault shall be thought meete.”

Now as no book could be published without license, and as no license was given to print a work, which belonged to another by purchase or usage, the property in a copy would have been sufficiently protected by these injunctions, had they been strictly obeyed. But that they were far from being so, we find by a decree being issued by the Star Chamber in 1566,* for the reformation of divers disorders in printing, which was the first decree ever made by this Court respecting printing.

It enacted, ‘that the printing any book against the force and meaning of any ordinance, prohibition, or commandment, contained or to be contained in any the statutes, or laws of the realm, or in any injunctions, letters patent, or ordinances, past or set forth, or to be past or set forth, should be visited with the forfeiture of all such books, and disability to exercise the art of printing, besides imprisonment for three months without bail or mainprize.’ And in order to keep the printers still more under control, they were enjoined to enter into ‘their several recognisances of reasonable sums of money to her Majesty, with sureties or without, as the ecclesiastical commissioners should think expedient; truly to observe all the said ordinances, well and truly yield all such forfeitures, and in no point be resisting, but in all things aiding the said master and wardens of the said company and their deputies for the true execution of the premises.’

Notwithstanding this decree, we find afterwards complaints made against some who had given bonds, and yet broke through all regulations. Accordingly, in 1586, another decree was issued, † reciting that the former had been disregarded and broken through; by reason, it was supposed, that ‘the

* Luck. Hist. of Print. p. 104.

† Lansd. M.S. cod. 905.

pains and penalties contained and set down in the same had been too light and small for the correction and punishment of so grievous and heinous offences; and so the offenders and malefactors in that behalf had not been so severely punished as the qualities of their offences had deserved;’ and therefore enacted, ‘that no printers who had been admitted within the last six months, were to exercise their trade, until the excessive number of printers should be diminished.’

No printing was to be carried on elsewhere, than in the city of London; except one press at Oxford, and one also at Cambridge. And the directions as to licensing, contained in the Queen’s injunctions of 1559, were here renewed under severe penalties.

But what more particularly distinguished this decree is an enactment in favor of Copyright, which perhaps was also included in the one of 1566.* For it is by this decree enacted, ‘that no one shall print any book or other paper, contrary to any statute, letters patent, &c., or *contrary to any allowed ordinance* set down for the good government of the *Company of Stationers* within the city of London.’ That these words alluded to the protection of the property in the copies is manifest from the recital of a proclamation in the subsequent reign, † which states, that whereas this last decree had been evaded, amongst other ways, “by printing beyond sea such allowed books, works, or writings, as had been imprinted within the realm by such to whom the sole printing thereof, by letters patent, or *lawful ordinance or authority* did appertain;” and therefore commands, that the same punishment shall be inflicted on persons importing, as on persons offending under that decree.

* I have not been able to meet with the decree of 1566, in any other than an abridged form; but as the clause in this decree of 1586 seems taken from the one of 1566, it is likely the same words would be found in the latter document if examined.

† 25th Sep. 1623.

The next decree we have to notice, is one in the 13th of Charles the First, § by which printers were placed under several arbitrary regulations, and the number of those allowed to keep a press, limited to twenty.

One of the redeeming features in this otherwise despotic act, was the protection it afforded Copyright, by the following clause, which enacted, 'that no one should import, or put to sale any books, which the Company of Stationers, or any other person had, or should by any letters patent, order, or *entrance in their register book or otherwise*, have the right, privilege, authority, or allowance solely to print; on penalty of forfeiture of books, and such fine as that Court should think fit.'

§ 11th July, 1637. Brit. Mus. M.S.

CHAPTER III.

FROM THE REBELLION IN 1640, TO THE RESTORATION
IN 1660.

NOR was the protection thus justly afforded to Copyright under the legitimate government, wholly lost sight of amidst the troubles that shortly ensued. For although in the anarchy and confusion of order and property, which accompanied the rebellion, several attempts were made to procure that all works, without exception, should be open to any to print: yet Offspring, Teatly, Burges, Gouge, Byfield, Seaman, Calamy, and a number of other divines, who were on favorable terms with the party which then prevailed in Parliament, made strong representations against such a practice.

They urged, 'that to their knowledge, very considerable sums of money had been paid by stationers and printers to many authors, for the copies of such useful books as had been imprinted. In regard whereof,' they said, 'we conceive it to be both just and necessary, that they should enjoy a property for the sole imprinting of their copies. For unless they do, all scholars will be utterly deprived of any recompense from the stationers or printers, for their studies and labour in writing or preparing books for the press. Besides, if the books that are printed in England be suffered to be imported from beyond the seas, or in any other way re-imprinted, to the prejudice of those who bear the charges of the impressions, the authors and the buyers will be abused by vicious

impressions, to the great discouragement of learned men, and extreme danger of all kinds of good learning.’

These and similar representations had so much weight with the House, that in an ordinance they afterwards published on the 14th of June, 1643,* ‘for suppressing the late great abuses and disorders in printing,’ reciting, amongst other things, that divers persons, “(contrary to former orders and the constant custom used among the Stationers’ Company) had taken liberty to print, vend, and publish the most profitable vendible copies of books belonging to the Company and other Stationers;” they ordered, inter alia, that all books should be “entered in the register book of the Company of Stationers, according to ancient custom;” and that no one should print or import printed, “any book lawfully licensed and entered in the register book of the said Company, for any particular member thereof, without the license and consent of the owner thereof;” on pain of forfeiting the same to the owner, “and such further punishment as should be thought fit.” Wardens, &c., empowered to make search, seize copies, and break presses, “employed in printing or reprinting books by such as have no lawful interest in them;” and to bring the compilers, printers, &c., before either of the Houses, “that so they might receive such further punishments as their offences should demerit.”

This ordinance also contained enactments for the licensing of all books before publication; and when Milton, in his noble speech for the liberty of unlicensed printing, in the following year, attacked it with all the force of argument, the poignancy of satire, and the enthusiasm of a spirit-stirring appeal in favour of liberty; he at the same time carefully guarded against its being thought, that he objected to those parts of it, which related “to the just retaining of each man his several copy; which God forbid,” he exclaims, “should be gainsaid.”

* Scobell’s Acts and Ord. of Parlmt. pp. 44, 5. ed. 1658.