lative authority, and introduce a species of property contrary to the end for which the whole system of property was established: as it would tend to embroil the peace of society, with frequent contentions—(contentions most highly disfiguring the face of literature, and highly disgusting to a liberal mind): as it would hinder and suppress the advancement of learning and knowledge; and as it would strip the subject of his natural rights;' it was hoped that the Court would at once disallow so extravagant a claim.

In answer to these arguments, the supporters of the claim of literary property replied, first, that the metaphysical reasonings concerning the notions of property, indulged in by their opponents, were too subtile: That their definitions of property were too narrow and too confined; for the rules attending property must keep pace with its increase and improvement, and must be adapted to every case: That a distinguishable existence in the thing claimed as property, an actual value in that thing to the true owner, are its essentials: That the best rule of reason and justice seemed to be, 'to assign to everything capable of ownership, a legal and determinate owner:' That it was not necessary that the subject should be of utility to man, or have any capacity to be fastened on, as was insisted: That a capacity to be distinguished answered every end of reason and certainty, which is the great favorite of the law: That "the present claim was founded upon the original right to the work, as being the mental labour of the author; and that the effect and produce of the labour was his: That it was a personal incorporeal property, saleable and profitable, having 'indicia certa;' for though the sentiments and doctrines might be called ideal, yet when the same were communicated to the sight and understanding of every man by the medium of printing, the work became a distinguishable subject of property, and not totally destitute of corporeal qualities:" That indeed to contend otherwise was futile, since it was settled and ad-

mitted that literary compositions in their original state, and incorporeal right of the publication of them were the private and exclusive property of the author, and that they might be ever retained so; and that if they were ravished from him before publication, trover or trespass lay.* Now how should the jury estimate the damages in such a case? By the value of the ink and paper? 'Certainly not. It would be most reasonable to consider the known character and ability of the author, and the value which his work (so taken from him), would produce by the publication and sale. But without publication, the work would be useless to the author, because without profit, and property without the power of use and disposal, is an empty sound. Publication, therefore, is the necessary act, and only means, to render this confessed property useful to mankind, and profitable to the owner; in this they are jointly concerned.' It would be therefore harsh and unreasonable to construe this only and necessary act to make the work useful and profitable, to be destructive at once of the author's confessed original property, against his expressed will. That to contend 'that by the law of nature, property ends when corporeal possession ceases,' was clearly false, since Barbeyrac shows, that such perpetual possession is impossible, and that however 'we may presume this in respect to those things which remain such as nature has produced them; yet, as for other things which are the fruits of human industry, and which are done with great labour and contrivance usually, it cannot be doubted but every one would preserve his right to them till he makes an open renunciation.'† Now there was no open renunciation in the present case, for was there not a difference betwixt selling the property in the work, and only one of the copies? 'Could it be conceived, that in purchasing a literary composition at

* Pope *v.* Curl. Webb *v.* Rose. Lord Clarendon's Works. Forrester *v.* Walker. Duke of Queensbury *v.* Shebbeare.

† Ed. of *Puffendorf*. Lib. iv. c. 6. note 1.

a shop, the purchaser ever thought he bought the right to be the printer and seller of that specific work? The improvement, knowledge, or amusement which he could derive from the performance was all his own, but the right to the work, the Copyright, remained to him whose industry composed it.'

With regard to the second head or division of the defendant's argument, namely, that there was no legal proof of the existence of Copyright before the 8th of Anne, c. 19, it was answered that the exclusive privileges, the decrees of Star-chamber, and the ordinances of Parliament, were legal proofs to the extent to which they were cited, for they were not adduced as acts *establishing* a right, but merely as *recognitions* of one previously existing; that further confirmations of this right were to be found in the customs of the Stationers' Company. And although it was said that these customs and by-laws were inconclusive in proof of a general usage, inasmuch as they were only binding on their own members, yet, in thus arguing, it seemed to be totally forgotten that *all printers* were obliged to belong to the Stationers' Company; and although perhaps there might be always some unallowed printing going on secretly, yet such was an exception to the general rule, and could in no way impugn a general usage. That as to no mention of the author ever being made, but only the printer, it was quite clear that this arose from the printer generally standing 'in loco auctoris,' being the 'owner' of the copy; whilst the author from various circumstances, either from inability of means, or want of confidence of success, seldom took upon himself the risk of publishing on his own account; but that when he did so, he came under the words 'owner of a copy,' and so was protected.

As to the injunctions of the Court of Chancery, all the cases went to prove, that that Court had treated the 8th of Anne, c. 19, as merely confirming and securing antecedent property for a limited term, without prejudice to the common-law

right; for if that Court had founded their injunctions, as it was contended, on the statute right, it would have been necessary, under the section which provides, 'That all actions, suits, bills, &c., for any offence that shall be committed against this act, shall be brought, sued, and commenced *within three months* after the offence committed;' that the bill should be brought within three months, which was not however the case. But there were some cases of injunctions, which could not by any stretch of argument be supposed to have been granted under the authority of the 8th of Anne. There was the case of 'Nelson's Fasts and Festivals,' where an injunction was acquiesced under in 1736, for a work published in 1703, the author having died in 1714; and that of 'The Whole Duty of Man,' where the injunction was acquiesced under in 1735, and the original assignment had been made in 1657. There was also the case of Motte *v.* Falkner, for printing Pope and Swift's Miscellanies, where the injunction was granted in 1735, and some of the pieces were printed in 1701 and 1702; and yet the Court granted the injunction to the whole, although the counsel for the defendant strongly pressed the objection as to those pieces; and Falkner was a man of substance, and the general point was of consequence to him, yet he was advised to acquiesce under the injunction. As to the case of the "Paradise Lost," it must be observed that Lord Hardwick, although indeed he guarded himself from giving an opinion on the general question, would hardly have granted the injunction, and penned it himself to the whole and in the disjunctive, so that printing the poem, or the life, or Bentley's notes, without one word of Dr. Newton's, would have been a breach, if he had not had a strong leaning in favour of the plaintiff's case. That although it was true, that these decisions in Chancery were not authorities in a common-law Court; yet they were competent as proofs of the opinion of the Court of Chancery in favour of an acknowledged copyright, pre-existing and independent of the

statute of Anne. With respect to the case of Millar *v.* Donaldson, which was cited as proof of a doubt arising in the Chancery Court as to this common-law right, Lord Northington, on that occasion, refused an injunction, because the precise question of law was at that moment pending in the Exchequer, in the case of Tonson against Collins, and as his Lordship very properly observed, it would have been presumption in him to have given an opinion, when the question of law was then in course of trial before the proper tribunal.

And a still more convincing proof of a previously existing common-law right, was afforded by the statute itself; for it was applied for, on the ground that an action on the case not being a sufficient protection for copyrights, the legislature would therefore be pleased to enact penalties and forfeiture of pirated books, which shows clearly that at the time of passing the statute, an action on the case was held to be the acknowledged remedy for infringement of a right that must before then have existed. And that such was the case, and such the light in which it was viewed by the legislature, is apparent from the wording of the act. For would the act, if it had been establishing a new and unheard of right till that time, have recited, "Whereas printers, &c., *have of late frequently taken the liberty of printing*, &c., without the consent of the authors or proprietors, &c., *to their very great detriment, and too often to the ruin of their families.*" Is not this a description of some infringement of a previously existing right, which had *of late* grown to that excess as to require by its ruinous consequences the interference of the legislature? The Act continues, "For preventing therefore the like *practices* for the future:" would the word "*practices*" have been used to describe a legal right (which the reprinting of books would have been, when there was no copyright,) or is it not rather fitted to express acts committed in fraud and violation of private rights, which this act was made to prevent?

And with regard to the third and last division of the

defendant's argument; it was denied that the statute 8th of Anne, did abrogate any common-law right, that might before have existed. Looking at the statute itself, and the circumstances under which it was passed, it was clear that it was only intended to give *a further remedy* in the shape of penalties and forfeitures, which were to be in force for a limited period, and to recover which, it was necessary so far to publish the ownership of the work, by entry in the Stationers' books, that no one might offend through ignorance. The proviso at the end was meant to prevent any misconception of the effect of the statute on the author's common-law right; for the words "any right," manifestly mean any other right than the term secured by the act, and the act speaks of no right whatsoever but that of authors, or derived from them; therefore, no other right could possibly be prejudiced or confirmed by any expression in the act, such as prerogative copies or patents, to which, as it was objected, these words referred. As to the clause respecting the price of books, although the inference drawn from it, as to the intention of the framers of the bill, was ingenious, it could not hold good; as the clause referred to *all* books, was perpetual, and was indeed only a revival of the 25 Hen. VIII. c. XV. sec. 4, which was never repealed till the 12 Geo. II.

As to the comparison between a literary and a mechanical work, it was thus answered: that they were of very different natures, for "the property of the maker of a mechanical engine is confined to that individual thing which he has made; and the machine made in imitation or resemblance of it is a different work in substance, materials, labour, and expense in which the maker of the original machine cannot claim any property; for it is not his, but only a resemblance of his; whereas the reprinted book is the very same substance, because its doctrine and sentiments are its essential and substantial part, and the printing of it is a mere mechanical act, and the method only of publishing and promulging the contents of the book."

And in answer to those arguments, which went to prove that such a claim ought not to be encouraged, it was contended, that it was not agreeable to natural justice that a stranger should reap the beneficial pecuniary produce of another man's work; "Jure naturæ æquum est, neminem cum alterius detrimento et injuriâ fieri locupletiorem:" That it was wise for every State to encourage letters, and the painful researches of learned men: That the easiest and most equal way of doing it, was by securing to them the property of their own works: That no one contributes who is not willing; and though a good work may be run down, and a bad one cried up for a time, yet sooner or later the reward will be in proportion to the merit of the work: That a writer's fame would not be the less that he has bread, without being under the necessity of prostituting his pen to flattery or party to get it: That he who engages in a laborious work, (such, for instance, as Johnson's Dictionary,) which may employ his whole life, will do it with more spirit, if, besides his own glory, he thinks it may be a provision for his family: That the fear of books being suppressed was chimerical; and as to their price being enhanced, it was equally so; for whilst an author might make additions and corrections to his work, highly valuable, he would always find it his interest to prevent the charge from becoming unreasonable; since a small profit in a speedy and numerous sale, is much larger gain than a great profit upon each book in a slow sale of less number.

Therefore, it was contended, that "on every principle of reason, natural justice, morality, and common law; on the evidence of the long received opinion of this property, appearing in ancient proceedings, and in law cases; on the clear sense of the legislature, and the opinions of the greatest lawyers of their time in the Court of Chancery, since that statute; the right of an author to the copy of his works was well-founded;" and it was hoped, "that the learned and industrious would be permitted from thenceforth, not only to

reap the fame, but the profits of their ingenious labours without interruption, to the honour and advantage of themselves and their families, and the increase and promotion of the interests of literature."

These last reasons appeared so convincing to three out of the four Judges who heard the cause, one of whom was Lord Mansfield, that judgment was pronounced in favour of the plaintiff; and although a writ of error was afterwards brought, the plaintiff in error suffered himself to be non-prossed; and the Lords Commissioners, after Trinity Term, 1770, granted an injunction.

CHAPTER IX.

FROM THE DECISION IN THE CASE OF MILLAR AGAINST TAYLOR IN 1769, TO THAT OF BECKFORD AGAINST HOOD, 1798.

The security and protection given by the foregoing decision to Copyright property, did not, however, long continue; for in a case that arose soon afterwards, where judgment was given on the authority of the foregoing decision, the defendant was advised to try an appeal to the House of Lords,* on which occasion the following questions were propounded to the Judges:—

"1. Whether at common law, an author of any book or literary composition, had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?

"2. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition; and might any person afterwards reprint and sell, for his own benefit, such book or literary composition, against the will of the author?

"3. If such action would have lain at common law, is it taken away by the statute of 8 Anne? And is an author by the said statute precluded from every remedy, except on the

* Donaldson *v.* Becket and others, in 1774, 2 Bro. P. C. 129, 4 Burr. Rep. p. 2408.

foundation of the said statute, and on the terms and conditions prescribed thereby?"

And after time being given to consider, they delivered their opinions seriatim; and there were of the eleven Judges, eight to three for the affirmative on the first question; four to seven on the second; and six to five on the third; so that it was concluded, that although an author by common law had an exclusive right to print his works, and did not lose it by the mere act of publication, yet the statute of 8 Anne, c. 19, had completely deprived him of that right. Lord Mansfield did not, out of delicacy, (as it is unusual for a Peer to support his own judgment) deliver any opinion; but it is well known that he concurred with the eight upon the first question, with the seven on the second, and with the five upon the third. Justice Blackstone was one of the majority on the two first questions, and of the minority on the third.

So that this opinion of the Judges, as to the 8 of Anne taking away the right at common law, was only carried by a majority of one out of the eleven; and had delicacy permitted Lord Mansfield to support his own decision, the Judges would have been equally divided. Besides, of the six Judges who decided that the 8 of Anne had taken away the common law right of the author, there was one who was of opinion, that the author had not the sole right of first printing and publishing his work, and could not maintain an action against those who did so without his consent; two who held, that although the author had this right, he could not maintain any action, unless it were taken from him by fraud or violence; and a fourth, who considered, that although an author had the sole right of first printing and publishing, and could maintain an action for its infringement; yet the moment he elected to publish, he abandoned this right, and any one might reprint the same: so that there were *only two* out of the six, that actually considered the point of the 8 of Anne

taking away a previously existing right, the other four not agreeing that there was any such previous right.

But, doubtful therefore as this opinion may well be considered, it was a judgment on an appeal to the highest tribunal the law recognizes, and as such was esteemed practically decisive of the point—that any common-law right the author might before have had, was taken away by the 8 of Anne.

The result of this trial, when known, so alarmed the trade, by the serious consequences of it on their property, that they immediately presented a petition to the House of Commons,* setting forth 'that they had constantly apprehended that the 8 of Anne, c. 19, did not interfere with any Copyright that might be invested in the petitioners by common law; and that they had therefore, for many years past, continued to purchase and sell such Copyrights, in the same manner as if such act had never been made: That the petitioners were confirmed in such their apprehensions, in regard that no determination was had during the period limited by the said act, in prejudice of such common-law right; and the same was recognised by a judgment in the Court of King's Bench, in Easter, 1769; that in consequence thereof many thousand pounds had been at different times invested in the purchase of ancient Copyrights, not protected by the statute 8 of Anne, so that the support of many families in a great measure depended upon the same; that, by a late decision of the House of Peers, such common-law right of authors and their assigns had been declared to have no existence, whereby the petitioners would be very great sufferers through their former voluntary misapprehension of the law; and therefore praying the House to take their singularly hard case into consideration, and to grant them such relief in the premises as to the House should seem meet.'

* On the 28th of February, 1774.

A committee was accordingly appointed, and on the 24th of March, 1774, they gave in their report, in which they referred to evidence laid before them of the practice and belief of the trade as to a common-law right, till the recent decision in the House of Peers; and of the immediate depreciation in the value of Copyrights which had ensued from that decision. Leave was accordingly given to bring in "a Bill for relief of booksellers and others, by vesting the copies of printed books in the purchasers of such copies from authors or their assigns, for a time therein to be limited."

It was taken up to the House of Lords on the 31st of May, but on the 2nd of June, on its being read a first time, it was moved that it be read a second time that day two months. A debate thereupon ensued.

'Lord Lyttleton was for its being read a second time, and said that he had letters from Dr. Robertson, Mr. Hume, &c., in favour of the Bill, and that the price the booksellers gave for Hawkesworth's voyage, was proof that they did believe they had a common-law right. That this Bill was not to repeal that decision which the house had come to, but to relieve men who had laid out about £60,000 in Copyright since the year 1769.' He also said in the course of his speech: 'Authors are not to be denied a free participation of the common rights of mankind, and their property is surely as sacred and deserving protection as that of any other subject.'

Lord Camden, however, urged, 'that they never could suppose they had a common-law right, for that it was first supported by Star Chamber decrees; that when they obtained the Act of the 8th of Anne, they could not suppose it, for the advantage and security of that Act were far short of what the common-law afforded them, had their claims been defensible on that ground; that on the expiration of the monopoly, in 1731, they could not fall into such a mistake, for they applied to Parliament for an extension of the monopoly

in the years 1735, 6, and 7;* and that he could not but think this attempt an affront on the house, viewed with regard to their recent decision.'

Lord Denbigh and Lord Apsley (the Lord Chancellor) also spoke against it. Lord Mansfield was not present during the debate. The house then divided, and the motion was carried by a majority of 21 to 11; so the bill was never further proceeded with. The account of the debate is very meagre, and we cannot learn what were the precise provisions of the bill; but it would appear that it was not founded on any general principles, but had only a limited application to Copyrights then in being.

Alarmed by the recent decision, the Universities applied to Parliament for protection of their Copyrights; and these powerful bodies, allied as they were to both houses by ties and associations, perhaps the strongest and most lasting of the kind that occur in a man's life, had no difficulty in obtaining that justice for themselves which was sternly denied to the owners of Copyright at large.

The 15 of Geo. III, c. 53, was passed, which enables the Universities and the Colleges of Eton, Westminster, and Winchester, to hold in perpetuity the Copyright in all works already given, or which might hereafter be given them under similar penalties, as in the 8 of Anne.

It appeared that it had been for some time the practice with booksellers, in order to evade what they considered the oppressive tax of giving in nine copies for the public libraries, to enter only the title of the first volume of their works in the register book; and then the public libraries could only claim a single volume, which of course was useless, and seldom demanded. To remedy this, a clause was inserted in the above act, that no penalties under the 8th of Anne should

* Lord Camden seems to have mistaken the object of those applications to Parliament. See ante p. 37, 8.

accrue, unless the title to the whole copy of a work, and every volume thereof, should be entered in the register book of the Stationers' Company; and unless nine copies of it were actually delivered to the warehouse-keeper of the Company for the use of the libraries in that act mentioned.*

By this we may clearly see the high favor in which the Universities stood, when they not only procured a statute conferring especial protection on their Copyrights, but also procured a confirmation of their claim to a gratuitous copy of each work that was published by others who enjoyed no such privilege. But the effect of this latter concession did not answer its expectation; for several booksellers preferred losing the protection afforded by the 8th of Anne altogether, by not entering their works in the register book, to delivering nine copies gratuitously of expensive and costly works: and of this more hereafter.

In 1798, a point, which was incidentally touched on in the foregoing case of Millar against Taylor, namely, whether the author had any right conferred by the 8th of Anne, beyond the remedies specifically pointed out by that act, came before the Court of King's Bench, in the case of Beckford against Hood,† which was an action on the case for damages brought by the author of a book for pirating it, during the 28 years given by the Statute. And three points were made: 1st. That no action for damages would lie since the 8th of Anne; 2ndly. That if it would lie, the provision in the statute which requires the entry at Stationers' Hall, must be duly complied with; And 3rdly, That the plaintiff had abandoned his property in it, by publishing it anonymously. But it was decided, on the principle laid down by Mr. Justice Yates, in the case of Millar against Taylor,‡ that, by the first section of the 8th of Anne, the author had an absolute right for a term of years, sufficient to support an action on the

* Sec. vi. † 7 Term. Rep. 620.

‡ 4 Burr. Rep. pp. 2380, 1; and see Ante, pp. 44, 5.

case:* that by the interpretation given to the clause requiring the entry, by the 6th section of the 15th Geo. III. c. 53, it was clear that the entry was only requisite to entitle a party to the penalties; and with regard to the not affixing a name to the publication, that such an omission could not be looked on but by the utmost casuistry, as a purposed abandonment of a preceding right.

The Court, in this case, felt the difficulty in which they were placed by the decision in the House of Lords, on the appeal of Donaldson against Beckett and others, for they were bound to construe the statute 8 of Anne, c. 19, as taking away a previously existing common-law right of the author; and yet they could not conceal from themselves, the injustice of such a construction, or reconcile it to the express language of the act. 'They could not find in this act,' they said, 'the encouragement which the statement in the recital held out to authors. The supposed remedy was wholly inadequate to the purpose: it only gave penalties and forfeiture; and even those not to the author, but to any who might preoccupy his place by first suing.' They were therefore obliged to put what may almost be termed a forced construction on the first section, to supply the remedy they felt to be necessary, and which they in vain sought for in the express provisions of the act.†

* This decision seemed contrary to that in Donaldson *v.* Beckett and others, where five out of the six Judges, (all that considered this point) held that an author "was precluded from every remedy, except on the foundation of the statute, and *on the terms and conditions prescribed thereby.*" But Mr. Justice Grose in this case said, with reference to that decision, that "the amount of their opinions only went to establish that the common-law right of action could not be exercised *beyond the time limited* by that statute."

† This fact alone seems to me a stronga rgument that the 8th of Anne, c. 19, did not take away the author's pre-existing common-law right.

CHAPTER X.

FROM THE PASSING THE 41 GEO. III. C. 107, TO THE PASSING THE 54 GEO. III. C. 156. 1801-14.

THAT there might, however, be no longer any reason for litigation on the subject of the foregoing decision, and that the point might be settled beyond a doubt, a bill was brought into Parliament on the 9th of June, 1801, entitled, "A Bill for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed books to the Authors of such books, or their Assigns, for the time to be therein mentioned." By this bill, which was not to have a retrospective effect, it was enacted, that the author or his assigns of any work, might bring a special action on the case, and recover damages, with full costs of suit, against any one pirating his book, or publishing or exposing to sale any such pirated copy, within the term of years limited by the 8 Anne. All such books were to be seized and made waste paper of, and the penalty upon every sheet so found, imposed by the 8 Anne, was increased to 3d. There was however a proviso, that no one should be liable to the penalty of 3d. per sheet, unless the title to the work was duly entered in the register book of the Stationers' Company.

It also enacted, that no one should import any book first printed in Great Britain within twenty years, on pain of forfeiting all such books, double their value, and a penalty of £10.

In its progress through the Committee, a clause was

added, conferring on Trinity College, Dublin, the same perpetual copyright as had been given before by the 15 Geo. III. c. 53, to the Universities, &c., under the same remedies and penalties as were enacted with regard to authors. A clause was also inserted in the Commons, giving a copy of every book published to Trinity College, Dublin; and the Lords amended it in the Upper House, by adding another copy for King's Inns, Dublin, thus increasing the number of copies to be furnished gratuitously by an author to public libraries, to eleven.

There is no account remaining of any debate on this bill. It was passed in less than a month, being introduced into the Commons' House on the 9th of June, and receiving the Royal assent on the 2nd of July.* It conferred some benefit on authors, inasmuch as it extended the protection of copyright to all parts of the British dominions, and increased the penalties enacted by 8 of Anne, although they remained still very trifling.

About this time a grievance, which had been borne for some time in silence, began to be severely felt, and this was the gratuitous delivery to public libraries, of at first nine, now increased to eleven, copies of every book published. Whilst it only extended to the ordinary run of books, it was not resisted; but when costly and illustrated works were demanded, of which limited editions only were printed, it became a grievous tax, and publishers preferred losing the Copyright in such works, which were not easily pirated, to complying with the demand. They reasoned, that if they were willing to relinquish all benefit under the Copyright Acts, by not entering these works in the register book of the Stationers' Company, there was no power legally or equitably which could force them to give up their property; for the obligation could not take effect, if they did not claim

* 41 Geo. III. c. 107.

under the statute, it being only imposed in exchange for the benefit conferred.

And the Universities, taking the same view, which indeed seems only a just one, although pronounced afterwards not legal;* and finding that they did not get copies of those works which they were the most eager to have, as being the most expensive to purchase; and that, even with regard to the generality of books, every expedient was adopted to evade their claim to the gratuitous delivery of copies; procured a bill to be brought into Parliament, which at the same time it was to effectually secure to them their right to the copies, was to offer to authors a supposed equivalent for this tax, in the shape of an extension of the term of Copyright.

It was introduced on the 16th of June, 1808, and was thus entitled: "A Bill for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing to the Libraries of the Universities, and other public libraries, copies of all newly printed books, and books reprinted with additions, and by further securing the copies and Copyright of printed books to the authors of such books or their assigns, for a time to be limited." The means by which learning was to be further encouraged, are undoubtedly misplaced; the securing a further term to authors being certainly the most likely way, and the obliging them to part with eleven copies of every work gratuitously, the least so, to effect such an object.

On the following day, on its being read a second time, it was objected that more time should be given, 'for the due consideration of a subject in which the interests of the most meritorious, although perhaps not the most opulent class of the community were so seriously concerned.' Mr. Villiers, however, who brought in the Bill, pressed the second read-

* Univ. of Cambr. *v.* Bryer. 16 East. p. 317.

ing; as, he said, he saw no reason for further delay, and sufficient time would be afforded for every reasonable purpose.

On the 22nd, Mr. Villiers moved, that the house, pursuant to order, should go into committee on the Bill. Mr. Wynne, although of opinion that the period of Copyright ought to be extended to 28 years certain, also thought 'that no author should be allowed to dispose of his Copyright for more than 14 years. As to the other part of the Bill, requiring that a copy of each work to be published should be sent to the public libraries, the booksellers who were the largest publishers, felt it would be so injurious to their interests, that they had prepared a petition against that part of it, which he expected would be ready to present in the course of the evening.' It was then proposed that the Bill should be divided, and that part which related to the further term to be given to authors in their copies, postponed till next session, on account of the lateness of the period at which it was brought forward, and the delicacy and difficulty of the question; and the other part respecting the securing the delivery of the eleven copies, as it was only to make more effectual an existing law, should be forthwith passed: on which,

'Sir Samuel Romilly regretted that it was now proposed to pass that part of the measure which was the most objectionable, or rather the only objectionable part of it. The system of Copyright established in this country, made the public, instead of any individual, the patrons of literature; and this, with a view to independence of sentiment and just thinking, was an inestimable advantage. It was certainly highly expedient that the libraries of the different Universities should be properly provided with books;* but he was astonished that it should be proposed to lay a tax upon au-

* This was in answer to the argument urged on the other side, 'that this stipulation was favourable to learning, as thereby students in the Universities would be enabled to consult books which otherwise they would be unable to purchase.'

thors for that purpose, which the public at large did not bear. There were many works which cost 50 guineas a copy, and was it not monstrous that the authors and publishers should be taxed to the amount of 550 guineas, by being obliged to give away 11 copies? The fact was, that such works, from the expense attending them, were in no danger of being pirated; no person being able to enter into competition with them, or to deprive them of the benefit of Copyright therein. There were other books, however, of great sale and merit, though cheap, to which the contribution of eleven copies would be easy; but he should certainly propose that expensive works, when the publishers were not anxious about their Copyright, should be exempted from this contribution.'

It was contended, however, that it was only a confirmation of the Act of Queen Anne, which had not been acted on of late years, in consequence of a doubt being suggested in point of law, as to the efficacy of the Act itself. Mr. Abercromby proposed that the period of Copyright should be limited to 20 years, instead of 28. Mr. Morris insisted, 'that the term of 28 years was not too much for a just Copyright; he cited the cases of Dr. Adam Smith's works, and Dr. Johnson's Dictionary, to prove that most valuable works were not properly estimated till they had gone through many editions, and had been long before the public.' Some further conversation having taken place, the house was resumed, and the further consideration of the report ordered for the 24th instant.

However, it appeared to be a general feeling that it was too late in the Session to proceed further with this Bill, for we hear nothing more of it between this time and the prorogation of Parliament, which took place on the 4th of July. And when Parliament met again, Mr. Villiers, in the meantime, having been sent as Ambassador to Portugal, the subject was not resumed.

Thus matters remained in the same state, until in 1811 Professor Christian, who had given the point a great deal of time and attention, persuaded the University of Cambridge that the true construction of the 8th of Anne required a delivery of the eleven copies, whether the entry was made or not; and that they had a clear right at law which they might enforce. Pursuant to his advice, therefore, they brought an action against a bookseller of the name of Bryer, for not delivering a copy of a work he had printed, although he had not entered the title; and the Court of King's Bench decided in favour of Professor Christian's construction.*

Soon after this decision a motion was made for an amendment of the law on this subject; and as the former motion by Mr. Villiers was to procure for the Universities a recognition of a privilege which they did not enjoy, so the present one, by Mr. Giddy, was to procure for authors and booksellers an enactment destructive of that privilege, which the recent decision in the King's Bench had now enabled the Universities to enforce. And as on Mr. Villiers' motion the House was advised not to meddle with the matter, since they had no petitions from parties interested in it; so on the present occasion the motion was prefaced by the introduction of a petition by Mr. Giddy,† from the booksellers and publishers of London and Westminster, complaining of the clause, and showing the hardship in the case of expensive works, of which only a limited number of copies were printed. They also complained of the further term of 14 years, being dependant on the author's being alive at the end of the first, 'which,' say they, 'is a distinction in many cases productive of great hardships to the families of authors, and is not founded on just principles.'

On the 11th of March, 1813, another petition to the same

* Univ. of Cambr. v. Bryer. 16 East. p. 317.

† On the 16th of Dec. 1812.

effect was produced from several printers of London and Westminster, and Mr. Giddy thereupon moved "that a committee be appointed to examine the Acts relating to Copyright, and to report, whether any and what alterations were requisite to be made therein." A short discussion ensued, in the course of which Sir Samuel Romilly, in answer to some observations, said: "There is another mistake under which the honourable gentleman" (referring to a member who had previously spoken) "labours, in supposing that the act of Queen Anne conferred a benefit on authors; no such thing. Before the passing of that act, authors had the exclusive property in their works; and the act in question went to limit that right to 14 years in the first instance, and to another period of 14 years, if the author should be alive at the expiration of the first period. The only privilege conferred by this act, which authors did not before enjoy, went to some penalties which were immaterial. It operated in a way most injurious to the best interests of literature, for as young authors were more likely to reach the second term than old, it gave the immature and jejune compositions of the former, double the reward reserved for the productions of ripened genius."

A committee was accordingly appointed, and on the 17th of June, they gave in their report, by which they recommended some changes and alterations in the law respecting the delivery of copies to the public libraries, and concluded thus: "Lastly, your committee have taken into their consideration the subject of Copyright, which extends at present to 14 years certain, and then to a second period of equal duration, provided the author happens to survive the first. They are inclined to think that no adequate reason can be given for this contingent reversion, and that a fixed term should be assigned beyond the existing period of 14 years."

Nothing more was done this session; but in the ensuing one, on the 10th of May, 1814, Mr. Giddy moved for and

obtained leave to bring in, pursuant to the report of that committee, "A Bill to amend the several acts for the encouragement of learning, by securing the copies and Copyright of printed books to the authors of such books and their assigns."

On the 18th May, on the house resolving pro formâ into a committee, Mr. Giddy stated shortly the heads of his Bill as follows: "1. That it should not be necessary that the copies of books presented to the public libraries, should be on fine paper. 2. That no books need be presented to these libraries, unless such as were required from the booksellers. 3. That all Copyrights should be entered at Stationers' Hall; and that if the author, by a special entry, waived his Copyright, he should then only be required to present one copy to the British Museum. 4. That the term of Copyright be extended from 14 years certain, and another 14 years if the author was living at the end of the first term, to 28 years certain." And another clause to prevent the copies presented to the libraries from being afterwards sold, which, it was alleged, was often done.

This bill was very near being again postponed to another session; but on the 18th of July several amendments having been discussed and carried,* the bill was ordered to be read a third time the next day, which was done, some further amendments made, and the bill passed and sent up to the Lords.

The Lords passed the bill with two amendments, which

* In the course of the discussion, Sir Egerton Brydges gave notice that he would next day "move for an amendment in the bill to extend further the period of copyright." Whether he did so or not, does not appear; as there is no account of the debate that took place on the 19th. The discussion on the 18th was principally as to the hardship or expediency of the clause, providing certain copies to be given to public libraries; and Mr. Marsh presented a petition to the House from a gentleman of the name of Fisher, "who, it appeared, had travelled all over Great Britain for the purpose of collecting specimens of painting, architecture, and the arts, for the purpose of

were sections 8 and 9, by which a partially retrospective effect was given to the further term of copyright created by the Act; and the Commons, on the 27th of July, agreeing to those amendments, the bill on the 29th received the royal assent.

This Act, which stands in the Statute-Book as the 54 Geo. III., c. 156, repeals so much of the 8 of Anne, and the 41 Geo. III., c. 107, as requires the absolute delivery of eleven copies of every book published, of the best paper; and instead thereof, enacts, for the future, that the copies shall only be delivered, on demand in writing being made, and with the exception of the one for the British Museum, shall be of that paper, on which the largest number of such book shall be imprinted for sale. Penalty, for not delivering copy according to demand £5, over and above the value of the copy, and full costs of suit; to be recovered in an action of debt, or other proper action, in any court of record.

And after reciting the term of copyright created by 8th of Anne, and confirmed by 41 Geo. III., and that "it would afford further encouragement to literature, if the duration of such copyright were extended in the manner thereinafter mentioned;" it enacts 'that in future the term of copyright shall be for twenty-eight years certain, and if the author be living at the expiration of that time, till his death; under pain of an action on the case for damages, with double costs of suit; copies of books to be forfeited and made waste paper of; and a penalty of 3d. per sheet, half to the Crown, and half to the informer.'

The title of all works, except Magazines, &c., (the entry of the first number of which will suffice,) to be entered in the register-book of the Stationers' Company, under penalty

afterwards publishing them with plates and illustrations; but who, having finished his work with respect to one county only, Bedford, was deterred by the great expense of the work, and the necessity of presenting the public libraries with eleven copies of it, from proceeding further."

of £5, and eleven times the value of the work; with a proviso that a want of such entry shall not forfeit copyright, but only subject to penalty.

Sections 8 and 9 give living authors of works published at the time of passing the act a further modified interest in the copyright, under certain circumstances*; and section 10 limits the time of bringing actions, &c., for offences against this act to one twelvemonth.†

In 1819 a point was made, whether by the wording of this act, the author of a piece first published in manuscript, did not lose his copyright; for that the statute made the printing a condition precedent. But Chief Justice Abbott decided, "that the above statute must be construed with reference to the 8th of Anne, c. 19, which it recites, and which, together with the 41 Geo. III., c. 107, were all made, 'in pari materiâ,' for the purpose of enlarging the rights of authors; that the 8th of Anne, c. 19, gave to authors a copyright in works not only composed and printed, but composed and not printed; and that he thought it was not the intention of the legislature either to abridge authors of any of their

* In 1818, a question arose as to the construction of these clauses; and it was decided by the Court of King's Bench, (Brooke *v.* Clarke, 1 B & A. 396) that these clauses gave authors who had published their works less than fourteen years before the passing of that act, an absolute term of fourteen years, after the expiration of the first fourteen years; and to authors who had published their works less than twenty-eight years before that act, the copyright for their life. But where the interest was not in the author, or his assigns, by the existing law, at the passing of the act, then it did not re-create a term, for the whole intention of the act was merely to extend it. And this decision was agreeable to common justice; for where the author's right had expired before the passing of the act, some third parties might have undertaken to print it, and it would have been hard upon them to revive the copyright, which they had concluded as ended.

† This act is the one now in force, regulating copyright property. The only subsequent alteration is respecting the gratuitous delivery of copies to the public libraries, which by the 6th and 7th William IV., c. 110, is now limited to five copies instead of eleven.

former rights, or to impose upon them as a condition precedent, that they should not sell their compositions in manuscript before they were printed."*

* White *v.* Geroch, 2 B. & A. 298. This case is not so reported as to enable one to ascertain on what precise grounds it was contended that a '*sale* in MS.' took away the author's right by the 54 Geo. III. The word, it is conceived, ought to be a '*publication* in MS.' Even the particular words relied on in the Statute, do not seem to be given; for those that are given, do not appear to justify the conclusions sought to be drawn from them.

CHAPTER XI.

FROM THE PASSING THE 54 GEO. 3, C. 156, IN 1814, TO THE END OF THE YEAR, 1836.

In the meantime, on the 19th of June, 1817, Sir Egerton Brydges moved for leave to bring in a bill to amend the foregoing act, "so far as regards books published before the act of Queen Anne, respecting the claims to eleven copies of the said books, and also to very limited editions of books;" which, after debate, was negatived by a majority of one only: the numbers being, Ayes 57, Noes 58. * In the course of the debate, Mr. Brougham said: 'certainly the provisions of the last bill rendered it necessary to be amended, as it imposed a greater burthen on authors than they ought to bear. It certainly was not any encouragement to learning to impose on poor men the task of supplying the University with books, and thereby unnecessarily sparing the funds of those rich and well-endowed bodies.'

On the 3rd of March, in the following year, Sir E. Brydges again brought forward his motion, and the bill was allowed to be brought in, it being agreed that the opposition should be reserved for the second reading.

Numerous petitions in favour and against the bill were at various times presented. Among the rest, 'from certain au-

* Sir Egerton personally felt the hardship of this tax, in the various scarce and curious works he published at his private press at Lee Priory, Kent.

thors and composers of books,' in which the following sound and forcible remarks occur.* "The petitioners humbly submit, that in this great commercial and wealthy country, reputation alone cannot be a sufficient stimulus to authors to compose or publish valuable works, and more especially those which involve much expense; the affluence of the country operates not only to make the annual expenditure for subsistence considerable, but also to enhance the charges of every publication; the same prosperity of the country leading to costly habits of living, prevents men of literary reputation from holding the same rank in this country that it obtains in some others; justice also to the family who have to derive their nurture and respectability from the parental labours, compels the parent to devote some portion of his attention to pecuniary considerations; hence an author can rarely write for fame alone, and every subtraction from his profit, and every measure that will diminish his ardour to prepare, and the readiness of booksellers to publish his work, especially as so many require such large sums to be expended and risked upon them, is an injury, not only to authors, but to literature itself. That not only great national celebrity arises from superior excellence in works of art and literature, but it may be considered to be equally true that whatever discourages or obstructs the progress of literature in any country, will produce in time a national inferiority; and those political effects will be severely felt when they will be with much difficulty remedied."

The booksellers complained very much, and with some justice, that the libraries, with the exception of two, did not confine their demands to useful books, but exacted a copy of every work, however trifling it might be; even novels and music.†

* Presented, April 8, 1818.

† Petition, 9 April, 1818.

A committee was appointed to search into the origin of this delivery of copies, and to report thereupon to the house; which they did accordingly on the 5th of June, 1818, and after tracing it from the early agreement made by Sir Thos Bodley with the Stationers' Company, through its intermediate steps, and remarking, 'that in no other country was there a demand of this nature carried to so great an extent; that in America, Prussia, Saxony, and Bavaria, one copy only was required to be deposited; in France and Austria, two; and in the Netherlands, three: but in several of these countries even this was not necessary unless Copyright was to be claimed:' They concluded by advising that this gratuitous delivery be done away with, except as regarded the British Museum; and if the Copyright be actually abandoned, then that no delivery at all should be necessary. On the report being given in, a debate arose, and it was then urged against the adoption of it, that the resolutions the committee had come to, were carried by a very slight majority; a majority of only one in one case, and of the casting vote of the Chairman in another. The Report however was ordered to be printed.

But the Parliament shortly after breaking up, nothing more was done with this bill; and when the new Parliament met on the 14th of January 1819, the subject was not again resumed, although, on the 22d of March, a petition for alteration of the existing law was presented from the booksellers, in which it was stated, "That the delivery of eleven copies of only five works, namely, 'Dugdale's Monasticon Anglicanum,' his 'History of St. Pauls,' 'Portraits of Illustrious Personages,' 'Ormerode's History of Cheshire,' and 'Wood's Athenæ Oxonienses,' would amount to £2198, 14s., and that the delivery of only one work, 'Dodwell's Scenes and Monuments of Greece,' would, at the trade price, be about £275.' The chief reason, perhaps, that the subject was not

resumed, was, that its principal supporter, Sir E. Brydges, did not sit in the succeeding Parliament.

We do not find the subject again mentioned, till after a lapse of twelve years, when, on the 28th of July, 1832, Mr. Spring Rice brought forward a motion to buy up the right of the Marischal College of Aberdeen to a copy of every new work published, which they were willing to dispose of for £460 a-year; and the copies thus acquired were to be devoted to a project then afoot, of exchanging literary works with France, to which the French Government, on their part, were willing to agree. The hardship on the proprietors of Copyright, in having to furnish these eleven copies, was again referred to in the course of the debate, and a wish expressed, that some measure might be taken to do away with so oppressive and injurious a tax.

Accordingly, although this right of the Marischal College to a copy of every work was purchased, it was thought better not to execute the latter part of the project, but to give the benefit of the purchase to the booksellers, by not exacting the copy thus acquired.

In this state, matters remained till the 28th of April, 1836, when Mr. Buckingham moved for leave to bring in a bill to do away with the delivery of the eleven copies, in a speech which merely recapitulated the arguments already noticed. The bill, when brought in, remained some time in the Commons' House, but passed more quickly through the Lords, and received the Royal assent on the 20th of August, 1836.*

It enacts, that so much of the 54 of Geo. III. as relates to the delivery of a copy of every book printed to the warehouse-keepers of the Stationers' Company, for the use of the library of Zion College, the libraries of the four Universities of Scotland, and the King's Inns' Library, Dublin, should be re-

* 6 & 7 Wm. IV. c. 110.