right?—I think not; unless I am asked questions I do not think that I have anything more to say.

3486. (*Mr. Daldy.*) Have you suffered from your paintings being copied?—Very much indeed.

3487. Have you adequate checks at the present time to prevent that being done; can you prevent it under the existing law?—I really do not exactly know what the penalties are; I know that there are penalties, but they seem to be so light that sometimes I have three or four pictures a year brought to me, which are poor copies with my name forged on them. One was brought to me seven years ago by two respectable men; one was a Liverpool merchant and the other a dealer; the dealer had discovered that it was not my picture, only a poor copy of one of my works with my name forged on it; I kept possession and have it still.

3488. (*Mr. Trollope.*) Was it an original or a copy?—It was scarcely a copy; it was very like a single figure which I had painted, the attitude was the same; the idea was from my picture, and my name was forged on it. The idea was exactly mine in respect to the position of the figure and everything else, but it was not copied from my picture.

3489. Have you frequently known cases in which pictures, which as not being copies I must call original pictures, have been painted, and to which your name has been forged?—Do you mean copies?

3490. Not copies, and therefore I call them original pictures, but pictures painted after your manner and then brought into the market with your name forged to them?—Yes, very often indeed; two or three every year.

3491. (*Sir H. Holland.*) Under the 7th section of the Act of the 25th and 26th of Victoria, chapter 96, the offender [that is a person who has done what you have described, namely, imitated the picture and forged your initials], is liable to a penalty not exceeding 10*l.*, "or not exceeding double the full price, if any, at "which all such copies, engravings, imitations, or "altered works shall have been sold, or offered for "sale; and all such copies, engravings, imitations, or "altered works shall be forfeited to the person" whose name is forged; but you are of opinion that that penalty is not sufficiently high?—I did not know hat it was even so high.

3492. Having heard that that is the penalty imposed by the Act, are you of opinion that that is sufficient?—I think that it ought to be made a forgery, the same as the forgery of a bill. I do not myself see what difference there is. A man deliberately forges your name on a piece of bad painting, and sends it into the market, injures your reputation, and sells it for 400*l.* or 500*l.* I do not see why that man should not undergo the penalty which is undergone by a bill forger. Copyright, according to my understanding, exists in the idea, and in this case the idea was identical with my own, that is to say, the thought, the design.

3493. (*Mr. Trollope.*) Do you not think that it would be very difficult to prove that such a picture as you have referred to was a copy of your picture?—If the copyright is in the thought of the picture there would be no difficulty whatever.

3494. Do you think that there would be no difficulty in so analysing and describing the thought as to give evidence to a jury that the thought in one picture was the same as the thought in another?—I should say that there would be no difficulty.

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3495. (*Mr. Daldy.*) I think you said that you would like the copyright of a picture always to remain in the possession of the artist until he parted with it either gratuitously or for consideration?—Yes.

3496. Would you like that to apply to portraits painted on commission?—That is the difficulty. I have thought over it, and I think that portrait painters would be obliged to give up that point, for it would be very awkward indeed to have your wife or daughter painted, and to let the copyright remain with the painter, when he might repeat the portrait half a dozen times, or engrave it, against the will of the commissioner; and I think that portrait painters would be very willing to give up that point; I fancy that it would interfere with their success if they retained it. If I were a portrait painter I should decidedly waive all claim to the copyright, unless the picture happened to be treated as a fancy picture, like Millais' "Hearts are Trumps" portraits of three young ladies.

3497. (*Sir H. Holland.*) But, subject to any arrangement, would you allow the owner of the portrait to have engravings made?—Yes, if the painter had anything to say in the selection of the engravers.

3498. One can understand that a bad engraving of a well-known character, painted by a well-known artist, might be a serious injury to the artist, because the engraving may be multiplied a thousand fold, and taken to the colonies and to America, and supposed to be an accurate copy of the picture?—Precisely so.

3499. Therefore would you not wish to see some protection on the part of the portrait painter against engravings being taken?—Yes; I should say that there ought to be some protection.

3500. (*Chairman.*) Would it meet your view if the consent of both parties, in cases of that sort, was obtained?—I think so; it might be very easily done. I know persons who have suffered very much by bad engravings being made from their pictures. I can mention a dozen of my pictures which have been engraved without my opinion having been asked, nor have I been aware that they were being engraved until I was asked to touch on them; there was no copyright, and bad engravings is the general result.

3501. (*Sir H. Holland.*) What have you done in those cases?—I have very often touched upon them to make them as respectable as possible, and have spent days, aye weeks upon them.

3502. But have you at any time taken any steps to prevent the engraving going on?—Never.

3503. Was that because you were afraid of the law's delays and the laws expenses, or because you doubted whether there was any remedy?—I doubted the remedy myself.

3504. (*Mr. Trollope.*) I suppose that you would hardly like to incur the expense of the remedy frequently?—That is a consideration, certainly.

3505. (*Sir H. Holland.*) In the case of engravings as to the illegality of which there is no real doubt, would you desire to see, as Mr. Graves did, a power to seize them?—I should.

3506-20. (*Chairman.*) Does anything else occur to you which you would like to add to what you have told us?—I do not think so.

The witness withdrew.

CHARLES EDWARD APPLETON, Esq., examined.

C. E. Appleton, Esq.

3521. (*Chairman.*) You have, as I know, turned your attention for some time to the subject of copyright, and I believe especially with respect to the American aspect of the question?—I know most about that aspect of it, I think. I have not studied specially other parts of the question of copyright, but I have studied most of the writings which have appeared in America on the subject of copyright, and I have also conversed with most of the persons concerned; and any information which I can give to the Commission in answer to questions, I shall be very glad to lay before them.

3522. Are you able to give the Commission a general idea of the view which is entertained by leading American authorities on this subject?—There are a great many views in America. It is generally supposed in England that the American views on copyright are homogeneous, but that is far from being the case. There are two extreme views, which I will describe first. There is the view which is held by

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the authors, almost unanimously, in America, which may be said to be the same view as is held by authors in England, namely, that a book copyrighted in England should be capable of being copyrighted in America without any restrictions or conditions. That is the view entertained by such persons as Mr. Longfellow; and the chief adherents of that view have been organised into what is called the Copyright Association, at the head of which was Mr. Charles Astor Bristed. The other extreme view is held by what we may call the Philadelphia school; it is the opinion that copyright, both domestic and international, is bad in principle. The principal advocate of that view is a very eminent economist, Mr. Henry C. Carey, of Philadelphia. He is well known as the advocate of protection and of paper money, and he bases that advocacy upon the same principles as those from which he derives his objection to copyright. He has written a number of pamphlets and letters on the subject, and he has a very considerable following in Philadelphia, both amongst publishers and amongst newspapers, and amongst authors. He is a strenuous opponent of all forms of international copyright. He has not mentioned the subject of domestic copyright so much in his writings, but he admits that his arguments carry the abolition of domestic copyright law. He draws a distinction between protection and monopoly. His fundamental economical principle is the decentralization of industry. He considers, for instance, that American industry is to some extent dependent upon England, and he is most anxious, therefore, to destroy the monopoly of England both in the monetary world and also in the industrial world, and at the same time to protect the growing industry of America. That is how he would illustrate the distinction. He also would be (and this would carry the abolition of domestic copyright) against the monopoly of the publishing business in America by the large New York firms, on the same principle. He is against international copyright with England, because, he says, that England would in that case have the monopoly of the book market in America; and he is against domestic copyright, because domestic copyright actually gives the monopoly of the publishing trade to the large firms in the east.

3523. (*Mr. Trollope.*) Therefore he is opposed to copyright altogether?—Yes, on his own admission in his works, which he probably would not allow to be pressed against him, just as he also admits that the least objectionable form of international copyright would be a royalty; everybody being allowed to print who paid, n the same way as is the case with dramatic authors.

3524. (*Dr. Smith.*) Did I rightly understand you to say that some authors were in favour of the abolition of domestic copyright?—I believe that Mr. Carey has a following in Philadelphia, not only amongst publishers, printers, and type-founders, who largely support him, but also amongst authors. I do not know that there is any author of great weight on his side, the only person that I could mention would be an economist, Professor Thompson, who has written a book very much on the same lines as Mr. Carey's "Social Science."

3525. (*Mr. Trollope.*) Are you now representing Mr. Carey's view's as your own?—Not in the least. I wish to represent no views. I do not wish to express any opinion upon the subject of American copyright with England, but only to give the Commission such information as they desire to elicit.

3526. Then we are to understand that the opinion which you have been good enough to give us of Mr. Carey's is merely given to us in order that we may know what Mr. Carey says in America?—That you may know what forces are ranged against you when you endeavour to make a convention with America.

3527. (*Chairman.*) You have now stated the two extreme views?—Yes.

3528. (*Mr. Daldy.*) Did I rightly understand you that decentralization was the root of Mr. Carey's views; that it was simply an application to copyright, but that his system of political economy was based upon decentralization of trade, and that it flowed from that that he wished to abolish copyright?—Yes; it flowed from the same principle as that which makes him advocate paper money, in order that the Americans may be freed from dependence upon the bullion market here. Mr. Carey's opinions may be called theoretical opinions; they are the opinions of an economist, although he was for some years of his life a publisher; but he is largely backed up by the publishers of Philadelphia, and generally by the politicians and by the manufacturers of Pennsylvania, and he is supported by the newspapers of Philadelphia. I am speaking now of the Philadelphia school; he is the head of that school. He is also supported, or probably would be supported in any further discussion on the subject, by a large number of farmers in the west of America, who have an objection to the kindred institution of patents. Mr. Carey regards, and many people in America regard, copyright and patent as fundamentally identical in principle; and therefore the opposition of the farmers of the west, who have a more and more determining influence in the politics of the Union, may be looked for in any further discussion of copyright.

3529. (*Sir H. Holland.*) They are afraid, I presume, that the price of books would be considerably raised in America if there was an international convention?—That is not a point which Mr. Carey himself takes.

3530. But I refer to the farmers of the west?—The farmers of the west are supposed to take it; that is the allegation which is made by a third party, also standing on the side of Mr. Carey, namely, the very important house of Harper and Brothers, of New York. Harper and Brothers were heard by counsel before Congress in 1872, and sent in a protest which probably weighed more strongly than anything else against the Bill before the House.

3531. (*Mr. Daldy.*) Which Bill?—There were three or four Bills. I was thinking particularly of what was called the Appleton Bill.

3532. (*Chairman.*) But if I understood you rightly the objection of the western farmers was not so much with regard to the price of books as with regard to the probable effect upon the price of agricultural and other implements?—Yes; I tried to explain that the objections to patents would be the same as the objection to copyright, copyright standing on the same ground as patents. I was then asked whether there was an objection to copyright on the ground that it would raise the price of books, and my answer to that question is that I do not know of my own knowledge that this would also be an objection raised by the western farmers, &c., but it is said to be; and that brings me to Mr. Harper's point of view; he is the person who says that they would so object. Mr. Harper's ground for objecting to copyright and protesting against it before the Library Committee of Congress was that it would raise the price of books, and that this would narrow the popular intelligence, more particularly meaning by "popular" the intelligence of the large western interest, which is becoming more and more dominant. I am now speaking of international copyright.

3533. (*Mr. Trollope.*) If we rightly understand you, Mr. Harper does not repudiate copyright, but only the idea of international copyright?—He does not. Those are the main forces ranged on the side of Mr. Carey; there is Mr. Carey's own great theoretical influence; he is a gentleman who fills a very influential position in America, very much the same position in America as the late Mr. Mill filled in England. Siding with him are the publishers of Philadelphia, with the great house of Harper, of New York, and the trades of Philadelphia ancillary to publishing. I mean the type-founders, paper makers, and printers. Besides these, there is the probable opposition of the farmers, and, to some extent, of the manufacturers of the Western States.

3534. (*Mr. Daldy.*) Would you go so far as to say

that the publishers of Philadelphia are against a domestic copyright?—No, I should not.

3535. Merely that they are against international copyright?—I said that Mr. Carey's arguments carry a domestic copyright also.

3536. But the publishers of Philadelphia do not follow him so far?—No.

3537. (*Mr. Trollope.*) There is no practical opposition in America to the law of domestic copyright, is there?—No. Mr. Carey in one of his pamphlets says, "You had better not meddle with the subject of inter- "national copyright, because it will stir up a discus- "sion about your own domestic copyright, and if "such a discussion is stirred up, there is very little "doubt that your own domestic copyright will fall."

3538. Therefore we do not gather from you that there is any question prevalent in America as to repudiating or abolishing the domestic law of copyright which now exists there?—Only a theoretical one.

3539. And it is so far from being a practical one that it has not been brought forward at all?—No; but it is involved in Mr. Carey's argument, and on the other hand it is involved in the objection to patents which is growing in the Western States.

3540. We need not take it into our consideration as being a prevalent question in the United States?—No.

3541. (*Chairman.*) Having mentioned the two extreme views, are there any intermediate views?—Those are the two extremes. Standing between these there is what one may call the New York school, intermediate between the New England school, which is all for copyright, and the Philadelphia school, which is against it. The New York school is represented mainly by Mr. William Appleton, of the firm of D. Appleton and Company. In 1871 the Library Committee, which is a permanent committee, were called upon by Congress to consider the question of copyright, and they requested the publishers of New York, and of America generally, to help them to frame a Bill. A publishers' meeting was then held in New York, which was apparently a very unsuccessful one. It was called by Mr. William Appleton, and by Messrs. Scribner, and Carter Brothers, and a few others of the leading publishers. Out of 101 invitations I think that something like 19 people came. From Philadelphia nobody came; from Boston only two people came. It was then discussed whether the principles of international copyright, subject to the condition of remanufacture in the United States, should not be adopted by the publishers. The so-called Appleton Bill provided that an English work may be copyrighted in America, provided that the English author stands in direct relations with the American publisher as his assignee, and that that book is printed entirely upon American paper, and is in fact wholly re-manufactured in America.

3542. (*Sir H. Holland.*) I think that the words of the Bill were, "So that it shall be wholly the product of the mechanical industry of the United States;" those were the words of the Appleton Bill?—Those words occur in the first draft of the Appleton Bill, but those words were left out in the final draft of the Appleton Bill, as a compromise with the authors, that is to say, with the Copyright Association. Will you be kind enough to read the words immediately preceding those?

3543. "Any author of a manuscript intended to be "published as a book, who is not a resident and "citizen of the United States, may obtain a copyright "for such manuscript upon the same terms and con- "ditions as are now required of an American author, "whenever such foreign author shall enter into a "contract with an American publisher, a citizen of "the United States, to manufacture the book in all its "parts, so that it shall be wholly the product of the "mechanical industry of the United States?"—"To manufacture the book in all its parts," remained in the final bill, and the following words, "So that it "shall be wholly the product of the mechanical in- "dustry of the United States," were left out, and it was considered to be a compromise to some extent with the views of the Copyright Association, because, I suppose, it would permit the practice which at present prevails to go on, namely, not to reset the type of a book in America, but to have stereotype plates sent from England, and to have the book printed from imported stereotype plates. That would be a kind of compromise.

3544. (*Mr. Daldy.*) Am I to understand you that Mr. Appleton was in favour of accepting that as a basis of an arrangement for an American copyright?—Yes.

3545. That the stereotype plates might be sent?—No; that is my inference from the words, "So that "it shall be wholly the product of the mechanical in- "dustry of the United States" being expressly left out after having been put in.

3546. You do not know it of your own knowledge?—No; but I have seen the final draft of the Bill with those words left out, endorsed in the handwriting of Mr. Appleton in the library of Congress, showing that he accepted the Bill with the words left out.

3547. In fact it made it indefinite?—It made the conditions more indefinite.

3548. (*Mr. Trollope.*) It is still Mr. Appleton's view, I presume, that the works of English authors, presuming that they obtained a copyright in America, should be manufactured in the United States?—I have conversed with Mr. Appleton upon that subject, and I asked him this question in the autumn of 1875, whether he would be willing to go a step further and to waive this restriction, so that the American publisher, provided that he was an American citizen who had his contract with the English author, should consult his own convenience as to whether he would manufacture the book wholly or in part in England, or wholly or in part in the United States. As a matter of fact, at the present time, some American reprints are wholly manufactured in England. I have myself seen a book so wholly manufactured in England, even to the binding; and I was reading in a German periodical the other day that the American reprint of the official account of the Franco-German War has been printed in a little town of Würtemberg, showing that the Americans at present do not object to the manufacture of books wholly or in part in Europe; and I said to Mr. Appleton, "Are you "willing to leave this question open, so that the pub- "lisher in future, under a copyright law shall have "the same liberty of wholly manufacturing or partly "manufacturing as he has at present?" He said that he was willing to go as far as that.

3549. (*Dr. Smith.*) Those books which are manufactured in this country or in Germany and are imported into the United States have to pay a duty of 25 per cent., have they not?—They have.

3550. (*Mr. Trollope.*) But that duty would of course be escaped if the plates could be imported?—I do not know what the duty on plates is.

3551. Whatever the duty on plates might be, I presume that it would come to a very small sum upon each individual copy of the work taken from those plates?—Comparatively small.

3552. (*Dr. Smith.*) Are you aware that the duty on plates is 35 per cent.?—I am not.

3553. (*Mr. Daldy.*) Do I rightly understand you to say that Mr. William Appleton of New York is prepared to let the plates be imported from England and to rest satisfied with printing off the editions in America?—We did not consider the subject of stereotype plates together; but I put before him the fact, which he acknowledged, that in the reprints which are now made by American publishers of English books, those publishers do not wholly manufacture them in the United States, but that they are partly manufactured and frequently wholly manufactured in England; and without mentioning stereotype plates in particular, I asked Mr. William Appleton whether he was willing that the *status quo* should be continued under an international copyright law, and I understood him to say that he was.

3554. Did you understand him to say that he wished

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the discretion in the matter to reside in the American publisher?—I understood him to assume that.

3555. Or did you understand him to say that he wished it to be settled by law. I have gathered from your former evidence that he, as an American publisher, wished to retain in his own person the right to control the question whether the book should be wholly or partially manufactured in the States?—Yes; I asked him whether he was willing that the present condition of things should continue, and I asked him whether he was willing to strike out the condition from his Bill that the book should be wholly manufactured in the States, and he said that he was, leaving the American publisher free to re-manufacture wholly or not in the United States at his pleasure.

3556. But not leaving the English author free to say whether it should be so manufactured wholly or partially?—No.

3557. (*Sir H. Holland.*) Did Mr. Appleton state that in his opinion other publishers would assent to that view, or was he merely speaking for himself?—He was merely speaking for himself.

3558. (*Dr. Smith.*) Is there any other view besides these three?—There are two more views. What is called the Appleton Bill, which is identical in all essential respects with two previous Bills, was voted by the majority of the publishers' meeting, but there was a minority report of dissentients, and they opposed the conditional copyright which the majority proposed, on the ground that it might throw the American market indirectly into the hands of English firms, because English firms might establish branch houses in America; and, whilst they were not prepared with any scheme which would preclude that, the leader of this section told me he was in favour of international copyright, but not in favour of any measure which has yet been proposed. The person I am speaking of is Mr. Edward Seymour, one of the managing partners of the large firm of Scribner, Armstrong, & Co.

3559. (*Sir H. Holland.*) Mr. Seymour's objections to that measure are, I think, recapitulated in two sections:—"First, it is in no sense an international "copyright law, but simply an Act to protect Ame- "rican publishers, regardless of the rights of American "authors. It has so narrow a basis, therefore, that "it can never receive the endorsement of the "public. Secondly, even if it were possible for "American publishers to secure the 'protection' pro- "posed in compelling the manufacture of foreign "copyrighted books in the United States, such "'protection' would be wholly delusive, since the "copyright which the English publisher could hold "indirectly through an American partner would secure "him the absolute control of this market, whether the "book was made here or in England?"—Yes. There is a further objection I think on the ground that it does not provide for the copyrighting of encyclopædias.

3560. There is a third objection: "For the reasons "above stated the Act is objectionable in prohibiting "the importation of stereos and electros, in failing to "provide for the copyrighting of cyclopædias, &c., "and in giving the American publisher power to "exclude revised editions of works of which he may "own the copyright?"—Yes. Whilst those views were being put before the Library Committee of Congress a third measure grew up called the Elderkin Bill. Mr. Elderkin, I believe, is the printer or publisher of one of the trade journals. I do not know him. It occurred simultaneously to Mr. Morton, of Louisville, Kentucky. It was placed before the committee and was taken up by Mr. Sherman, one of its members. The Sherman Bill provides that an English book could be copyrighted in America on this condition, that all persons who wished to print the book could print it, but that they should pay either a royalty of 5 per cent. or a royalty of 10 per cent.; opinions differed as to how much the royalty should be.

3561. (*Mr. Trollope.*) That being a royalty on the cost at which the book was to be published?—Again they differed on that point, as to whether or not the royalty should be upon the price of the book as served to the customer, bound, and so on. Mr. Morton thinks that the binding ought to be taken off, and that the author has no right to any royalty upon the price of of the binding, but only to a royalty upon the price of the book. Those are the main views of which I am cognisant in America, and I think that they cover almost the whole area. The Southern States cannot be said to have any opinion upon the subject at all; since the war they have published little or nothing, and they are not large consumers of books. Mr. Carey's views may be said to cover the middle and the western States. The views of the Copyright Association may be roughly said to cover the New England States, and the three or four intermediate views may be identified with New York.

3562. (*Sir H. Holland.*) I did not catch whether you said that any large amount of support had been given to the Elderkin compromise, namely, payment by a royalty?—It is curious that payment by a royalty has not met with the same support in America as it has in this country. The London *Bookseller* had an article in favour of it, and a Bill was proposed by the writer of that article. The Americans have an opinion as to who the writer of that article is, but I am not sure that I should be right in stating it; he is a very well-known publisher in the neighbourhood of Paternoster Row.

3563. Do you suppose that this arrangement of a royalty was suggested with the idea that it would have the support of the American authors as distinguished from the American publishers?—The American authors have committed themselves to Mr. Appleton's Bill by their compromise; they went to Congress with their own own counsel to represent them, and distinct from Mr. Appleton, but at the Library Committee of Congress, the two parties coalesced and the authors gave in their adhesion to Mr. Appleton's modified Bill.

3564. Still, supposing that it turned out that Mr. Appleton's Bill had no chance of being carried, I presume that the authors would not be so far bound that they might not advocate the plan of a royalty?—The authors in their private opinions retain their view of absolute and unqualified copyright based upon the abstract right of the author to his work, but some of them differ about that; one very eminent American author told me that he did not consider that there was any question of abstract right, and that he held it was merely a question of expediency. But I have no doubt that they would be willing to accept any measure of copyright which was at all equitable.

3565. (*Mr. Trollope.*) In what form did these American authors show their agreement to Mr. Appleton's Bill?—They were represented by the secretary of the Copyright Association to which most of the leading American authors belong.

3566. You are now speaking of course of the authors of the United States generally?—No, I am speaking mainly of the authors of New England who are in favour of unqualified copyright. Most of the American authors are New England authors.

3567. In what form did these authors show that they acceded to Mr. Appleton's Bill?—They went to Congress to press their own view, with their secretary Mr. Bristed, and with Mr. Andrews as their counsel. Mr. Andrews made a speech, and at the end of it Mr. Appleton and his friends stated their opinions on the question of copyright. Then there was a a cessation of the sitting of the committee for a week, and during that week the representatives of these two parties agreed to coalesce, and to take the modified Appleton Bill.

3568. Have you any means of knowing that this association of authors really represented the majority of the authors of the United States?—I am afraid that I cannot put into your hands (I do not think that I have it anywhere,) a list of the members of the Copyright Association, but I am under the impression that it consisted at all events of the principal of the American authors: men like Longfellow and Bryant, and Lowell belonged to it.

3569. You, I suppose, would understand that the whole value of such an opinion on the question of compromise would depend upon the fact whether or not the association really was an association which the American authors would acknowledge as representing themselves?—I can only say what I have been told. I have been told that it does represent the authors of America, meaning by that the authors of New England principally.

3570. Is there any printed list of that association?—I have no doubt that there is, but I do not possess one.

3571. (*Mr. Daldy.*) Was the association by its constitution in any way limited to a portion of the States, or was it considered to be an association of American authors from all States?—I think the latter.

3572. (*Dr. Smith.*) Is it your opinion that those views represented by Mr. Appleton and the Copyright Association are the most influential views and the views most likely to prevail?—It is difficult to say what would prevail in Congress, because Congress would be mainly dominated by members who come from the west, who would be against all forms of copyright; but Mr. Appleton's view is influential in so far as it is a practical view, and from the fact that Mr. Appleton is a man of business and not an author. Probably a large number of persons of intelligence hold the authors' view of unconditional copyright; but in America in determining policy an author counts for very little, whereas a publisher counts for a great deal.

3573. But I understood you to say that the authors had given in their adhesion to Mr. Appleton's view?—They have.

3574. And under those circumstances you imagine that Mr. Appleton's view would have considerable weight in the country?—I should say that it is the only practical view before the country at the present moment.

3575. (*Mr. Trollope.*) Am I right in gathering from the evidence which you have given us that with the exception of the view taken by Mr. Carey, whose party I believe you call the Philadelphia school, all these associations and all these opinions in America generally are in favour of some form of international copyright?—Yes, I think that they are.

3576. (*Sir H. Holland.*) May I ask you, as a matter of history, whether there was not first a Bill in 1871 presented by Mr. Cox to Congress; are you aware of that Bill?—Yes, I have a copy of it.

3577. In that Bill it is provided that in order to secure the benefit of copyright to foreign authors the book should be "wholly manufactured in the United States"?—Yes.

3578. Then came Mr. Appleton's first Bill of which you have given us information?—Yes.

3579. Then, as I understand, the Copyright Association met and they presented a third Bill to Congress?—Yes.

3580. In which it is said in one section, "All "rights of property secured to citizens of the United "States of America by existing copyright laws of "United States are hereby secured to the citizens and "subjects of every country the government of which "secures reciprocal rights to citizens of the United "States"?—Yes.

3581. Then the parties met, and a compromise was effected, and a fourth Bill presented to Congress, which was the result of the compromise?—Yes.

3582. The following was the first section of that Bill, "That any author or artist who is not a citizen of "the United States may secure a copyright for his or "her work in accordance with the regulations of the "United States Copyright Act, provided that such "author and artist shall manufacture and publish said "works in the United States?"—Yes.

3583. Therefore it is not quite correct to say that the fourth Bill merely omitted the words, "So that it "shall be wholly the product of the mechanical in-"dustry of the United States;" the words of Mr. Cox's first Bill, "Shall be wholly manufactured and published in the United States" are in fact adopted. Do you think that there really is any material difference between Mr. Appleton's Bill, to the effect that a foreigner must enter into a contract, "to manu-"facture the book in all its parts, so that it should be "wholly the product of the mechanical industry of "the United States," and this fourth Bill which was the result of a compromise?—I think that there is, whatever difference there may be between saying that it shall be in all its parts manufactured, and saying that it shall be wholly the product of the industry of the United States.

3584. The words of the fourth Bill are, "That "such author and artist shall manufacture and pub-"lish in the United States"?—Yes; the omission of the words I have specified is the only verbal difference between the two bills.

3585. You speak of that from your own knowledge?—Yes, I have seen the Bill which was the result of the compromise, with those words to which I have referred left out. I have also very carefully gone over the facts with the librarian of Congress.

3586. Mr. Dicey has given evidence that he thought that this proposal of a royalty if put forward would be actively accepted by the American authors, and that, although the American publishers would probably not wish for such an arrangement, they would willingly accept it as a compromise. You have studied this question. Are you inclined to agree with that opinion or not?—I am inclined to differ from it, I think that it would be strongly objected to by almost all the best publishers of America; and the objection which they would raise to it is this (and this objection, I believe, is felt by every well-known and important publisher of New York,) that it would prevent a book from being distributed. If everybody could print a book equally by paying a royalty to the author it would be no one's business to advertise the book; or if one publisher had spent capital in pushing and advertising the book, other publishers would take advantage of his investment, and this would deter him from repeating it.

3587. We have been told that there is in America a kind of honourable understanding between the publishers that if one publisher has expended a considerable sum of money in bringing out a book, others will not reprint it?—Yes, what is called a courtesy copyright, that is an understanding which theoretically exists between all firms in America, but practically only amongst the five or six largest firms; but if the Sherman Bill became law, I imagine it would put an end to courtesy copyright, as everybody would then be legally free to print on payment of a royalty.

3588. (*Mr. Trollope.*) Would not that plan of Mr. Dicey's make it almost impossible for a firm to bring out a very expensive book?—Quite impossible.

3589. Does not that impossibility itself almost answer the question, and show that the American trade would not assent to it?—I do not think that it is a very practical suggestion, although it has gained very strong support in this country. Mr. Watts, the keeper of printed books in the British Museum, has expressed the same opinion, and M. Renouard speaks of it with some approval in his "Traité des Droits d'Auteurs."

3590. (*Chairman.*) But Mr. Watts' opinion is very old; it was his opinion in 1837, a long time ago?—That is so.

3591. (*Sir H. Holland.*) Possibly some difficulty of the kind which we have just mentioned might be obviated by allowing two or three years to the copyright of the publisher who first brought out the book, upon his paying a royalty?—Yes.

3592. (*Chairman.*) I see that Mr. Watts' plan took five years?—Yes; I think that that also is the plan in Italy. After the 40 years' copyright expired in Italy, a publisher was not at perfect liberty to reprint, but he was at liberty to reprint on condition of paying a royalty. I do not know whether it has worked in Italy. We certainly have the Sir John Rose's opinion that it has not worked in Canada.

3593. (*Sir H. Holland.*) We know that under the

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Foreign Reprints Act the authors get no returns at all?—I think that Mr. Watts has given his opinion that a new excise law would be necessary, and that officers must be employed to see that more copies were not printed than were stated in the authorisation.

3594. (*Dr. Smith.*) If a system of royalty was adopted what means would be taken for securing the royalty to the authors?—The only possible way is that which was suggested by the anonymous writer in the London *Bookseller*, namely, that the publisher who desired to reprint should state the number of copies which he desired to reprint, and should prepay the royalty upon the whole number to an agent or public officer, and that authority should be given to a specified printer to print that number of copies, and that this authorisation should appear on every book protected by the royalty.

3595. Then it would be in the nature of an excise?—Yes.

3596. Was it proposed that when a book was reprinted the royalty should be paid upon the publication of the whole number of copies?—I think that in the English proposal it was specified that it should be prepaid upon the whole number of copies before they could be printed, *i.e.*, before the printer could have the authorisation to print.

3597. Is it not your opinion that that would very much interfere with the reprinting, because, supposing that a work was unsuccessful, the publisher who reprinted the book would have to pay upon the copies whether they were sold or not?—It would be in the nature of a commercial venture.

3598. (*Mr. Daldy.*) May I ask you whether, as that seems to be a very important question, you think that the fourth Bill in which the words relating to the manufacture of the book were smoothed down would permit the printing off from plates?—I do not know whether they were intended expressly to permit the printing off from plates, but from what I have heard from publishers in America, I am of opinion that they would accept the printing from plates as a compromise, and I infer from that, that this was the compromise intended.

3599. (*Sir H. Holland.*) Did I rightly understand you that the royalty proposal was ever turned into a Bill?—Yes; the Sherman Bill was based upon the royalty proposal; it was brought by Mr. Elderkin to Congress, and Mr. Sherman, one of the members of the commission upon the library, accepted it and framed a Bill.

3600. Therefore we should see in that Bill, if it was presented to Congress, how they proposed to secure the royalty to the author?—Yes. I can send you a copy of that Bill, and shall be happy to do so. (*The Bill will be found in the Appendix*).

3601. (*Mr. Daldy.*) With reference to the compromise to which you say the authors assented, was that compromise with a view to get a Bill of some kind or other passed at that time, or was it that they really yielded up the views which they had originally expressed?—It was a compromise, but it was all on one side; the publishers did not meet the authors' view; the authors really acceded to the views of the publishers, but it was called a compromise.

3602. Are you acquainted with the recent Canadian Act on copyright?—No. I cannot say that I am; I have not studied the Canadian Act at all.

3603. (*Sir H. Holland.*) A suggestion was made to us, on which I should like to have your opinion, that the only way of really getting any international arrangement made between the United States and this country would be that there should be a commission appointed of eminent literary men and publishers on both sides, who should go carefully into the subject, and then sketch out the arrangement of the details. What is your opinion upon that point?—A commission of eminent literary men would no doubt have great weight with the Government in this country, but literary men in America, however eminent, have no influence upon Congress, and it is by a Bill in Congress, so far as I have understood in America, that the Bill must be passed, and not by means of a treaty.

3604. (*Mr. Trollope.*) When you say that literary men in the United States have no influence upon Congress, do you mean to say that they have none as individuals, or that any generally expressed opinion does not have influence upon Congress?—Neither collective opinion nor individuals have any influence whatever upon Congress at the present moment.

3605. (*Sir J. Benedict.*) With respect to music, are you aware that a quantity of music written in England to words by English authors and composed by English composers has been reproduced in the United States by gentlemen living in the United States and writing different words to the musical compositions?—I did not know it.

3606. They by that means getting a copyright for the words, and unfortunately for the music too. Are the American authors protected unless they have originally composed the music also?—I have not studied the subject, but I imagine that if an American author wrote original words the fact of those original words being set to certain music would not affect his right to copyright in them; I do not, however, think that my opinion upon that subject is worth having.

3607. It has been told me that to secure for an English composer residing in America the copyright of any song of his composition he must apply to an America author for words?—Am I to understand that he could then get a copyright both in the music and in the words?

3608. Yes.—That I do not know.

The witness withdrew.

Adjourned to to-morrow at half-past 2 o'clock.

Thursday, 18th January 1877.

PRESENT:

SIR HENRY T. HOLLAND, BART, C.M.G., M.P., IN THE CHAIR.

SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.	J. A. FROUDE, ESQ.
SIR JULIUS BENEDICT.	ANTHONY TROLLOPE, ESQ.
DR. WILLIAM SMITH.	F. R. DALDY, ESQ.

J. LEYBOURN GODDARD, ESQ., Secretary.

BASIL FIELD, Esq., examined.

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3609. (*Chairman.*) I think you are a solicitor, are not you, of Lincoln's Inn Fields?—I am.

3610. And if I may say so, the son of a very eminent solicitor who also was an artist, and interested himself very much in these questions?—Yes.

3611. And therefore you have a kind of hereditary knowledge of the subject?—Yes, I have more than that, I may say.

3612. I was going to ask, you have also yourself, have you not, paid considerable attention to this subject of copyright?—I have.

3613. And especially copyright with respect to the fine arts?—Yes, especially and almost ex-

clusively to that branch of copyright; and as solicitor to the Society of Painters in Watercolours, the Committee of the Dudley Gallery, the Langham Chambers Artists' Society, and a number of individual artists, of course I have had a considerable experience in these matters; besides which I assisted my father, who was, not professionally but as a volunteer, instrumental in collecting the evidence and facts upon which the Act of 1862 was based. And I have had a good deal of experience of the working of that Act. I have had a great many cases of piracy under my professional notice. It so happens that I have had 16 or 17 cases in the last three months.

3614. Are those cases arising upon the Act of 1862?—All of them.

3615. Will you give us your experience of the working of that Act?—I am not sure whether I shall be allowed to do so; but if I might, I should like very briefly to give a history of legislation on copyright with respect to the fine arts. The first attempt to give copyright to works of art other than engravings and statues, was in 1842, when Serjeant Talfourd brought in his Literary Copyright Amendment Act. He included a number of clauses in the Bill to meet this branch of copyright; but he experienced considerable opposition from Sir Robert Peel, who unfortunately had had a personal difficulty about a portrait of himself painted by Lawrence. Some publisher had claimed copyright in it, and pretended that Sir Robert was not at liberty to engrave it himself. Sir Robert felt very strongly on the subject, and therefore wished that the Bill should be referred to a select committee if those clauses were introduced; and therefore Serjeant Talfourd very unwillingly withdrew them. The next thing with regard to copyright was that about the end of 1856 or early in 1857 there had been some notorious cases of piracy, which attracted much attention from artists, and the Society of Arts took up the question, and in December 1857 they appointed a committee which went very carefully into the subject. I am at a disadvantage in not knowing whether Mr. Le Neve Foster has already handed in the report of that committee.

3616. No, he began with the Act of 1862; will you therefore proceed?—I will be very brief, but I think perhaps this will be interesting to the Commission. A committee was then appointed with Sir Charles Eastlake, President of the Royal Academy, as the chairman, and John Lewis, President of the Society of Painters in Watercolours, was deputy chairman, and the late Mr. Roberton Blaine was the legal reporter. It was composed of eminent lawyers and artists almost entirely, and they went into the subject very carefully. They reported that an Act should be brought in to "secure a copyright for the author's "life and 30 years after, for such of the designs of "an artist as he may himself have conceived, and "as had been produced by his own hands, or by those "of his assistants, and as he may himself have signed "or marked, so as to claim copyright for." This "signing" refers to the artists' signature on his picture, and the only registration which was suggested was to be the registration of monograms or signatures at the Royal Academy; that was the first idea. "These would be works of which the artist's own brain may be considered as the inventor "and primary source; and would include all however first embodied; and whether they profess to "be portraits of men or things, or products of imagination; and will apply especially to the works of "painters and designers, sculptors, and die engravers "and architects." The next object was to secure protection for a like period of years to art of a more imitative character. I need not read all that I have here, but it applied to engravers, photographers, and plaster cast makers. That committee sat constantly, and had the advantage of examining many artists and collecting evidence; and that committee first devised the original Bill which led eventually after great alterations to the Act of 1862, which originally was drawn by Mr. Vincent, of the Chancery Bar, afterwards re-drawn by him and Mr. Roberton Blaine, and finally settled after a great deal of discussion by Sir John Rolt. It had the approval in its original form of Mr. Coulson, Q.C., Mr. Walpole, and many others. I have a copy here of the very first draft of this Bill as it was originally drawn before it was in any way altered, dated, in my father's handwriting, 16th April 1858.

3617. Are there any special points in that Bill which you think ought to be now brought forward and made into law; because otherwise, as you will see, the Act of 1862 exists, and we have to deal practically with that Act and any amendments that should be made in it; but if there are in that Bill clauses which you think now ought to be added to the Act of 1862 then, of course, it is important?—Those to whom I have referred, and others to whom I am about to refer, foresaw many of the difficulties that have arisen. Clauses were framed to meet those difficulties, and I was going to describe why they were changed in the House, and how the Bill got into its present form, and then I thought the Commission would consider whether if the difficulties which caused it to be changed into its present unsatisfactory state could be met, (and I can show that they have all been considered by these eminent persons,) it would not be better perhaps to go back to the first principles. That will be for the Commission to consider of course. But while upon this, I may say that there were at least ten or twelve different drafts between this original draft of 1858, and the Bill of 1862. I have been through these drafts. Upon them I find notes by and in some cases in the handwriting of Lord Chelmsford, Lord Cairns, Lord Westbury (with whom, when Attorney-General, many consultations were had, and who, but for his elevation to the woolsack, would have taken charge of the Bill in the House of Commons), Sir John Rolt, Lord Coleridge, Lord Selborne, Mr. Coulson, Mr. Walpole, Mr. Roberton Blaine, Mr. Vincent, and my father; and therefore if here-after, in giving my evidence, I speak of my opinion, I hope the Commission will consider that I am merely doing so upon the facts that I have gathered from these notes, and that I am not in the least putting forward any opinion of my own, which would be worth nothing. At the same time I may say that I have a considerable number of letters (from a few of which I wish to read extracts) from eminent painters, in which they constantly speak of "my scheme." The is that when I first found that this Commission was inquiring into the question of art copyright, I was, as a labour of love, engaged in preparing evidence for an amendment Bill myself, which Mr. Vincent had kindly promised to help me with, and which an eminent lawyer in the House had promised to submit to the consideration of the House.

3618. Perhaps you will put in a copy of the Bill as finally agreed to?—I am afraid that I cannot possibly do that. There is, I fear, no such thing existing. The copies have been destroyed. Most of these are in pencil notes. I have had to go through as many as twenty different drafts to get to the conclusion (and therefore it must only be taken for what it is worth), which I have drawn from these notes. In 1860 there was a deputation to Lord Palmerston, a full account of which is given in the Journal of the Society of Arts for Friday, May the 4th 1860. There were representatives in that deputation from all the Art Societies of England, Scotland and Ireland. Sir Charles Eastlake, Sir Thomas Phillips, and my father, seem to have been the spokesmen on that occasion, and Lord Palmerston very cordially took up the matter. Now in May 1861, I find that the Bill (in what state I could not say) was actually read a second time in the House. It then stood over for some reason which I am not able to give.

3619. To that I think Mr. Le Neve Foster has referred?—Then that will save time, and I need not go into it. Then we come to February 1862, where I have, as I believe, the very last private proof, at any rate the last I have been able to find, of the Bill which

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afterwards became the Act of 1862, the present Act. That is dated February 13th, 1862. In this Bill the copyright is given to the artist without the necessity of any agreement in writing, nor does he part with it by parting with the picture. It was, however, proposed to give it to the artist for his life and for seven years only. I believe it was in that state that it was read a first time, but I cannot find amongst my papers one with a mark of first reading on it. Now, before I come to the question of how the law came into its present state in passing through the House, I might mention that there was a Bill introduced in 1864. I do not know whether there is any record of it. It was brought in by Mr. Black, Mr. Stirling, and Mr. Massey.

3620. The only Bill besides the Bill of 1862 of which we have had mention, was a Bill brought in by Lord Westbury, and referred to a committee of the House of Lords in 1869?—I shall not dwell upon this matter at all, but I may merely say that the Bill of 1864 proposed to give the copyright to the artist for life and seven years: that the copyright was to remain in him notwithstanding that he parted with the picture; but there was a provision that he should not copy or repeat the work without leave of the proprietor of the work of art.

3621. Then so far it was a proposed repeal of the Act of 1862, because that only reserves the copyright in case there is a special agreement in writing?—It was so. This Bill was very much disliked by artists on account of its insisting on compulsory registration, which was necessary, because it made first publication, as well as the name being put on the work compulsory. But I do not think I need trouble you with that any more. Now the Bill to which I have been referring, and which came to be the present Act, as originally drawn, gave the copyright to the author for life and 30 years. It made assignments and licenses to be in writing, much in the same way as they are now.

3622. Could you let us have a copy of that Bill to be printed in the Appendix, if thought necessary?—I can lend you this particular copy in my hand, but it is the only one I have. The Bill came in in the most simple form. The moment it got into the house the difficulty of portraits suggested itself to some members. It was thought monstrous that if the copyright were given to the artist, and more particularly to the photographer in cases of photographs, it should be in the power of such artist or such photographer to reproduce portraits, it might be of a man's wife or daughter, and that the result of that might be that photographs of these persons might be exposed in the windows amongst actresses and like characters Now in one of the earlier drafts there was a clause to prevent that, but for some reason it did not get into the Bill as brought into the House. The provision was to this effect, (this was not the clause, but it refers to it; this is merely a resolution which was afterwards embodied in a clause,) "That when any such work of art shall represent the "likeness of any person or persons it shall not be "lawful for the author of such work or his assigns to "to repeat, copy, or reproduce the same in any man-"ner without the consent in writing of the proprietor "thereof for the time being." I believe that this clause was left out because it was felt that there might be cases of likenesses in historical paintings which would not come under the same heading, and with regard to which the same reasons would not exist: for instance, Mr. Prinsep has gone to India to paint the Imperial assemblage at Delhi. There is no doubt the painting will be full of portraits, and yet it is clear that Mr. Prinsep ought to have copyright in that painting.

3623. Possibly some distinction might be made there between a particular portrait which is ordered and a particular picture of general interest, like the one you have referred to?—Yes. The distinction might often be obvious; but it would be difficult to separate the two classes by previous definition. This was the main difficulty, the portraits and photographs. Then members were afraid of replicas, that there might be many repetitions of works: that after buying a work there would be no guarantee that an artist should not flood the market with actual repetitions. Unfortunately there were two or three very glaring cases which occurred just before the Bill was considered by the House. Then an idea was prevalent, which I have no doubt the Commission will be surprised to hear is very commonly entertained now by people who one would imagine would know better, that if an artist retains the copyright in a picture, the picture must be given up to him for engraving: that he has a right to have it back for engraving in the absence of any agreement. Of course I need hardly tell the Commission that nothing can be more untrue than that, but the idea prevails. A very large collector quite recently told me that he was always under that impression.

3624. (*Mr. Trollope.*) Did he think that a picture could be taken from him for the purpose of engraving for any indefinite time against his will?—He was afraid that the picture could be taken from him for an indefinite time for engraving; that he might be two or three years without his picture. He is a large collector, and a very well known man. The members were afraid also (the Bill did not make it perfectly clear at first sight), that it would prevent copies for study. Now if you look at the present Act you will see in a moment that it does not prevent students copying a picture for purposes of study, any more than other Copyright Acts prevent a reader from making a private note of what he reads in a book; for although the first clause gives the author the sole and exclusive right of copying for all purposes, yet all the penal clauses are limited to questions of copying for "sale, hire, exhibition, or distribution." That was carefully so framed in order not to prevent innocent copying; because not only do students require to copy, but when gentlemen have bought watercolour drawings very often their daughters like to copy them. But all these things gave rise to difficulties and objections in the House; and in order to avoid them they made the copyright pass to a person giving a commission when paintings were made on commission. The word "commission" is carefully avoided in the Act, but the expression is, "made or executed for or on behalf of any other person for a good or a valuable consideration." In that case, and in that case only, the copyright passes to the owner of the picture without any writing at all. The House thought that if the artist wanted a copyright he could reserve it; but, in order to make it fair to both sides, I suppose, they made the necessity for a written agreement reciprocal.

3625. (*Chairman.*) And the result is that in case of a sale, except where a picture has been ordered, if there is no agreement in writing on either side, the copyright is lost altogether?—It goes then for any one to pirate who can get to see the picture. Ninety-nine out of a hundred pictures, I believe, are in that state. The artist dare not approach the question of copyright. The moment he mentions it, a purchaser, who has no desire for it himself, who knows nothing about it and cares nothing about it, imagines that something is being kept back, or that the artist has some motive in reserving the copyright; and an artist, whose bread depends upon the sale of his picture, is very shy at thrusting before an intending purchaser a formal stamped agreement (it requires a sixpenny stamp), just when he may risk the sale. He is only too glad to get rid of the picture, and to trust to no harm arising. That that is so I can show you from many letters and from several instances which I have known.

3626. (*Mr. Trollope.*) You are not aware perhaps that that has already been explained to us by artists?—Then I may drop that part of my evidence. I know a Royal Academician who is also a corresponding member of the Institute of France, who has lost sales by it. I know that the painter of a celebrated picture last year has lost sales by it, and many others. But I may perhaps be allowed to say one thing, that many artists wish to be allowed to reserve the copyright simply to protect themselves against chromolithographs and bad engravings. Carl Haag is a

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watercolour painter, whose important watercolour drawings to my knowledge sell for more than a thousand guineas apiece; and yet he has found such difficulty in approaching the question of copyright that he invariably sells his picture to a dealer who will sign the necessary memorandum for him; he retains the copyright and the purchaser buys from the dealer the same picture (which he would not buy from Carl Haag,) at an advanced price and without the copyright. There was, I believe, one case in which the purchaser actually refused to buy a drawing because Carl Haag tried to retain the copyright, and afterwards bought it from a dealer at ten per cent. advance without the copyright. Now not only do individual artists not dare approach this question, but the Academy itself as a body did not dare approach this subject. As solicitors to the Society of Painters in Water Colours, after the Act of 1862 was passed, we drew a memorandum at the end of the catalogue, stating that "The recent Artistic Copyright "Act requires that for the preservation of copyright a "written stipulation shall be made on the *first* sale of "every work of art between artist and purchaser "declaring to whom the copyright should belong. "For the protection, therefore, of the public who are "purchasers, as also the artist, it is notified that the "copyright of every work sold in the society's "gallery is reserved to the artist, unless express "agreement be made to the contrary; and that upon "all sales, when copyright is reserved, the purchaser "is to sign the document rendered necessary by the "Artistic Copyright Act for securing such copyright "to the purchaser or artist;" and it went on to say that otherwise on the first sale of the work of art the copyright was wholly lost. Before printing that, the Society consulted the Academy to see what they were going to do in the matter. The Secretary of the Academy wrote back to the Secretary of the Society of Painters in Water Colours, and said that it was in the opinion of the Council of the Royal Academy, so difficult for artists to approach the subject of any reservation of copyright that they thought it would interfere with sales, and they did not intend to take any notice of it whatever. The Water Colour Society, therefore, had to follow suit, and an immense number of copyrights were consequently lost.

3627. (*Chairman.*) Then I understand you to agree with the evidence of other witnesses of eminence who have been before us that the law should be altered to this effect, that the copyright should be vested in the artist unless there is an agreement to the contrary?—Yes, I certainly do. In France they have a law for the protection of the artist against exaggerated and distorted copies, which would protect him even if he had parted with his copyright. The result here is that almost all copyrights are lost on sales; and the injurious effect to the artist is of course to his reputation when bad engravings or bad copies are produced; and to his pocket also, because if he has the copyright the publisher will come to him and employ him to touch the proofs, and with regard to his reputation he can insist upon having a first-rate artist engraver.

3628. By preserving copyright to the artist you do not propose, do you, to give him the power of having an engraving made of the picture against the desire of the purchaser?—No, most decidedly not.

3629. Let us keep the point distinct about the copyright in the artist and the right of engraving?—Yes. The copyright in the artist is only a veto on the right of engraving. He says, "Yes, if you will employ some good engraver." That is really what it is, and then publishers always pay the artist, if he understands the work, to touch the proofs.

3630. (*Mr. Trollope.*) I presume if an artist has the copyright of the picture he has the right of engraving it?—He has. But he has not the picture you see, and cannot get possession of it without consent of the owner.

3631. If an artist has sold the picture and has had it engraved before he sold it, he would, presuming the copyright to remain with him, have the legal power of selling the engraving, would he not?—He would under the present law if he had engraved it before he sold it. The process is this: When the artist has the copyright, an engraver, such as Mr. Graves or some other publisher, goes to the artist and says, "Have you got the copyright in such and such a work?" "Yes."—"Who has got the picture?" "Mr. Smith." He goes to Mr. Smith and says, "If you will "let me have the picture for engraving I have got "leave from the artist, and I will employ a first-rate "engraver, it will be thoroughly well done under "the supervision of the artist, and the proofs touched "by him, and I will give you so much for lending me "the picture for engraving, and undertake not to "keep it more than a certain time." The purchaser therefore gets the immense advantage of having the picture well engraved, because a well engraved work is worth very much more in the market. (You will see "engraved" when it comes to Christie's, put in the catalogue.) The artist gets the advantage of having his work well engraved, which is a capital advertisement. The publisher gets the advantage of having a title; the public gets a good engraving instead of a bad one; and the artist engraver gets employed instead of some of these cheap jacks who are employed when no title can be made.

3632. I want to know whether the artist has not the right of engraving and selling the engraving if he keeps the copyright, and doing it in opposition to the owner of the picture?—Yes, by the present law, if he can get at the picture.

3633. (*Sir H. D. Wolff.*) Supposing he has had it engraved before he has sold it, and has not published the engraving. Supposing he has had the plate made and not had it struck off, and he then sells the picture after the plate is made, would he then have the right to publish the engraving so made?—Clearly under the present law.

3634. (*Mr. Daldy.*) Provided he reserves the copyright in writing?—Unless the purchaser buys the copyright it is open to every one, the artist amongst all the world, to engrave it if he can get at the picture. He has just the same right as a pirate.

3635. (*Sir H. D. Wolff.*) The present position of matters is that if the picture is sold without any reservation anybody may engrave it?—Anybody may engrave it, may imitate it, may make the most distorted caricature of it.

3636. The artist clearly can only do that if the purchaser chooses to give him access to it; but supposing there is a reservation who is it reserved to then: can the purchaser of the picture buy the copyright of the engraving from the artist at the same time?—Certainly; and always does when he is a publisher or any one who cares for the copyright.

3637. And then it is his?—Then it is his.

3638. But it may be reserved to the artist also?—Yes.

3639. But if the first purchaser and the artist do not come to any agreement upon it it becomes open to the world?—Yes. Now to avoid this in cases of portraits that clause was put in about commissions; but it has given rise to a great deal of trouble. It is very difficult to say what a commission is. Although the word is not used it is a very difficult thing to say what the words used in the Act would cover. Now in ordinary parlance if you give an artist a commission for a picture you merely say, "I want you to paint "me a picture for 500*l.* or 1,000*l.*; I should prefer "a landscape, or a figure piece, or one of your "Egyptian paintings." That is generally called a commission, and the artist when he has it ready says, "Would you like this or not?" That is really only a sale, and it is difficult to draw the line between commissions and sales, though it is most material, because in commissions without any writing at all the copyright now passes to the commissioner.

3640. (*Chairman.*) Would you propose to make any alteration in the law in the case where an order is given for a picture; would you in that case desire that the copyright should be vested in the artist?—I should say that no difference at all need be made between commissions and sales; but that there should be a separate clause to say that in case of portraits

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painted on commission the copyright shall belong to the commissioner, and not to the artist unless otherwise agreed. I think that would meet every case.

3641. (*Dr. Smith.*) If I understand you right you would make a special exception in favour of portraits, but not in favour of any other kind of picture painted on commission?—Certainly; in the case of a portrait it is clear that a man giving a commission for a portrait of his wife or daughter, or himself, should have the absolute and entire control of the copyright, a veto on any sort of republication. I was going to mention as a curious instance that if those words mean commissions in the ordinary sense, I know a man who has got two copyrights at this present moment though he has only paid for one picture. He gave a commission for a picture for which he paid. He did not quite like it; and the artist said, "I will paint you another instead." He painted another, and received the first one back, and that was "a valuable consideration." Both were commissions, so that the purchaser only paid for one picture and got two copyrights.

3642. (*Chairman.*) In that case would not the first picture when given up be in the same position as if it had never been ordered and delivered?—Yes; but, in the words of the Act, copyright does not pass with the picture unless by a memorandum in writing. Therefore as it was given up in that case without any writing the copyright remained in the commissioner.

3643. If that is so, I should have thought that in that case the first picture could not be said to have been published, and that it must be taken as if it had never been painted?—There is no publication at all necessary in the existing Act as you are aware.

3644. But it had never been put forward for sale; it is just the same as if it had been in the artist's studio all the time?—No; the commissioner (or purchaser) kept it for years and said, "I have never quite liked that picture," and at last the artist said, "Now I will paint you another."

3645. (*Sir H. D. Wolff.*) There might be other things that a man might order to be painted, that he would not like reproduced; his sitting-room or bedroom for instance; he would not want that engraved and published any more than his own portrait?—All that is wished is this, that in cases where the law now allows the copyright to lapse altogether and remain for the pirates, the artist should have it; because the commissions in the Act were only meant to apply to portraits. I see the force of what you say. It is possible that there are other paintings which are in the nature of portraits. Photographs clearly ought to be treated in that way I think.

3646. (*Chairman.*) Would not the case put by Sir Drummond Wolff be met by an agreement?—Yes.

3647. (*Mr. Trollope.*) Would it not be better that he who gives a commission for the portrait should save himself by a separate agreement in his own peculiar case?—I do not think it would ever pass the House, with the experience we have of the opposition there was before, unless there is a distinct provision that in every case of a portrait painted on commission, unless otherwise agreed, the copyright shall belong to the commissioner.

3648. Do you not think that it would be almost impossible to define a portrait?—No.

3649. If you order a portrait of a dog, what then?—I think a portrait painted on commission in that way would come under the rule.

3650. Or a portrait of a pack of hounds?—Yes, but I think portraiture might be confined to human likenesses, and all other cases left to special agreement.

3651. (*Sir J. Benedict.*) There have been historical paintings in which portraits have been introduced. I suppose we all remember the paintings of Landseer where portraits of eminent personages have been introduced in fancy dresses. Would those portraits be liable to piracy?—It would depend on whether the painting was on commission or not. If you paint the portrait of a well-known actor or introduce historical personages it is not perhaps essentially of the nature of portraiture; it may be an imaginary composition, but yet include portraits.

3652. For instance there is that celebrated painting of the Duke of Wellington and, I think, the Marchioness of Douro; would you limit the copyright there in the same way?—No, certainly not, unless it was on commission. But you see the person giving the commission would be the best judge whether it was of such a private nature that it should not be published.

3653. (*Mr. Trollope.*) When you say that you are sure a Bill would not pass the House unless portraits were exempted, do you mean that the opposition would come from legislators, or from the public, or from the artists?—The legislators principally. Some members of the House the moment a picture is mentioned think of family portraits.

3654. (*Mr. Daldy.*) Would it meet your view if the person giving the commission for a portrait allowed the copyright still to remain in the possession of the artist, but that the artist is not to be allowed to use that for the purposes of reproduction without the consent of the person whose portrait it purports to be?—I think it would be much better, but I doubt whether it would be palatable; I do not mean to artists, I mean now to the House and to the champions of the public who write on these matters.

3655. (*Mr. Trollope.*) But you no doubt perceive, that in wording the Bill there would be difficulty in giving this peculiar privilege to portraits?—There would be no doubt some difficulty.

3656. (*Sir H. D. Wolff.*) As a portrait can be taken of you without your consent, and you therefore have not the copyright in your own face, how can you establish a special copyright in the portrait of your face?—You cannot; and that really was the difficulty on account of which the clause about likenesses that I alluded to was left out. You can always say this, that where a portrait is taken on commission the copyright shall belong to the commissioner; you cannot carry it further than that.

3657. In answer to Mr. Trollope just now, when he asked you about members objecting to this, you said that they were afraid of their own family portraits, and so on, being copied. Their own family portraits they would not have given commissions for?—I did not mean that they were afraid those portraits that they had on their walls would be copied, but that portraiture was the first thing that suggested itself to their minds when pictures were mentioned.

3658. Do you think that now in the present day, after the whole thing has been discussed so often, the House of Commons would still take this objection, it seems to me a frivolous one?—A few members might still do so. The scheme, however, will come before the House under more favourable circumstances if it is recommended in your report.

3659. (*Mr. Trollope.*) Would it not be sufficient if the Bill contained a clause specially arranging that in cases of portraits, the person who gives the commission should be entitled to ask for a copyright if he wished?—Certainly, that would be sufficient.

3660. (*Sir H. D. Wolff.*) Do not you think that if you laid it down as a rule that whenever a person gave a commission for a picture, unless there was a distinct understanding about the copyright, it should belong to one or the other, and you laid that down as a general rule, it would become the law, and everybody would know that law?—The great difficulty is to say what commissions are; it is such a very difficult point. If you ask an artist to paint a picture for you, and you take it away, that in common parlance is supposed to be a commission.

3661. Even then it would be an understanding that when a man orders a picture to be made of a particular subject, when, for instance, he says, "You "paint me a picture either of myself, or my dog, or "my house, or my sitting room," or anything of that kind, that is to belong to the person who orders the picture, unless it is previously arranged that it is to belong to the artist?—There is great difficulty in drawing an exact line. Supposing you say to a man,

"I want a landscape," would that be sufficient? No. Supposing you had said to Sir Edwin Landseer, "I want an animal," would that be sufficient? No.

3662. Why should you draw a line at all; why should you not say that whatever picture is ordered ("ordered" is a disagreeable word to make use of, but I only do it because there is scarcely another word that answers to it) by a purchaser, it should be understood that the copyright is to belong to him, unless it is differently arranged between him and the artist by an agreement?—That is the law now, when the sale is completed by payment of the consideration.

3663. Why should it not remain so?—Because though "ordered" the picture (whether historical, landscape, or other except portrait) is equally the invention of the artist, and he equally desires to possess the copyright. Besides it is exceedingly difficult, because many cases arise in which you never know who has got the copyright, for instance, it would pass under the will as residuary personal estate; or on intestacy, it would go to the next of kin of the commissioner, a man who as a rule never knows that he has got it, and never registers, and does not care about it; and the publisher who buys the picture afterwards cannot get a title; whereas if the representatives of well-known artists were the depositaries of this copyright, publishers would always know with whom they had to deal and to whom they had to go.

3664. Why should not the registration be made compulsory to a certain extent?—I will come to that branch of the subject later if you will allow me.

3665. (*Dr. Smith.*) If I understand you aright it is the wish of the artists, is it not, that copyright should vest always in the artist unless there is a special agreement to the contrary?—Yes.

3666. Only you make an exception in the case of portraits?—Yes, portraits painted on commission.

3667. And of other works painted on commission the copyright would vest in the artist?—Yes, unless otherwise agreed. If, for instance you were to ask a decorative artist like Stacey Marks to paint decorations in your own house, you naturally would make it part of the bargain that you should have the copyright in those; you would not like them to be repeated probably.

3668. I understand that; I only wanted to ascertain whether that is the desire of the artists, that unless there is any special agreement to the contrary the copyright should always vest in the artist, whether the work has been painted on commission or not?—It is. I have some very strong letters to that effect, very fully going into it, from George Leslie the Royal Academician, from Mr. Herbert the Royal Academician, and from Mr. Wells the Royal Academician and portrait painter. None of the portrait painters that I have spoken to object to an exception being made to portraits on commission, because it leaves them where they are now by the law.

3669. (*Chairman.*) I understand that you make that exception in the case of portraits rather in accordance with what you suppose is likely to suit public opinion, than in accordance with the desire of the artists themselves?—Of course they do not mind one way or the other, because all decent artists always consider that the copyright in a portrait ought to belong to the person for whom they paint it, and not to them.

3670. But do you make that exception with respect to portraits rather in deference to what you suppose to be public opinion than in deference to the desire of artists?—I do; but it is not objected to by any artists I have yet spoken to about it.

3671. (*Sir H. D. Wolff.*) As I understand, the ordering the picture is at present the owner of the copyright?—Yes.

3672. And that you think is so vague that there are great difficulties about it?—Yes, there are great difficulties about it.

3673. Then on the other hand you say it would be better to give the copyright to the artist with the exception of portraits?—Yes.

3674. In fact, reversing the present situation?—Yes, just as far as commissions go.

3675. Except in case of an understanding, of an agreement, that is to say?—Yes.

3676. Therefore would it not be better to have it like that generally instead of making any exception for portraits?—If the Commission think so that would suit artists of course.

3677. (*Chairman.*) I want to arrive at whether you make that exception in deference to what you suppose to be public opinion, and not in deference to what you consider to be the desire of artists?—In deference to public opinion, but to which the artists make no objection.

3678. And in saying that, you are giving the opinion of eminent artists?—Yes, and I have letters showing that.

3679. Is it in your opinion, feasible, to make an agreement between a commissioner and an artist obligatory; to say that before a picture is painted an agreement must be made in writing stating in whom the copyright will vest?—I think, though that could be made obligatory, it would practically not be done. Artists are not men of the world, not men of business in any way, and they never would think of doing it; and the person giving the commission would not know anything about it. Would it not be very much simpler to say that it is always with the artist, unless agreed to the contrary. The purchaser can always approach the subject if he wants the copyright, and by an agreement acquire it.

3680. (*Mr. Daldy.*) You are speaking now of copyright in artistic works generally?—Yes.

3681. Would it not be simpler still to let the copyright, even of portraits, rest with the artist, and in fact all copyright in artistic works, rest with the artist, but to have a reservation preventing their using portraits painted on commission, or reproducing them in any way, without the sanction of the person represented?—I think that is the best and clearest way of doing it.

3682. That would leave the copyright in all cases in the hands of the artist?—That is simpler certainly.

3683. (*Chairman.*) What is your next point?—Perhaps I might be allowed to mention a very curious case which shows the care which the commissioner practically takes of the copyright; it was a case where without any written agreement an associate of the Royal Academy was employed to make some decorative designs for one of the theatres. That was done on commission, and these designs were exceedingly popular. The person giving the commission got into difficulties and sold the theatre. The present owner of the theatre, and therefore of the decorations, and the artist who designed those decorations, cannot between them prevent pirates from making copies and generally very bad copies of them.

3684. (*Sir H. D. Wolff.*) You have got the same difficulty in a house. For instance, a house painted by Mr. Marks; it must be sold we will suppose out of the hands of the owner into the hands of another owner. Who would have the copyright then?—Under the present law the first commissioner has the copyright although he parts with the house, if the artist had it, it would be much simpler. I do not know whether I might read you the names of some of the distinguished artists with whom I have recently been in correspondence on this subject. I will mention the following names: J. R. Herbert, R.A., Corresponding Member of the Institute of France; Sir John Gilbert, R.A., President of the Society of Painters in Water-colours; E. Armitage, R.A., Professor of Painting at the Royal Academy; H. T. Wells, R.A.; F. Goodall, R.A.; P. F. Poole, R.A.; G. D. Leslie, R.A.; T. Cousins, R.A.; Alma Tadema, A.R.A.; H. S. Marks, A.R.A.; Vicat Cole, A.R.A.; Walter Ouless, A.R.A.; Marcus Stone, A.R.A.; F. W. Burton, Director of the National Gallery; A. D. Tripp, Secretary of the Society of Painters in Water-colours; F. Topham, E. Duncan, G. Fripp, Carl Haag, Frederick Taylor, J. J. Jenkins, Edward Goodall, Luke Fildes, J. Archer, Frank Holl, W. Fisher, Mark Antony, and J. Mogford. (*Some of the letters will be found in the Appendix.*)

3685. (*Chairman.*) Have you anything to say on the term of copyright?—May I first state that in some

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of the earlier sketches and drafts for Bills there was an idea of making the artist sign or affix his monogram to works, and in some cases it was desired that he should date them in order to facilitate identification. Now in case (as I hope may be the case) registration is made merely voluntary, if insisted on at all, in works of this kind, some such provision would certainly be very useful and would not be objected to on the part of most artists. There is nothing like the work itself to refer to instead of any mere description in a register, if any dispute arises; and certain it is that if you make it illegal, as it now is, to copy the signature of an artist on a copy, that would be a very great means of identifying the originals. Then there was a provision which I think I ought to mention, rather in the interest of the public than in the interest of artists, which is that in the absence of agreement at the time of the first sale of a work, the artist, notwithstanding that he has retained the copyright, is not to repeat the work he has sold in the same material without the leave of the proprietor for the time being of the work. That was to avoid those cases of replicas that were at one time to be met with. Whether the Commission will think it at all necessary to go into that, or that now they can leave it to the right feeling of artists, is not for me to say.

3686. You say that there was a provision in one of the earlier Bills against replicas?—I find there were clauses framed or suggestions made to that effect. There was no such provision in the Bill when it was brought into the House, it was not thought necessary.

3687. But are you aware of any cases that have occurred of questions arising as to the making of replicas?—I am thankful to say not lately. Many years ago I knew two or three very bad cases where people having bought what they considered to be an unique work, found two or three others by the same artist in the market.

3688. (*Sir D. Wolff.*) But if you give the artist the copyright how can you prevent that?—By providing by a special clause that the artist, notwithstanding that he has the copyright, is not to repeat the work in the same material without leave of the owner of the original work.

3689. (*Chairman.*) Then according to that he might photograph it; why do you use the words "in the same material"?—Simply because a photograph, or an engraving from it, if well done, or done as the artist would do it, really enhances the value of the original work to the proprietor. It is flooding the market with the same thing, or with something which might be mistaken for it, which is objectionable.

3690. But there are proprietors who might prefer not having photographs taken of their pictures?—They can always bargain for the copyright if they wish.

3691. (*Sir H. D. Wolff.*) You would give leave to the artist to have a chromo-lithograph made of a picture?—You might give the artist leave to do it if he wished, for the sake of his reputation he will take care it is well done if done at all. There is one point on this branch which is very material. Under the present Act it seems very doubtful whether, if an artist has parted with his copyright, he has the right to sell his *bonâ fide* sketches and studies.

3692. (*Mr. Trollope.*) The law at present does not prevent an artist from making a replica, a copy of his own picture, does it?—It would prevent his doing so if the picture had been painted on commission, because the copyright would then be in the commissioner.

3693. But if not painted on commission the law at present does not prevent his doing so.—Not in the absence of an agreement.

3694. Is there any complaint general at present as to the state of the law in that respect?—Merely on behalf of the artists; when they have parted with the copyright they are afraid that under this Act they cannot legally sell, or that their representatives cannot legally sell, after they are dead, the immense accumulation they have of studies and sketches, which are most valuable property.

3695. I want now to know whether there is any complaint on the part of the public or on the part of the artists as to the law on the subject of replicas at the present moment?—I have not lately heard any complaint whatever. Some years ago there were several complaints about some particular artist who painted the same subject over and over again.

3696. But it is not general at the present time?—It is not.

3697. Then is it worth the while of the Commission to go into that question with regard to artistic copyright?—I think not. I merely throw it out as a suggestion that if they consider it worth their while to deal with the matter, there is a way that has been suggested to stop it. Now about these artists' studies, this is very material to the artists; indeed they feel very strongly about it. Under section 6 of the present Act you see, "If the author of any painting after having "sold or disposed of the copyright shall, without the "consent of the proprietor, sell any repetition or copy "of the said work, or the design thereof, made without "such consent as aforesaid, he shall forfeit 10*l*." The result of that is, that if an artist has parted with his copyright, he has an enormous number of sketches that he must not use again in the reproduction of other works. Now they are the note books of the artist; they are his materials from which he makes all his pictures; I mean his sketches for back grounds, sketches of clumps of trees, boats, and little things to fill up. It would be impossible for artists to work unless they were allowed to use these again, and it would be a great hardship if they were not allowed to sell them.

3698. (*Chairman.*) And is there any decision that they may not use parts of a picture that they have sold?—I do not think that there has ever been a decision upon that, but I think it is very clear from the Act that they may not.

3699. But are you aware of any legal opinion having been given by counsel that they might not use a figure, which they have introduced into a picture which has been sold, for any other picture?—I am not aware of any opinion on the question ever having been taken. It is very unlikely they would take an opinion until a case arose; but if the Commission are reporting on the Act, that is quite a point I think that their attention should be drawn to. I may be wrong, but according to my view of the Act it at present does make it exceedingly doubtful, to say the least of it, whether an artist has a right to use these things again.

3700. Then supposing that the Act is amended in that respect, and the doubt set at rest, would you propose that there should be any limit to the amount of repetition which the artist might make, because he might practically nearly paint the same picture again?—I should say if you were to put it in this way it would be quite safe; that where an artist shall have parted with the copyright in a work, he may nevertheless use the *bonâ fide* sketches and studies for the same in other works and compositions, so that he does not repeat or colorably imitate the design of the original work. I think that would meet it, but I have not considered it carefully as a draughtsman.

3701. But that is the general tenor of the clause you would like to see introduced?—Yes, and I should like it to go on to say, "and he and his assigns after his "death shall be at liberty to sell such *bonâ fide* "sketches and studies without prejudice to the copy-"right in the original work;" so as not to hurt the proprietor of the original work who had bought the original copyright. It is possible the Commission may not know the enormous number of studies that are necessary for large and important works. It is within my personal knowledge that for a picture of Henley Regatta on a large scale which is being painted now, and which has been on the easel for the last three years, the artist has upwards of 70 drawings, designs and studies.

3702. (*Mr. Trollope.*) Those designs and studies are constantly now sold, are they not?—They are, but it is very doubtful if they can be legally sold. If this Act is going to be amended I thought the Commission would like their attention called to that point.

3703. But as far as you know have artists any com-

punction at present in selling such things?—Yes; Mr. Edward Duncan, the artist, consulted me the other day before he sold one. It was a highly finished study.

3704. In fact artists do from day to day sell them?—They do.

3705. (*Sir H. D. Wolff.*) What is that case to which you refer?—In that very case of Mr. Edward Duncan's, the result, which you see at the exhibition in Pall Mall, of a ship, a lighthouse, and so on, has arisen from five or six different studies. The artist will make a rough sketch on the spot from nature of what he thinks will "paint," as they call it. He comes back to his studio and tries to make an arrangement with the ships, and so on, so that the lines may come well. From that he generally tries it in colour in one or two ways; and in this way Mr. Edward Duncan made a careful monochrome study to get the chiaro-oscuro right. It was beautifully finished; it was a black and white illustration of the same design that he was going to paint to see how it would arrange. That was really the work, and that is usually the work. They are most valuable things. I remember, in my boyhood, Clarkson Stanfield being complimented on having painted a large picture in a few weeks. "Yes," he said, "but that little one, the design for it, took me many months." Now as to the term of copyright. The term of copyright everywhere, excepting in this present Act, everywhere in all the old draft Bills I have looked through, was for life and 30 years. Seven years really seems to me to be too short. I daresay you have had some evidence on that point already. It is not sufficient, for this reason, that the fame of an artist generally comes to him late in life. It is not till then that his works are engraved, and then there is generally very little time to enjoy the copyright. I daresay you have Mr. Blaine's "Reasons" for Lord Westbury's Bill of 1869. I do not know whether Mr. Le Neve Foster pointed out that in almost all European nations, excepting ours, it is for the author's life and 20, 30, 40, or 50 years, as the case may be, while ours is only for life and seven years; and as reciprocity seems to be the principle on which all international copyright is based, I suppose the Commission will consider whether it would not be advisable on that point, as well as for our own sake, that we should assimilate it.

3706. (*Chairman.*) Then you do not agree with Mr. Le Neve Foster, who worked with Mr. Blaine, because he says he thinks seven years after death quite sufficient?—No, I do not certainly; and with very great respect for Mr. Le Neve Foster, I think that view is not shared by artists (but these letters to which I have referred will show that), for the reason I say, that an artist seldom comes to the zenith of his fame till late in life, and the seven years are then a very short time if you are going to lay out thousands of pounds on an engraving.

3707. (*Dr. Smith.*) You state that in the original draft it was 30 years after death; can you state the reason why the change was made from the original draft to the present length in the Act of Parliament, namely, seven years?—I wish I could. I have been searching for it and I cannot find it. I have not the least idea. It is 15 years ago that the Act was passed.

3708. (*Chairman.*) I observe that Sir Francis Grant agrees with Mr. Foster that seven years is quite sufficient, so that you are not speaking quite the opinion of all the artists?—I have reason to believe that Sir Francis has thought better of this and altered his opinion, and has communicated such change of opinion to Lord John Manners. Now there is one thing that is very material about reciprocity in the term. It seems that Her Majesty the Queen has been unable to obtain the consent of Bavaria to enter into a copyright convention, only because the term of copyright allowed by the Bavarian laws is so much longer than that allowed in England.

3709. May I ask where that appears?—From Mr. Blaine's Researche, in a note at page 7 of Mr. Blaine's "Reasons" why the Bill of 1869 is requisite; and there is some very interesting information about the length in different countries that I need not trouble the Commission with if they have had it put in already. Then I do not know whether I may anticipate something that I think may very possibly be said to me, and that is, whether the term should be for life and years, or for years alone. I do not know whether that has been considered here, but one of the Commissioners in conversation asked me to consider it. One advantage of adopting the term of life and a certain number of years is that it does away with the great difficulty of fixing the date of first publication. Those who first considered this question tried to find some way of fixing the date of a first publication for works of art. But they found it almost impossible, because even after a work is sold the artist may materially alter the design of it; he may say years afterwards, "I do not think that picture does me "justice. I should like to have it back." And he may so materially alter it that you could not say exactly when it was first published. For this reason, amongst others, after mature deliberation, they adopted the principle of limiting the term to the life of the artist and so many years. On this plan it is immaterial to ascertain when copyright begins in order to know when it ends. As far as protection from piracy goes, it begins from the first touch of the brush, for under the case of Prince Albert v. Strange copyright—or more strictly speaking, a common law property, with a right incidental thereto to prevent the publication of copies, which comes to the same thing—always belongs to an artist until he has sold his work. The only question, then, is whether there is any difficulty in ascertaining when copyright expires. Now it is for life and years in all European countries. There the law has been in existence for a long while, and no trouble has been found in proving the date of the death of an artist, and now we have had 15 years experience of it in England, and I have never heard of any case where there has been any difficulty in tracing the death of the artist. Of course it is very much easier to search at Somerset House for the date of the death of the artist, and to know that the copyright in all his work expires at a certain time after that, than to have to go to a register and look out such a title as "My First Sermon," which, by the way, though judicially decided to be a sufficient description for registration, does not identify the little child awake in a pew, and having found the entry, to ascertain the time when the copyright of that picture expires, and to repeat the operation for each and every individual work the artist may have executed during his life.

3710. Do you fix the term of 30 years because that has been generally adopted by other countries?—If you ask me my private opinion, I think that 20 is plenty; but it was the opinion of Mr. Blaine, who has looked very carefully into this question, that 30 years is the right term; it appears to be rather under than over the average of all the European nations; and if you are going to enter into treaties with them on the ground of reciprocity you ought to give the same time as they do.

3711. That case which you have mentioned is the solitary instance of a difficulty with a foreign nation?—Yes; I do not put it higher than that, but I put it on behalf of the artists that seven years is not nearly enough. If a man comes to fame late in life, and an engraving takes five or six years (I think "the Derby Day" took seven years), then the copyright is out before the benefits can be reaped.

3712. (*Sir H. D. Wolff.*) Just one point more on that question of commission. You say that the copyright ought to be in the hands of the artist, that he might prevent bad reproductions of his picture. Supposing, however, that the artist parts with his copyright. A man might find in the case of a picture for which he has given a commission, either his own portrait, or something sacred to himself in his house, a very bad reproduction of it, not by the artist, but from the fact of his having sold the copyright to somebody else?—I do not say that is impossible, but I do say that artists are so exceedingly sensitive and

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touchy about their own reputation and about bad works not being done from theirs, that it is morally impossible.

3713. Could not his copyright have been taken from him in bankruptcy, and then his assignees might reproduce it?—Well, in the case of assignees in bankruptcy of an artist, if he had the copyright it would pass to them no doubt as his personal estate. So it would to the assignees of the purchaser; whichever you give it to, you are in just the same difficulty, and the artist is the least likely of the two to become bankrupt, not being a trader and having but little credit.

3714. (*Mr. Trollope.*) You said at first that you would recommend that this term of copyright should be extended to 30 years after death. There I go along with you; but do I understand you now to change that and say you think 20 years a better term?—I said if I were to give my personal opinion for what it is worth, I think 20 years would be enough.

3715 You think that the arguments which you have just used, and in which I coincide, as to the small amount of property which the artist was allowed to have in his own work by giving him seven years for his work after his death, would be sufficiently met by a term of 20 years afterwards?—I do certainly personally. When a man is popular enough for his work to be engraved, such of his works as are worth engraving would probably be engraved within seven years after his death, and another term of thirteen years beyond that would be probably enough copyright.

3716. You are aware that an author has 42 years after the publication of his work?—Yes.

3717. Do you see any reasons why an artist should have less than an author?—No, I do not, and I have no doubt that the Commission have heard some very good reasons for a longer term than 20 years. I would myself rather see it 30; I know that my artist friends would very much rather see it 30.

3718. (*Chairman.*) The Engravings Act, which gives a copyright for 28 years from the first publication of an engraving, would protect the author of an engraving?—Yes, certainly.

3719. But not the artist if he has caused his picture to be engraved?—No; the copyright in the picture itself is quite a different thing from the copyright in the engraving. Anybody else, as soon as the copyright in the picture is out (at the present time that is seven years after death), if they can get at that picture, may make another engraving, or do anything they like, for instance, undersell a good one by a cheap engraving.

3720. By the Engravings Act, everyone has for 28 years from the first publishing thereof the sole right and liberty of multiplying, by any means whatever, copies of any print of whatever subject which he has invented or designed, graved, etched, or worked in mezzotinto or chiaro-oscuro; or which he has from his own work. design, or invention, caused or procured to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, or which he has engraved, etched, or worked in mezzotinto or chiaro-oscuro, or caused to be engraved, etched, or worked from any picture, drawing, model, or sculpture, either ancient or modern?—Yes. Nobody can copy the engraving, but anybody may go to the original picture, unless the engraver is also the inventor and designer of such picture, and engrave it. There is the difficulty; and pictures ought to have a longer term for that reason. If a publisher is going to lay out a large sum on an engraving, he ought to be protected against a cheap-jack engraver who may get hold of the picture and ruin him, to the detriment of fine work. The more you can encourage publishers to lay out large sums in having works really well engraved by artist engravers, and where possible the proofs touched by the artist, the more it is for the benefit of the public.

3721. You are putting it that the extension should be given in favour of the artist, but it is rather in favour of the engraver, is it not?—And also the artist's family, because as the copyright still exists for them, they would get a better price for the right of engraving; and for the public who would get a better engraving.

3722. (*Mr. Daldy.*) Do I understand that you give a preference to 30 years and life over a fixed term because of the difficulty of fixing the date of the original copyright in a picture?—That is one great reason. Another reason is that you really only want copyright for a certain term after life. If the life is a very short one the term ought to be shortened; if the life is a very long one the man is still probably earning fame and making more value for the copyright.

3723. But the difficulty stared you in the face of fixing the date of copyright?—Yes, not only me, but all people of every nation who have been over the ground before me, and who therefore elected a term of life and a certain number of years.

The witness withdrew.

Adjourned to Wednesday next at half-past 2 o'clock.

Wednesday, 24th January 1877.

PRESENT:

THE RIGHT HONOURABLE LORD JOHN MANNERS, M.P., IN THE CHAIR.

The Right Hon. the EARL OF DEVON.
SIR HENRY T. HOLLAND, BART., C.M.G., M.P.
SIR JULIUS BENEDICT.
SIR J. FITZJAMES STEPHENS, Q.C., K.C.S.I. M.P.
FARRER HERSCHELL, ESQ., Q.C., MP.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, ESQ.
F. R. DALDY, ESQ.

J. LEYBOURN GODDARD, ESQ., Secretary.

Monsieur C. Gavard.
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Monsieur CHARLES GAVARD further examined.

3724. (*Chairman.*) I believe you wish to supplement your former observations on one or two points?—Yes; I wish to give some explanations on some details. The first point occurs at question No. 1767. The question was, "Would it be sufficient that the "consul, or the person designated at Paris as the "registrar, should give a certificate of the registration "to the person making the application?" I answered, "Yes." I wish now to add, "but it is settled that the "consul send after that the certificate of reception to "his own country, to be registered at the proper "place." The consul delivers only a receipt, and his receipt is sent to his own country to be registered; a regular registration is only in his own country.

3725. And what you wish is that a copy of the certificate of the registration should be sent to the country in which the copyright is to take effect:—Yes, that is, that the consul himself should send this declaration to his own country, to the proper place, and the registration to take place in the foreign country.

At question 1771 I was asked, "Is it not the case "that five countries still enforce registration at their "legations in Paris, namely, Russia, Saxony, Switzerland, Portugal, and Austria." I answered, "Yes, "and Belgium also." I have some correction to make here. There is no registration between France and Russia. There is a treaty, and registration is not necessary. There was a registration between France and Belgium, but that was abolished at the renewal of

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our treaty with Belgium in 1869; it is a great simplification.

At question 1775 I was asked, "What is the penalty "attached to the infringement of the law; is it a "pecuniary penalty or imprisonment, or what?" I answered, "I believe that it is a fine." I wish the answer to be "Yes, it is a fine, and I may add that "the printer is alone to be prosecuted in case of "omission of deposit;" it is never the author, only the printer. The fine would often be very heavy, 1,000 francs for the first time of neglect on the part of the printer, that is, if the printer omits to depositthe work, he is prosecuted and fined 1,000 francs for the first time, and if the same case occurs again he will lose the privilege, and no more be able to print.

3726. (*Mr. Trollope.*) Is not that deposit also taken as registration?—Yes; he deposits his book, and that is registration at the same time. Then, coming to question 1777, I am asked, "Therefore if he "subsequently makes a deposit, and then some other "person publishes his book, he may sue for the in-"fringement?" I said, "Certainly, although the case "cannot occur in practice." As I said before, the case presented under this number cannot occur in France, but should it happen, it is quite obvious that the author would not lose his right; the right is quite independent of the registration.

3727. (*Sir H. Holland.*) May I ask why the case cannot occur in France?—Because the obligation is on the printer; he would be immediately fined and prosecuted by the public attorney. The fine is very heavy, a thousand francs for the first infringement, and after that the loss of the privilege of printing. I will give some more explanation on that point in reference to number 1781. I will add, "The deposit "in France is only the legal proof of the right and "does not constitute the right. If then the deposit "of a book were omitted at the time of its publica-"tion and completed after that, the author is allowed "to sue any one for infringement of his right from "the day of the publication. This case, which, as I "said, is not to be foreseen in France, may possibly "occur with a foreign author, who, after neglecting the "deposit in France at the publication of his book in "England, fulfils after that this formality in France. "The courts have since 1852 issued such judgments." The case, as I said before, is impossible in France. The deposit is obligatory for the printer; but if a foreigner also published his book in England there is no obligation for his making a deposit in France; and if after that he accomplished his deposit in France he would recover all his rights from the day of the publication.

At No. 1784 I was asked, "You are aware that a "man may publish a book in England without "choosing to protect it. Should not a Frenchman "be allowed to publish such a book in France as "there is no protection for it in England?" I answered, "Yes. If he has no protection in his own "country he should have no protection in the other, "according to the treaty," but I will add to that, "provided, however, that he may not discharge in "France the deposit requested by the French decree "of 1852, which empowers him with all the rights "conferred on a French author, independently of the "treaty." It is possible that an author has no right in his own country, but if he comes to France and makes the deposit according to our own legislation he is like a French author enjoying the same rights; that is a possibility.

I pass now to No. 1813. There the question was with reference to plays and dramatic author's rights. I had the honour to forward directly to his Lordship the statutes of the Dramatic Authors Society. As to what concerns the question under No. 1813, I may observe that nothing in the statutes of the French Dramatic Authors Society obliges an author to let his play be given without his consent; he always retains the right of preventing representation, even if the payment of the regular fees be offered to him; but if he gives at any time his consent he cannot cancel that after, provided that the manager does not leave his play unacted for a year and a day.

I will only add one general observation: I wish to express myself most strongly in favour of disjunction of the practical modifications of international law requested by France from the much larger questions of internal law on which the Copyright Commission is intended to inquire. What we require is some practical modification only on delays, deposit, registration, and such things, and I am afraid, if you do not make a disjunction of that from the large question which occupies the attention of the Copyright Commission, you will postpone for a long time a settlement earnestly claimed by the French, and I dare say, also by the British authors, and which is quite under hand.

The witness withdrew.

Mr. CHARLES HENRY PURDAY examined.

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3728. (*Sir J. Benedict.*) You have been connected a great deal with musical publications, I think, and you have been an editor yourself of musical works?—Yes.

3729. And am I right in asking whether you have been a sufferer from the present state of copyright in any way, and whether you have any recommendations to make as to how and in what manner it could best be modified with a view to musical matters?—I can show you one case in which I am at present a sufferer by the present law, and I will show you the books. This book (*producing it*) was brought out by Routledge's in 1860 called "Church and Home Metrical Psalter and Hymnal." They agreed with me to give me 30*l.* down, 10*l.* more on the sale of 4,000, and another 10*l.* on the sale of 6,000. Between two and three years after they had brought out my book, of which they never printed more than 2,000, they bring out another under precisely the same title, taking four fifths of my book and putting another editor's name to it. Now I can bring no action for this piracy, because I cannot prove the day of publication of my book. That is a case that I think is most important.

3730. (*Sir H. Holland.*) Why cannot you prove the date of publication?—Because the Act says that before you bring an action you must enter at Stationers' Hall, and you must enter the very day of publication. Now as they published this book, assuming it to be theirs, it was not with me to enter it at Stationers' Hall, but for them. They never have entered it, and they refused to pay me the two 10*l.* which are due to me, on the ground that they have never published more than 2,000 copies of my book. The fact is that they have swamped my book completely by this other book (*producing it*).

3731. (*Mr. Trollope.*) Are you speaking of a peril to which musical books only are subjected, or to which any book may be subjected?—Any book may be subject to that, and cases have been settled upon that very point.

3732. Then this grievance which you now mention does not apply specially to musical works, but to all literary copyrights?—To all copyrights.

3733. (*Sir J. Benedict.*) But you had the means to secure your copyright within those two years by applying to Stationers' Hall and seeing whether your right had been entered, had you not?—No. I had no means of doing that, because they are not compelled to pay me more money till they have published more copies, and it was not for me to know whether they had entered my book or not.

3734. (*Sir H. Holland.*) But they lessened your chance of getting any more money by publishing this second edition?—No question of it.

3735. And, therefore, if you have lost, you probably have some remedy. Is your only reason for not bringing an action against them that you cannot tell what the date of publication was?—Precisely so, because if I bring my action, enter my book upon any particular

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day, they may say that that was not the day of publication, and I cannot say that it was.

3736. If you brought an action and administered questions to them as to what was the date of publication they would be bound to answer those questions, would they not?—Certainly; but you must enter before you bring the action.

3737. (*Mr. Trollope.*) If the registration of all books had been compulsory at the time at which your own book was published then no such occurrence as this could have taken place?—Certainly not.

3738. Compulsory registration, if it now existed, would give an adequate remedy to the evil of which you now complain?—No question of it, I think. It should be sufficient if the author proves that the copyright belongs to him clearly, that he should then have the right to bring an action without entry.

3739. But at any rate if registration were compulsory by law, that would remedy altogether the evil of which you now complain?—No question of it. I have mentioned that over and over again.

3740. (*Dr. Smith.*) I do not understand from your evidence whether you parted with the copyright to Messrs. Routledge or whether you retained it?—There is the evidence; there is the agreement between us (*handing it in; but see Question* 5894). "Memorandum of "agreement made between Charles Henry Purday on "the one part, and Routledge, Warne, and Routledge, "of Farringdon Street, on the second part, this 28th "day of December 1859; that is to say, that Mr. Purday "has compiled and edited a work to be entitled "'Routledge's Church and Home Psalter and Hymnal,' "and Messrs. Routledge, Warne, and Routledge agree "to publish the same on the following terms, viz., "30*l.* to be paid in cash on the publication of the "work, which is to be placed in the printer's hands "immediately; also a further sum of 10*l.* on the sale "exceeding 4,000 copies; and also a further sum of "10*l.* on the sale exceeding 6,000 copies. This con-"sideration to entitle Messrs. Routledge, Warne, and "Routledge to the complete copyright of the work. "As witness our hands.

(Signed) "C. H. PURDAY.

"ROUTLEDGE, WARNE, AND ROUTLEDGE.

"Witness, F. RICE."

3741. (*Sir H. Holland.*) Have you been advised by counsel that you have no remedy?—I have no other remedy than this; I may enter my book and they may deny that my entry is correct.

3742. (*Mr. Trollope.*) But have you been so advised by counsel?—Yes.

3743. (*Mr. Herschell.*) When did they publish the other book?—Between two and three years after mine; and the most shameful part of it is, in the preface to that book, the reverend editor assumes to be the selector of the music and the adaptor of the hymns; that it is his work in point of fact.

3744. (*Sir J. Benedict.*) You are of opinion that a compulsory registration would be a most important remedy?—Yes.

3745. And at a moderate fee?—Yes.

3746. If in the registration there were all the particulars given, if you had a kind of literary cheque book in which you would have exactly the counterpart to register it at the Board of Trade, or the British Museum, and you enter your work whether it is literary or musical, and then there is a form giving full description of the work which you have to fill out with the date, *et cetera*, and you get the counterpart of this, which at the same time would be the evidence of the registration, and the evidence of your own copyright, do you think that that would answer the purpose?—Quite. I think it would be the thing that would be most important.

3747. But is not that done at Stationers' Hall now?—No; you can have a copy of the entry at any time by paying 5*s.* for it, then you have 5*s.* to pay for the entry, and 5*s.* to pay for the copy, and the consequence is that thousands of things are never entered now, because the Act says you may enter, and that you are not compelled to enter until you bring an action.

3748. In the French copyright law, are you aware of this paragraph, that "an assignment does not "authorise the assignee to misrepresent and distort "the work of the author. The matter itself of the "work is not sold to him, but only the right to make a "profit by it. He is so to speak only a usufructuary." Is not the contrary the case in the English law?—Yes. A publisher has no business to alter an author's work without his consent and that is one of the most important things to be provided for in the new law, because it is very common to do so.

3749. (*Mr. Trollope.*) Do you mean that this is common on the part of the publisher?—Yes, I can show you twenty instances where not only the work itself has been altered but the very title of the work, and another man's name put upon it.

3750. (*Dr. Smith.*) You mean when you have sold the copyright?—Yes.

3751. Then you would wish some clause of this kind, that though you have sold the copyright, the person who has purchased it should not be at liberty to make any alteration in that work without the consent of the original author?—Yes.

3752. (*Mr. Trollope.*) But you, I presume, are now speaking rather of altered titles than of alteration in the absolute work?—No, not so; I have had works of my own altered, and I could bring them here to show.

3753. (*Mr. Daldy.*) Would you debar a purchaser of a copyright from making an abridgment of a work which he published?—No, certainly not.

3754. That would involve an alteration?—But it would be simply an abridgment; it would be a different thing, and you would have to call it an abridgment.

3755. Do I understand you to mean that you would object to any alteration of the text of the original work being palmed off as part of the work of the original author; but that he may make these alterations if, with consent, he points out that the original author is not responsible for them?—Yes.

3756. (*Sir J. Benedict.*) There is another question that I will put to you as having a great experience in musical matters, about the permission to appropriate the movements of an air to arrange them for the piano or any other instrument, and to translate an original work without the consent of the author. This is completely forbidden in France; but are you aware that if it is not authorised in England, anyhow the law is infringed repeatedly?—I think so. I think if a man, for instance, purchases a song he has no right to make a pianoforte piece of it without the consent of the author. He purchases the song with the words and that is the identical thing that he purchases, and it should be with the consent of the author that anything else is done with his work. But I believe in Prussia it is common that anybody may make variations upon an air from an opera without the consent of the author.

3757. There is another thing; this registration has been objected to in several instances by the publishers. But do you think that if the registration fee, as I suggested, were reduced to a fractional figure, say 1*s.* apiece, by that means you could obtain the consent of all the publishers, and a kind of moral obligation to register?—I have not a doubt about that.

3758. Are you aware that hitherto the law has been set aside; the works have been published without any registration whatever at a great personal inconvenience to authors, and even publishers, because death may occur and the things may fall into other hands. By doing what I suggest, do you think that all the publishers of literary works as well as of musical works would consent to undergo a kind of obligation which might be enforced by penalties?—Yes, I do think so, and my experience leads me to think so, because I have had communication for a great many years with the music trade, and that question has been put by me frequently. If a reduction in the price of entry were made to 1*s.* would you enter all your things? They say, "Oh yes, we would "be very glad to do it, but we do not see any reason "why we should pay 5*s.* merely for the entry of a "penny book, when we may print perhaps 100 penny "books in the course of a year, and if the law does

"not compel us to enter them why we save 25*l.* a "year by the non-entry." It is true that there is the risk of piracy, but that risk is very small comparatively; not one thing in a thousand is pirated.

3759. There is another question which I wanted to put to you; there has been a general complaint of people assuming the right of buying as a kind of musical middle men copyrights which fell into the market; they have by acquiring that right frequently put a veto to performances of songs belonging to opera and popular compositions, and basing that on an article in the English copyright law as it exists now, they have asked and enforced the claim of a penalty of 2*l.* for each such song sung by any performer or performed at any concert room. Do you think that in a future copyright law, and the same with literary extracts, there should be no penalty attached to singing single songs if they are sung or performed without the consent of the composer or his assigns; do you think such a change would operate beneficially or otherwise?—I think it would operate beneficially, and I think that the law never contemplated otherwise, as you will see by the Act of the 3rd of William the Fourth, c. 15. That is purely a dramatic Act, and although music was attached to the drama they were operas. Now according to the present Act you see a single song may be the object of charging 2*l.* for once singing it whether it belongs to an opera or whether it does not, so that I think the original Act never contemplated that a single song should be paid for. I refer to this 2*l.* penalty for singing it without the author's consent.

3760. (*Sir H. Holland.*) Do you think that the authors of these single songs would be willing to allow them to be sung anywhere without their consent without a penalty being attached?—They would be glad to have them sung, because by that mode they get them known.

3761. (*Mr. Herschell.*) You mean that what is realised by the sale of the song is more profitable than the chance of the 2*l.* penalty?—No doubt of that; and if you charge 2*l.* for singing, who will take up your songs and sing them?

3762. (*Sir H. Holland.*) It is the person who sings who is liable to the penalty if you think it worth while to pursue it. The object is to prevent the singing of these songs without the consent of the author. The author may not think it worth his while to enforce the penalty, but, as I understand, you would do away altogether with consent being necessary?—Yes, I would have it repealed entirely, because the more our things are spread abroad the better for us publishers, and we are very glad for singers to take up our songs. At present we pay them for singing, and they get a royalty.

3763. (*Chairman.*) The principal cases that have been brought before us upon this particular point referred not to the owner of the copyright in the music, but to the owner of the copyright in the words of the song which had been sung. You are aware of that?—Yes.

3764. But are you able to tell us that the authors of the words of the songs which are so sung would be equally ready with the composer of the music to waive this penalty of 2*l.*?—I have not a doubt about it. You see it is not the authors who have compelled these penalties; the authors have had nothing to do with it; but it is the assignee of the author, the proprietor of the libretto of an opera.

3765. Would you make any distinction between single songs, and songs out of an opera?—I should not myself, because I think it is most important that we should have them sung.

3766. (*Dr. Smith.*) But to what extent would you limit the singing of songs from an opera. I mean by that, would you allow any large portion of an opera to be sung?—That would depend, I think, upon whether it would interfere with the performance of the entire opera itself. I think it never was intended that the penalty should be obtained for singing songs in a concert room. I think that it is a purely dramatic affair.

3767. (*Sir H. Holland.*) Who is to judge as to how far the singing say of seven or eight songs out of an opera like "Norma" would injure the performance of the opera?—I do not think it would myself if it were a concert room affair.

3768. Would you leave it to the jury to decide whether it was a substantial injury or not?—Yes; but you are speaking now of an opera that is non-copyrighted.

3769. Take an opera in which there is copyright; the question is whether you would leave it to a jury to decide whether the singing of six or seven songs out of such an opera which was being performed, or likely to be performed, at the theatre, would be a substantial injury to the performance of the opera?—I do not think it would; I think it would be decidedly an advantage to the publisher that they should be sung.

3770. Yes, but it might not be an advantage to the lessee of the theatre?—I do not think that it would be any disadvantage to him.

3771. It would be if it injured the performance. I want to know to whom you would leave the decision what is an injury to the performance of an opera. If there is an injury to the performance of course it is an injury to the lessee?—That must depend upon what the jury say, I think.

3772. (*Sir J. Benedict.*) Do you not think that in fixing a penalty for such an infringement as Sir Henry Holland has been alluding to, a sum varying from 5*s.* to 2*l.* would be perfectly sufficient. There are performances which they call dramatic recitals, or operatic recitals, without scenic effects, giving almost the substance of an opera; those might in some way detract from the receipts of a lessee who having spent hundreds and thousands in the production of a new work, and he would probably object to the right of anybody to take a number of pieces and bring them out in a dramatic form, and perform them as he likes?—I think that is a point which might be debated. I do not think it is a very common thing in the first place to do so. I think, with your experience, you would know that it is not very common to sing half an opera in a concert room.

3773. (*Sir H. Holland.*) It is not very common now because there is a penalty attached; but cannot you conceive that at a place like the Canterbury Hall or one of the music halls, it might answer very well to take six, seven, or eight airs out of an opera which is being performed at the theatre; might not such a proceeding be to the injury of the lessee of the theatre?—I agree with you there, because such a place as the Canterbury Hall is almost a place of dramatic entertainment, and therefore under such circumstances it might be a disadvantage to the lessee of the theatre.

3774. (*Mr. Herschell.*) But you would leave it in all cases to the jury to say whether it was such an interference with the copyright as would be likely to injure the owner of the copyright?—Yes, I think so; that it should be left to the jury to say whether they believed it to be so an important matter.

3775. (*Sir J. Benedict.*) Would not it be a very desirable addition to the law as it exists at present to lay down as the most important point a certain moral contingency, (I do not speak of music alone but of dramatic and literary works), to give the author of such a work the right to interfere or to prevent a publisher either doing after a time as is done in the instances you have brought forward now, or making arrangements of novels as dramas to suit, it may be, a depraved taste, and arranging them according to the views of any lessee who might have bought the copyright, and then would consider himself entitled to alter and to modify the work just as he liked in order to gain the favour of a wider though not a cultivated enlightened public. I mean if such a contingency could be fixed by law. I do not speak of penalties, but the right of preventing any such performance if the author considers himself injured in his literary or musical work?—I think the author should be consulted unquestionably in such a matter.

3776. Do you agree with the opinion that it is very hard upon an author that, once having parted with his

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property, he may be in the hands of any mercenary, vulgar, and, I may say, immoral person who may do with the work just what he likes. I suppose you know that such cases have happened of people dying insolvent, their property being sold, and that property, which is perhaps the work of years of labour, falling into the hands of unprincipled men who make capital out of the talent of the author?—Yes, no doubt about that; there should be a restriction.

3777. Do not you think a provision by law should be made to protect the author or his assigns against such abuses?—I think at any rate the proprietor should be consulted in such a case.

3778. (*Earl of Devon.*) Will you allow me to revert for a moment to the subject of which you were speaking just now, because I have had a particular case bearing upon that placed in my hands, on which I should like to ask your opinion. The circumstances are these: An evening gathering takes place in a small town in a country district, (in this case it was Somerton, in the county of Somerset,) for the benefit of a local charity; a young lady, the sister of a clergyman in the immediate neighbourhood, volunteers to sing a particular song, which she does, the object being to make attractive the gathering, and therefore to realise a certain sum for the benefit of this charity. A few days afterwards she receives a letter from Mr. Wall, the secretary of the Authors, Composers, and Artistes Copyright and Performing Right Protection Office, dated, 8, Colebrook Row, Islington, to the following effect, "Madam, Re (libretto of) Opera 'The "'Brides of Venice.' As for and on behalf of and "under a power of attorney from F. H. Bodda, Esq., "the registered proprietor of the sole liberty of repre- "senting, or performing, or causing, or permitting to "be represented or performed the above, or any part "thereof, I hereby claim immediate payment by you "unto me of the sum of 2*l.*, the amount of statutory "penalty of 40*s.* incurred by you by having per- "formed, or caused, or permitted to be performed a "certain part of the same; (to wit), the song entitled "'By the Sad Sea Waves,' at the Lecture Hall, "Somerton, on August 14th last, without the consent "in writing first had and obtained of the aforesaid "proprietor of such said sole libretto (contrary to and "against the statutory provisions in that behalf con- "tained). Unless the above-named amount be paid "unto me *on or before Wednesday next, the 6th inst.*, "the matter will be placed, without further notice, in "the hands of the solicitors, with instructions to "issue legal process against you in respect thereof." Now the question I should like to put to you is, whether, under the circumstances which I have now stated, you think that a due regard to the interests of composers, or artists, or authors requires that such a state of the law should exist?—I think not.

3779. Are you able to suggest any course of action, or any provision by which the legal rights of artists, authors, and composers might be duly secured without such interference with the act of an individual lady as has occurred in this instance?—The question is whether that question is intended for a new law, or to repeal the present law.

3780. We are here to consider whether the existing law is on a satisfactory footing, and if we come to the conclusion that it is not, we have to suggest such alterations as may be desirable?—Yes, I think it ought to altered.

3781. In what way would you suggest an alteration?—Under such circumstances I should say that the singer of a single song ought not to be subject to any penalty, but that people should be perfectly free under such circumstances.

3782. Then unless the representation amounts to a representation of the opera, or the substantial part of it, you would think that the penalty should not be enforced?—I think not.

3783. (*Mr. Daldy.*) Do you not think that the case would be met by allowing the free singing of all the songs of which the singing was not specially reserved by notice on the songs?—Yes, it might be so.

3784. That the singing might be reserved by notice, but that otherwise they might be sung without any penalty?—Yes.

3785. (*Sir J. Benedict.*) Do not you think that it would be even better if the right of performance was to result to either the author or the assignees without any penalty whatever, that the right of performance should be asked either of the author or the assignees? I mean in that case you would prevent use being made of a work in any low music hall, and in any place which you would object to as being derogatory to the work. If that was the general rule do not you think if it was put on all the copies, "The right of performance is to be applied for, to Cramer and Company," or to the author, as the case might be, that would meet the case?—Yes, I quite agree with that.

3786. (*Chairman.*) Are you of opinion that if the right is reserved to the author or his assignees, but no penalty can follow upon the infringement of that right, the right really becomes a valuable one?—I doubt it very much, because I think it is a thing that would not be very much used.

3787. But if no penalty is to follow the infringement of the right, how would that act as a protection of his works in places such as have been described by Sir Julius Benedict?—I do not think it would act so. I think you would find there would be a difficulty about it.

3788. Therefore in your opinion some penalty, though probably a mitigated one, ought to follow the infringement of the right?—Perhaps a shilling would answer the purpose.

3789. (*Dr. Smith.*) Is any law of any value whatever unless there is a penalty enacted for its infringement?—It is quite true that it is not.

3790. And therefore if there is no penalty enacted for its infringement, what is the value of the law now suggested?—Quite so.

3791. (*Mr. Herschell*) But your view is that there should be no penalty, but that everybody should be free?—Undoubtedly, it is a most important thing that they should be free. Now it appears to me to be an extraordinary thing that a penalty should be insisted upon for singing the words, when the music anybody may sing. I do not understand that, you are only singing half the thing.

3792. (*Sir J. Benedict.*) Generally speaking do you not find that the words of songs as they are published now and given to composers have in many instances a very small literary value?—There is no doubt about that, and 50 years ago no music publisher paid for words.

3793. And that generally they are bought by the publisher or by the composer himself who invests them with interest by his music; therefore do you think that it is fair to say that a song, which consists of eight lines, written by what the French call a *parolier*, a man who would do it perhaps in five minutes, should have the same claim and the same right as the composition, which, if it is a single song, may take the man who writes it days and weeks till he finds the melody which he considers the right one. Have you not in your experience found that generally the words are not considered in the sale of the songs, and that the only person who is consulted in the sale of the songs is the composer?—Yes, quite so generally.

3794. And that therefore the words of single songs ought to be excluded from that privilege?—Yes, I think so.

3795. (*Mr. Herschell.*) You seem to intimate that no proceedings could be taken for singing a song, though you sing the whole of the musical composition, if you did not sing the words. Is not the contrary the case now; the representation of a musical composition may be owned, may it not, so that if you gave in public that musical composition, you may still be liable under the Act for representing it in public even without the words?—I think even a polka might thus be prevented from being played by the present Act.

3796. If then you adopt a musical composition

merely altering the words employed, will not you be liable for the infringement of the representation of that?—It will depend on whether the musical composition is copyrighted or not; in many cases the words are copyrighted but not the music. I think we ought to get rid as much as possible of the ridiculous idea of the use of a small portion of music or words being of necessity a thing to charge for. They are often very trivial.

3797. (*Sir J. Benedict.*) Are you of opinion that the proof of registration abroad according to continental regulations, should be admitted without the necessity of re-registering in England? You are aware of the complaints which have been made in difierent parts of the continent of the hardship of having those works registered in England; you are no doubt aware too of the simple proceedings in France and Germany; that in France they have only to go before a magistrate to register according to what we heard from Monsieur Gavard, and that in Germany there is a general central office in Leipsig to which the works are sent, and there is an end of it. Do not you think it would be a very acceptable boon for foreign publishers and composers to have all those difficulties removed, and to admit the proof of their works being duly registered abroad as quite conclusive of their right in England?—I think there would be some difficulty about that. You see we have been so much accustomed to publish anything that was foreign which has not been registered that we should fall into error I think in that respect. I think the Commission are probably aware that in France they never publish anything without the authority of the author, whether it has been registered or whether it has not. That is one of the laws of France. Now the question is whether that law could be made equally good here. It could by an international copyright law, that it should have the authority of the author before it should be published in this country; because you see the limiting to three months the entry of any copyright very often is difficult; you must enter within three months.

3798. In foreign copyrights?—Yes, under the present convention it must be entered within three months.

3799. Then there is a question about copyright in England, the compositions of Englishmen residing abroad, and works published abroad, whether these should not be considered as having just the same rights as the publications of foreigners, and not be subjected to the hardships of Englishmen losing their copyright because by chance or necessity they reside and publish their works abroad. You are aware that in that case an Englishman loses his right of copyright whilst it does not affect a foreigner. Do you think there is any necessity for such a law, and do not you think that the abrogation of such a law would be very beneficial for the composers in the colonies, in Canada and Australia for instance?—I have suggested that there should be places of registration in our colonies where we may send over works that are copyrighted, because at present it is impossible for the Custom House authorities to know anything about what is copyright. The consequence is that we are overridden by America, because of the Custom House authorities not knowing what really is copyright.

3800. That is hardly an answer to my question. I speak of publications abroad by English composers?—I think that an English composer might obviate that very easily by having it so published that it should be published on the same day in both countries.

3801. Would not that be very difficult?—I think not. I think it could be arranged.

3802. The question is whether they would publish the work in England. If they did not publish it in England he would lose the copyright. He might be unknown and might publish the work first abroad, but that work might be pirated and reprinted without the slightest difficulty; whilst if he came afterwards in the course of years to this country, his works would bring him nothing because he was an Englishman by misfortune living in Montreal or Ottawa, instead of living in Canterbury. Do not you think that such a law is very unjust?—I think it is myself, and I think that all the laws connected with copyright are unjust, on this ground, that the property in a man's brains should be equal to that in land or in money. I think it should be perpetual, and he should be enabled to lease it at certain periods, he and his family. You see the law has literally stopped the perpetual right of an author. The Act of Anne took away that which the author had before.

3803. (*Chairman.*) In going to the Act of Anne are you not rather leading us to ask whether the common law right, which it is supposed existed, was as valuable to an author as the limited statute right which he now possesses?—I think it was more valuable to him to do as he liked with his things.

3803*a*. What means had he of enforcing that?—He had no means positively of enforcing that except by bringing an action; and at that period you know it was very difficult to bring actions against publishers because they were men of straw, but now it is not so.

3804. (*Mr. Trollope.*) Do you think that before the time of Queen Anne an author realised to himself at all the fact that he owned a perpetual copyright in his works?—There is not a doubt about it that he did; and the Bill that was brought in, on which that Act was founded, states so. to give him copyright for ever. I mean that it was the Bill for securing to an author copyright for ever.

3805. But the Bill of Queen Anne was a Bill for securing to the author copyright for a limited time?—No, not the Bill, the Act was.

3806. (*Sir J. Benedict.*) I want to know what your experience is with regard to copyrights in the United States, and what you think on a question as to which we have been discussing, and hearing evidence in all possible shapes, namely, whether any remedy could be found, not only in respect to music, but in respect to literary works, to induce the publishers of the United States to come to an understanding with this country to establish an international copyright between two states. I hope you agree with me in thinking that that is a thing that is most desirable?—I do.

3807. Have you any suggestions to make which would facilitate such an improvement in the present state of things?—I can tell you what is done at present. I know some cases in which an author sends his things abroad to America, and they allow him 10 per cent. upon all that is sold, and they say that that is as much as they allow their own authors.

3808. Perhaps you are not aware that the difficulty is, if I understand it rightly, that the Americans will not have anything published but by their own printers?—That is the difficulty.

3809. If you were to sell the copyright in England to an eminent publisher, he would be prevented, from disposing of his copyright in America?—No doubt.

3810. Is it not the case that they would treat directly with the author, not with the publisher?—Yes.

3811. The same is the case with musical publications?—Yes.

3812. Are you aware that to secure a copyright in America in a musical publication, you must have the work written by a gentleman residing in America, or an American subject?—Yes; they cannot be copyrighted without, and in the case which I have just mentioned I know the party says, "It is only because "I am first in the market, by getting your proof "sheets, that I can do anything, because if they find "out that this is a non-copyright, everybody else will "do it." But an American told me himself that if he chose to publish any English book, or piece of music, which would be likely to be popular, he could sell from 30,000 to 40,000 copies. There is great difficulty in bringing them to anything like a fair mode of doing things.

3813. (*Chairman.*) Have you any suggestions to make as to any practical arrangement that might be come to with the Americans?—I think that is only to be done by making the attempt.

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3814. But what attempt would you make?—You would write to some of the publishers to this effect: "Now if we bring out a thing together, upon what "terms will you enable the author to get anything by "it?"

3815. You are now talking of the individual agreements between English authors and American publishers. My question rather referred to whether you had any suggestion to make for an international arrangement between the two countries?—I do not see a possibility of that sort of thing under the present circumstances. I do not think you could bring them to anything like a real understanding.

3816. Have you any more observations which you would wish to make?—Yes. I presume that the Commission will recommend the repeal of that portion of the Act which gives four copies to the libraries. I think that that ought to be done.

3817. Do you refer to all the copies?—All the copies except the one for the British Museum. Then there is another point. When copyrights change hands, as they frequently do at sales, and a book is reprinted with the original plates by another publisher, with simply another imprint on the title page, I think that the deposit at the British Museum should not be re-demanded if it has been already deposited. I do not know whether that is an idea that has struck the Commission. Then it appears to me that works of that description which change hands should be re-entered to the party to whom they have been sold.

3818. (*Mr. Daldy.*) That can be done at present, can it not, at Stationers' Hall for 1*s.*?—That can be done, but it never is; you must pay 5*s.* Then it appears to me that one assignment may include copyright and dramatic right; and so it appears upon the present Act, that if the dramatic right or performing right is stated upon the assignment they may be both entered as one.

3819. Do you mean that you would prefer their being entered as one rather than as separate rights?—Yes, rather than as separate rights. Then I have already said that it should be sufficient evidence for a proprietor to show his written assignment, in bringing an action for piracy; he should not be compelled to prove the day of publication. Then there is another thing; no limitation of action should be enforced provided the proprietor shows that he never knew of a piracy within 12 months of its being committed, and damages should accrue on conviction. At present the law limits it to 12 months.

3820. Do I understand you to state there shall be no limitation, unless the author proves that he was not aware of the infringement within 12 months of its taking place, or do you mean that the author may at any time secure a remedy, if he bring his action within 12 months of his becoming acquainted with the infringement?—The latter is what I mean, because in many cases piracies are not found out for years, and then a man can bring no action nor get any damages under the present state of the law. Then there is another point which I think should be considered, and that is, that the term of copyright should commence from the sale of the work, and not from its publication.

3821. (*Chairman.*) Do you mean on exposition of the book for sale?—No, on the sale of the manuscript, and not on the publication.

3822. (*Mr. Trollope.*) But is it not the case that a great many works are published of which the manuscripts have not been sold?—And a great many manuscripts are sold and never published.

3823. I have asked you whether it is not the case that a great many manuscripts are published and not sold?—No, I think not; very seldom indeed.

3824. Is it not the case that a manuscript is published and not sold when the publisher publishes it at the expense of the author?—That is another thing; but I mean on the sale of the copyright.

3825. But I understood you to suggest that the copyright should begin on the sale of a manuscript, and not on the publication?—Yes.

3826. But all copyright must depend on publication. There can be no copyright without publication, but there are a great many cases in which there is publication without sale?—That may be. I am speaking of the absolute sale of the copyrights. If I sell you a copyright to-day, the term of the copyright begins from to-day, and not from the time that you publish, that is what I mean. You may keep that copyright in your desk for half a dozen years, and then you say, "Still I have 28 years copyright," but no, six of the years have gone by.

3827. (*Chairman.*) You mean that you would have a special provision for cases in which the manuscript is sold?—Yes.

3828. But would not it rather make the law still more confused than it is now?—I think not, because the present law makes it depend upon publication. Now a man may not publish a work for years after he has bought it, and it does not return to the author again until 28 years after its publication, not 28 years after the time that he has sold it.

3829. But now let us take the other case, the case to which Mr. Trollope has referred where the manuscript is not sold. What provision would you make for that case?—You could not make any provision under such circumstances. I know of hundreds of cases where manuscripts are not published for years, but lie by. There is really only one other point to which I would refer, and that is this, that there should be a provision that no work shall have printed on it "Entered," unless such work has been entered. It is common now to put "Entered at Stationers' Hall," though it never has been entered.

3830. Is there no penalty now under the existing law for doing that?—None. Every musical work that is brought out almost says, "Entered at Stationers' Hall," but thousands have never been entered at all.

3831. What practical use is there in doing that?—No use at all. It is only a common mode of doing things in order to assume that entry is made. They have complained of it at Stationers' Hall.

3832. (*Sir J. Benedict.*) Do not you think that having compulsory registration, whether at Stationers' Hall, or wherever it is, would do away with this objection?—Yes, perhaps it would, and therefore that objection would fall to the ground.

The witness withdrew.

Adjourned to to-morrow at half-past 2 o'clock.

Thursday, 25th January 1877.

PRESENT:

THE RIGHT HONOURABLE LORD JOHN MANNERS, M.P., IN THE CHAIR.

SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
SIR JULIUS BENEDICT.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, ESQ.
F. R. DALDY, ESQ.
J. LEYBOURN GODDARD, ESQ., Secretary.

M. Arnold, Esq.

25 Jan. 1877.

MATTHEW ARNOLD, ESQ., D.C.L., examined.

3833. (*Chairman.*) Your attention has no doubt been directed to the subject of copyright; but I believe you rather wish to give some evidence on the subject of the extension of time of time after death?—Yes, I wish to say that what interests me in the question is above all the lengthening of the time,

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after the author's death, during which the property in his works remains to his family.

3834. Would you explain to the Committee wherein you think the present state of the law defective, and how you would propose to remedy it?—I think that to works of a serious kind it may naturally happen that they take a long time before they come into their sale, and that the 42 years from publication which the law at present allows may very nearly have expired before the work comes into its sale, and then if the author dies his family really get very little profit from it. And I should like to see it altered simply by giving what I believe the French give: the term of the widow's life and 30 years afterwards. I do not see why any nation should give more than this country, but still if the French copyright is impossible I think the term of 30 years from death which Germany gives would be a very great boon.

3835. (*Dr. Smith.*) But you are perhaps aware that in Germany and in France there is no period, like ours, certain?—Just so; no certain period from the date of publication.

3836. (*Mr. Trollope.*) It follows I think that the French term must be considerably longer than the English, does it not?—Yes, I think so.

3837. And that the German term probably would be longer?—I think so.

3838. (*Sir D. Wolff.*) Do you not think that if we are to make copyright international it would be well to assimilate it in the different countries?—Yes.

3839. (*Mr. Trollope.*) It has been suggested to us that copyright should not only not be prolonged but that it should be somewhat shortened; and the reason for that shortening has been given as follows: that the present length of the time allowed operates rather for the benefit of publishers than for that of authors, and that a shortening of the duration would not injure authors because the custom of authors at present is to dispose of their copyrights, I was going to say in perpetuity, but I will say for the length of time over which they have power. Could you give us any opinion on that subject? Do you think that authors are in the habit of disposing of their copyrights in entirety?—I cannot speak with certainty about other authors. I can only say for myself that it would be only under the pressure of a most extreme necessity that I should dispose of a copyright. I should think it a fatal thing to do.

3840. Then as a literary man you are inclined to say that the Legislature of this country in reference to this matter should presume that authors do not usually regard the entire sale of their copyrights with favour?—I think so. Of course I cannot speak for all authors, but an author who publishes a serious work on which he did his best would feel, I should think, that unless he keeps it in his own hands he has no chance of getting whatever is properly to be got from it in the way of profit, that its immediate profit is not likely to be the chief part of the profit. My own works (one speaks for one's own case) sell a good deal better now than they did 20 years ago.

3841. An author may continue a work in the later part of his life which he has only commenced in the former part of his life, though he may then have made a separate work of it by the fact of publication. Does it not appear to you to be expedient that those two works should have a similar time to run before they lose their copyright?—I should be inclined to say so, but I have not thought about that.

3842. (*Sir D. Wolff.*) What should you say would be the principle upon which an author would dispose of his works now; by editions?—The moment he could, he would dispose of it by editions, I should think. If it is a school book, he probably may ask for a royalty, or he may ask for a certain share of the profits; but it is not a school book but a literary book which has a good sale, and if he is a man who can make fair terms with publishers, I should think he would dispose of it by editions.

3842*a*. You said that your books sell better now than they did when you first published them 20 years ago. Now supposing a publisher saw a great deal of genius in your works in your youth, would he not be entitled to the benefit of the improvement of the property just like a man who may see a picture by an artist, who has not yet got any reputation, which he thinks a remarkably good picture, and he buys it on the speculation of its rising in value?—If the publisher bought my copyright of me, I should have no right to complain afterwards. I might be compelled by poverty to sell, like anybody else who sells a thing under pressure. I did not sell. My poems have been about 25 years published, and if I were to die in 10 years time, my family would have the benefit of the copyright for but seven years more. Yet I may say that the sale did not really begin until 20 years of these 42 were expired. Wordsworth's is the great case; I think I have heard him say that for the first 30 years or so he had not made enough by his poems to buy shoe strings; there was 30 years of his term of 42 gone.

3843. That is the case with property sometimes; you buy a house on a 99 years' lease, and at the end of 30 years it may be more valuable for the remaining 69 years than when it was first purchased?—Yes; but the question is whether the cases are the same. The 42 years from publication are supposed to be a book's 42 best years.

3844 (*Dr. Smith.*) I should like to return to a question which Mr. Trollope put to you in reference to the same work of which portions are published at different periods. To make my meaning clear I will take examples of historical works which have appeared in our own time, such as Mr. Grote's "History of Greece," and Mr. Froude's "History of England." Those two works in course of publication extended over a period of from about 15 to 20 years; they were generally published two volumes at a time; the consequence of which is that the copyright will run out at different periods. Now the question which I wish to put to you is this: does it not seem to you rather a hardship upon the author, or rather upon his representatives, that they should not be able to have the full advantage of the copyright of the book because they have only got possession of the later volumes and not of the earlier?—I think it is very disagreeable for them. I do not know whether I should call it a hardship. Some of the volumes of course have ceased to be in their power. Very often the earlier poems, too, of a man pass out of his power before the later ones.

3845. In the case I am putting they are part of the same work?—Yes, there is that consideration.

3846. And if the plan you propose of having a longer period after death, say a period of 30 years, was carried into effect, then the author would have the advantage, or rather his representatives would have the advantage, of the whole of his works instead of having the advantage of only a portion of them?—Yes.

3847. And will not the value of the copyright of the later volumes be very much diminished because other people can avail themselves of the earlier volumes?—Yes, of course.

3848. (*Mr. Trollope.*) At the present moment the copyright of "Pickwick" has either run out or will run out in the course of some few months. The copyright of the last of Mr. Dickens's works will not run out I think till 1912. Does it not appear to you that at the present time such an arrangement as that must be very injurious to Mr. Dickens's family, or to those who own the literary property which he created?—I have not considered the point.

3849. The fact would be this that after this year any other publisher may take a portion of Mr Dickens's works and publish that portion, and in that way interfere very materially with the work as a whole?—It is very inconvenient, I should think, for the owners of the property, for the family. They would naturally prefer an arrangement under which they had not this inconvenience.

3850. And you think that might easily be remedied by a term of years, such as that which the French and the Germans at present grant?—I think so.

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3851. (*Chairman.*) With respect to the German law do you know practically whether authors raise any complaints against it?—No, I do not know whether they do.

3852. Is it your opinion that all the complaints, such as Mr. Trollope has referred to, would be substantially and fairly met if the English law were assimilated to that of Germany which gives 30 years after death?—I think so.

3853. (*Mr. Daldy.*) You know the state of the copyright law in the United States perhaps?—As I understand, it is in fact there the 42 years of England, only you have to give notice for the last part of it.

3854. It is 28 years with a power of renewal. Do you happen to have heard the reason for that power of renewal?—Is it not that authors may part with their copyrights for a time, and then their copyrights return to them?

3855. Their copyrights revert to them, and they are able to sell them over again. Do you think there would be any advantage in making any break in the copyright law here which would enable that to be done over here in the case of those who had parted with their copyrights; so that anyone here who parts with his copyright may part with it for the first term, and then when the work may have possibly grown into notoriety and become very valuable it reverts to him, and he has the power of selling it again. In America he has that power; do you think it would be of any advantage to carry out that idea in our English copyright; I mean as a general arrangement?—Surely a man may now sell his copyright for a term of years.

3856. We have been told here that the publishers will not give more for a copyright with 42 years to run than they will give for one with 28 years to run; in other words, that they do not look upon it as worth more than 28 years' purchase Would it be of any advantage to the author to have that break in the copyright law which would enable him at the end of that time to resell?—I should think it would be an advantage to him. I should not think, however, the publishers would say that they considered a 42 years' copyright and a 28 years, the same thing.

3857. (*Dr. Smith.*) But you give that reply I suppose on the supposition that the author has sold his copyright?—Yes.

3858. If the author retains his copyright of course your answer would not apply?—No, merely supposing he sells it.

3859. You stated it as your opinion that in your own case, and you should imagine in the case of most literary men, the author would not part with his copyright?—Quite so, I have not parted with a single copyright.

3860. Are you not aware that in the case of the chief standard works published by Mr. Murray and Mr. Longman the authors have not parted with their copyrights?—As to a good many standard works published by Messrs. Longman and Mr. Murray I am aware that the authors have not parted with them.

3861. (*Chairman.*) Upon the whole then if it is thought advisable to assimilate the English law to the law of any other country would you prefer that the law here should be assimilated to the German or to the American law?—To the German, certainly.

3862. (*Sir D. Wolff.*) May I ask you one or two questions with regard to international copyright. Your works are very largely sold in America, are they not?—I am told they are a good deal sold there.

3863. Do you not receive any remuneration for that?—No, but Ticknor and Field once sent me, I think, 50*l.* as a kind of honorarium, to acknowledge the profit which they had got from me.

3864. You have no idea what your circulation in America is?—No, but I am told that the Americans are a reading people, and that the reading of books goes further down into society there than here; and they tell me that the circulation is a good deal larger than it is here.

3865. And I suppose the price is cheaper?—It is cheaper.

3866. And therefore if we had an international copyright with America you might hope to get more for your books than you do, inasmuch as you would get the American circulation also?—Yes. I have not gone into the question of international copyright, but, of course, as far as America is concerned, I (like all other authors, I suppose) should gain immensely by such an international copyright.

3867. Your books are not high priced, are they; they are not of great bulk, are they?—No, not of great bulk; but they are not particularly cheap, I think.

3868. Do you think they are read much in the circulating libraries, or that they are bought chiefly?—Chiefly bought, I think.

3869. You have not had any experience of the high price of books stopping their circulation?—No.

3870. Do you think if your books were cheaper they would sell more in England than they do?—I do not think so. A new edition of my poems is now preparing, and the publishers, entirely of their own notion, have proposed to raise the price, saying that to the class of people who buy my poems it does not make any difference, and by raising the price they are enabled to make a more handsome book.

3871. It makes an *édition de luxe* perhaps?—No, not an *édition de luxe*, but it is a handsomer book. On the other hand, if the class of people who want a man's book is very large I do not think there is anything in the present system that hinders a cheap edition from being published. When things had got to that point that it was likely a large number of Mr. Carlyle's works would be sold, they published a very cheap edition of "Sartor Resartus," and all of them.

3872. As a writer of poems, your poems are pretty much purchased by people wishing to read them and study them, instead of waiting to see them from the circulating libraries perhaps?—Yes. I will add, as to international copyright, that I do not understand the insurmountable obstacle to effecting anything with America, after the experience of the success of France in getting rid of what the French call the *contre-façon Belge*. I can imagine no interest that the Americans have in continuing to pirate our books that the Belgians had not in continuing to pirate French books. Balzac and men like him complained that their bread was taken out of their mouth by the Belgians, and yet France has now made a satisfactory arrangement with Belgium. I no longer see the Belgian editions of French works which I used to see and buy. The Belgians undersold the French by a franc or two a volume, I believe, even with books that only cost four or five francs in France. They had the market of their own country and of Europe for these books.

3873. Still in England a book is published at a much higher price than it is in America; the difference between the American reprint of an English book and the original print is much greater than it was between the French original print and the Belgian reprint, I presume?—Yes, but there was enough profit to bring immense gain to the Belgians.

3874. You say it was a difference of about a franc a volume?—Yes, with cheap books.

3875. In America they publish at a dollar what we publish here for 31*s.* 6*d.*, I think?—It is not so with my books. I believe a book of mine published here at 9*s.*, is published at a dollar and a half in America.

The witness withdrew.

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Mr. JAMES MARTIN examined.

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3876. (*Chairman.*) You have had your attention directed to the operation of the law of copyright as it affects photographs?—I have, and I attend here as representing Messrs. Elliott and Fry, of Baker Street.

3877. Have you any observations that you wish to make with respect to the existing law, or any suggestions for its amendment?—If you will permit me I will read just the brief note that I have made for my own guidance which will embody all that I have to say on the subject. I am prepared to answer afterwards any questions that may seem desirable. As the result of observation, it seems to me that the rights of photographic publishers at present are inadequately protected. In illustration I may mention that men of merit, such as Carlyle, Tennyson, Ruskin, and Longfellow, and Lords Derby and Salisbury, Sir Stafford Northcote, and Mr. Cross have honoured us with sittings; and when such is the case we take from six to 12 negatives of each sitter, and having printed proofs from those negatives, we enter at Stationers' Hall for our own protection only a selection from those proofs, and not all of them; but we publish all the pictures, and then we find that proprietors of newspapers and similar publications which are illustrated, seize upon one of these pictures which we have not entered at Stationers' Hall, and reproduce it. In illustration I have here (*producing it*) a publication called "Hand and Heart," volume 2, number 53, which has reproduced our portrait of Mr. Cross (*producing it*). Or sometimes they are reproduced by lithography, as is done on a large scale abroad, in Hamburg especially, and afterwards imported into this country. There are other illustrations of this in the "Christian Globe," volume 2, numbers 10, 13, and 41. There is our portrait of Lord Shaftesbury reproduced (*producing the "Christian Globe" and the portrait*), and there is the exact facsimile of the photograph. These are all our portraits (*pointing to different numbers of the paper*).

3878. (*Mr. Daldy.*) In any of the cases which you have cited do you know whether the permission of the person himself had been obtained?—That I am unable to say.

3879. (*Mr. Trollope.*) How was the person who pirated your work able to ascertain which of your portraits had been and which had not been entered at Stationers' Hall?—Anyone desirous of knowing what picture or portraits are entered at Stationers' Hall can do so by going to the hall and paying down an inquiry fee of 1*s.*, they can then refer to the books.

3880. Do you suppose that in the cases which you have brought before us that was done by the persons who adopted your portrait?—I think it is a fair inference, seeing that most of the cases of reproduction are of pictures which had not been so entered.

3881. But some of yours which had been so entered have also been pirated?—Yes.

3882. And you do not enter the majority of them?—No.

3883. And therefore, of course, the probability would be that the majority of those which are so adopted would also not have been entered?—Yes, as we do not enter the majority it is generally from one that has not been entered that the reproduction is made.

3884. Therefore, there would appear to be no reason for imagining that these persons go to Stationers' Hall and ascertain which has been entered and which have not been entered, because if they did so, they would scrupulously avoid the publication of those which have been entered?—Precisely.

3885. Do you think then that there is any reason for supposing that these persons go to Stationers' Hall in order to find out which of your portraits have been entered and protected, and which have not been entered, and have not been protected?—Yes, I do think there is reason to think so.

3886. Could you tell us why?—The reason is, that the portrait reproduced is, I will not say always, but frequently one of the series not protected, not entered. I assume, therefore, that they have ascertained which is entered at Stationers' Hall, because a copy of the picture is placed in the books of the Stationers' Company, and they see which is so entered, and avoid that one, and re-produce one of the others.

3887. But they do not always avoid that one?—Not always.

3888. It is the fact that you do not enter the majority?—Precisely.

3889. And they reproduce also a majority of those which are not protected?—They reproduce one out of the number not protected, as a rule.

3890. (*Dr. Smith.*) May I ask you why do you not enter them all at Stationers' Hall?—We select those which we think are likely to be the most saleable, and protect those, and so far as our judgment will guide us. If you will kindly look at these (*producing some portraits*), here is a variety of four or five poses of Sir Stafford Northcote. You will see that one or two of those are really better portraits (at least in my estimation) than the other three, therefore, we should enter two, and not enter the remaining three.

3891. Then is it not your own fault that they are copied, because you have not entered them?—That is a question which the Commission will be able to decide further on, I think. I have a suggestion to make in connexion with that portion of the subject.

3892. (*Sir D. Wolff.*) Before you go on, may I ask you this question, Do you not think that these photographs very often which are published in the papers are sent by the persons themselves. For instance, I know that nearly all members of Parliament get letters asking them to send a biography of themselves and a photograph. Without thinking of it at all, the member of Parliament who chooses to do it sends his photograph, out of a dozen photographs which he has had taken, he sends one to the newspaper; that one probably having been bought by himself is not a protected one. There does not seem to be any offence in a newspaper publisher publishing that photograph?—I think that the question as to the ownership of copyright in a portrait is not quite clearly defined in that connexion. When a member of Parliament, or anyone of note, sits to a photographer for his portrait, and that photographer takes say all the portraits, suppose he takes five, and enters them all at Stationers' Hall, the question is (I don't know whether it is decided or not), is the copyright of that series of portraits of that person vested in the photographer who has entered them at Stationers' Hall, or does it belong to the person who sat? If in the sitting be included tacitly an assignment of copyright in the portrait of the individual, then the photographer is the proprietor of that copyright, and a man loses almost a right over his own portrait, that is a right to send it for reproduction to a newspaper, without first advising the photographer of it.

3893. You ask, we will suppose, a distinguished man, a statesman, to sit to you, I think your firm does that, and you take so many photographs of him, and you present him with a certain number very often, no doubt; then a person writes to him or his wife and asks for a photograph of him, and he sends one of those which you have given to him. It seems to me you would complicate it very much if you raised the question of copyright in that, would you not?—There is no question that it would lead to complication; but if it were generally understood that the photographer is to be referred to before reproduction of a portrait in any fashion, I mean the photographer who has originally published it and entered the copyright, then the matter is simplified.

3894. (*Chairman.*) I notice with respect to the photograph and the print of Lord Shaftesbury that you have put in, that the photograph shows the shirt-front completely in light whereas the print in the illustrated paper shows it partially in shadow. Does that indicate at all that the print is not taken from the

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photograph?—I think not. The position of the head, the direction of the eyes, and the general expression of the face are an exact reproduction of the photograph, and the mere introduction of a few lines of shading on the shirt I think hardly affects the question. Of course it is a matter for consideration.

3895. Then has any attempt been made to try the legal question to which your last two or three answers applied?—I am not aware of any.

3896. Has it ever occurred to your firm to try the actual legal position as it stands now before the law is proposed to be altered?—It certainly has occurred to us to do so, but when we have thought of the time that would be expended, and the probable costs also, we have not pursued the question.

3897. Will you now continue your evidence?—I have already referred to the "Christian Globe," and there is one publication (I am sorry to say I have not a copy of it), the "Sporting and Dramatic News," which reproduced this portrait (*producing it*) of Miss Rayne without the slightest alteration; they never asked for permission or made acknowledgment, and that is a very valuable portrait. The picture sells all over the country wherever it appears. That picture was reproduced without asking our permission, and without making the slightest alteration in it. You will see that in the catalogue (*producing it*) that we have of works, there are so many persons that if we were only to enter say five negatives of each of the persons named in our catalogue it would be something enormous, and the expenses would be a matter of consideration, though it is only 1*s.* each.

3898. (*Mr. Daldy.*) Have you made any special arrangement by which you acquired the copyright of that portrait of Miss Rayne, or was it taken in the ordinary way?—We invited the young lady to sit to us, and she kindly promised that she would not sit to anyone else; and when the picture was taken we immediately took it to Stationers' Hall, and we attached the word copyright.

3899. I understand she did not commission you to take it for her?—No, we invited her.

3900. (*Sir D. Wolff.*) Still one photograph is very much like another. Supposing Miss Rayne chose to sit for any one else in exactly the same position as she had sat to you in, it would be the same photograph, would it not?—You have touched there upon an interesting question. There is scarcely anything more difficult to do than to reproduce a position in a photograph, to do it again exactly the same as it has been done before. We have had occasion to make the effort, and have taken great pains to do so, and cannot. I do not think it could be done at all.

3901. Lord John Manners pointed out to you a slight difference between your portrait of Lord Shaftesbury and the print?—That was a reproduction by a wood engraving; they have purposely introduced the shading on the shirt-front. But to take the same sitter in the same position again, even in the same dress and in the same studio, and taking care to have the light in the same direction, it is impossible to do it exactly the same.

3902. Might not this wood engraving have been taken from a photograph in which it was attempted to take that position without entirely succeeding; you cannot positively identify these two, can you?—I certainly should have no hesitation in referring to that wood engraving as a reproduction of our portrait of Lord Shaftesbury.

3903. (*Chairman.*) I observe that in the case of Lord Shaftesbury that there is nothing said in the paper as to the woodcut being taken from the photograph; whereas in the "Hand and Heart," it is stated that although the portrait of Mr. Cross is drawn and engraved by J. R. Cooper, it is taken from a photograph?—Yes, but they do not mention our names.

3904. Might it not therefore be much more difficult to prove in the case of Lord Shaftesbury's woodcut that it was taken from one of your photographs, than in the case of Mr. Cross in "Hand and Heart," that is taken avowedly from a photograph?—By that much that it is taken from a photograph, but you have a copy of the photograph, and I think you will see that it is an exact reproduction. There is another paragraph in my notes which I have headed "International." Our photographs and those of other photographers are freely copied by photography and reproduced by lithography and wood engraving abroad; also exact facsimiles by the Woodbury-type process are imported into this country and offered for sale at a tithe of the present retail price. I have brought with me a couple of Woodbury-types. I do not know if it is generally understood what they are. They are photographs produced by a mechanical process to resemble silver prints, and the process being so purely mechanical after the original work is taken, of course they can be produced very cheaply. Those are Woodbury-types (*producing some*). The process consists in preparing a metal matrix from which these are printed by pressure in a press. There is no chemistry in the actual production of the picture at all. My purpose was to suggest that for the purposes of any enactment that may be contemplated by this Commission, proof of date of publication should be deemed sufficient when entered in a book set apart for that purpose in the office of the publishing photographer, and that entry at the Stationers' Hall shall not be considered imperative for all or any of the photographs so published; and that photographers shall be free to enter only such portraits as shall have been unlawfully reproduced after their reproduction. I should explain that all pictures which we publish of the character which I have shown are mounted upon what we call our "copyright" cards. They bear the word "Copyright," and our name and address as producers of the photograph; and my view of it is this that a photograph so appearing with our name and address, and the word "Copyright" upon it should be considered as belonging to us. We have the primary interest. I speak of course for other photographers as well; the photographer producing such pictures as these has really the primary interest, and if I may be permitted to say so, the right to any profit which may accrue from the sale of them.

3905. Do I understand you to mean that you would propose that the registration at Stationers' Hall should be abandoned, and that registration should take place in each photographer's office?—I think, perhaps, the term "registration" can hardly be applied to the entry that I refer to. In the case of books in which I have had some little experience (having published some two or three which have sold very fairly), I know that this custom obtains. I give an order to my printer to print so many books, and he sends them to the bookbinder, and when they are bound and ready for delivery I write to the binder and say "Deliver 500 copies of such a book to the publishers," say Houlston and Sons. The bookbinder enters in a delivery book the 500 copies to Houlston and Son, and that is taken by their messenger, who receives a signature. And what I would propose as to photographs is, that an entry of a similar character should be accepted as proof of the date of publication, for that I imagine is the thing that will always be asked for in investigating the question as to who is the owner of the copyright of a book or of a picture. The question will be asked, When was this published? I submit that the entry in a book set apart for that purpose in the office of a publishing photographer should be accepted as evidence of the date of publication.

3906. Now under the existing law in order to enable you to proceed against a pirate you must prove that your work has been properly entered, and the date of it in the books at Stationers' Hall; that is the present law?—That is as I understand it, or I may say as I understood the law till yesterday, when I may tell you that I had some conversation with Mr. Purday, who gave evidence before the Commission yesterday, and he assured me that it was not necessary to enter at all until after a piracy had taken place, until after publication.

3907. My question was this; you must enter in

order to enable you to proceed to obtain your remedy by law?—I believe that is so.

3908. Then if I understand your proposal it would be to enable the necessary forms to be gone through in the office of each of the photographers instead of, as at present, at Stationers' Hall?—Precisely.

3909. (*Mr. Trollope.*) Would you propose to give to the public the right to examine your book?—I see no objection to that at all.

3910. But would you propose to give them that right? You suggested that this registration should be changed, and that that which is now done at Stationers' Hall, which is to a certain degree a public institution, should be done in your own closet, which is altogether private. Would you propose to give to the public the right to examine your books in your private closet?—I am assuming the case of a prosecution being conducted in a court of law for infringement of copyright, and that evidence is required in that prosecution of the date of publication; and what I would suggest is that an entry in a book kept expressly for the purpose of entering dates of publication should be accepted as genuine evidence of the date of publication of a particular picture.

3911. Then you would not propose to give the public the right of entry into your closet for examination of this book?—I imagine that all those who would be interested in the case would be simply those engaged on the trial which I am assuming to take place, and not that the public at large should enter our office and examine the book.

3912. Then perhaps you will answer my question. I do not want to press you to say that you would give a right to the public. I only want to know whether you would propose to give such a right to the public?—No. I should not propose that.

3913. Then in that case the public would be debarred from the power which it has now, and which you have alluded to just now, of ascertaining whether a photograph was registered or was not registered, and whether it was debarred from its republication or was not debarred?—It would.

3914. (*Sir D. Wolff.*) Supposing Mr. Cross or Lord Shaftesbury had given this photograph to the publisher of the illustrated newspaper with a view of his printing it, the publisher would not know whether he had the right to publish it or not?—Under those circumstances he would not, but he could always ascertain by applying to the photographer whose name would be on the card.

3915. But you say you would not allow him to go to your office to examine your book?—Certainly, any person with a definite object in view might.

3916. (*Chairman.*) But you would keep it in your own discretion, as I understand; you would not permit anybody by law to have the right to enter your office and see what works are entered in your book?—No, certainly not.

3917. (*Sir D. Wolff.*) Supposing a person had a photograph made of himself before he was made a cabinet minister, and that after he was made a cabinet minister he gave you leave to publish it without the trouble of sitting again, it would be very difficult for the newspaper publisher to know whether he was infringing your copyright or not, because he might have a copy that was given him before?—If we receive permission from the gentleman who had become a cabinet minister to publish his portrait because a public interest had arisen in the portrait we should publish it on "copyright" cards, with our name and address, and any publisher desiring to reproduce the portrait in this fashion could ascertain whether we claimed the copyright in it by applying to our office.

3918. Supposing he had a copy given him that was not a copyright card?—Then we should have to suffer very fairly any loss which might accrue from the publication, because if we did not specify on the card that we claimed the copyright clearly we are not entitled to it.

3919. (*Sir J. Benedict.*) There are a great many distinguished characters, cabinet ministers, statesmen, artists, &c., whose portraits have been taken, not once, but 30 or 40 times by different photographers, not only in England but abroad; would every one of those photographers have the right to claim for his peculiar adaptation of the portrait he had taken the privilege, and say that the other photographs were piracies. It would be very difficult to define the limits of that. I speak of an artist for instance like Madam Patti; I think she has had about 600 or 700 photographs taken of her. Even if it is a copyright card you could not protect your own copy from such possibilities, could you?—I should say that in that case each photographer would be entitled to any profit which might accrue from the sale of the picture, which he himself might have taken. That is my view of it as against publishers, who desire to reproduce photographs in that fashion, making them common, and thus reducing the value of the original photographs, and stopping the demand for them.

3920. (*Mr. Daldy.*) Are you aware that under the Fine Arts Act of 1862 a distinction is drawn between photographs which are produced on commission, that is to say, by order of the person who sits and photographs taken under other circumstances, as far as the person who has the copyright is concerned?—No. I was not aware of that.

3921. But are you not aware that it is necessary, in order to secure copyright, that every such painting, drawing, or photograph should be registered?—Yes, I am aware of that, certainly.

3922. Then is your complaint that the registration is too expensive, or that the process of getting it registered is too cumbrous?—My complaint is chiefly of the trouble rather than the expense, because it cannot be regarded as a very heavy tax to pay a shilling on each picture for entry.

3923. But you wish to be rid of the trouble of making the entry?—Yes.

3924. Then, in point of fact, the law as it stands at present does protect the owner of the copyright, whether the sitter or the photographer who takes the portrait; but you object to the trouble which is necessary to get that protection?—Yes, my view of it is that an entry in a special book should be accepted as sufficient evidence of date of publication, and that our issuing pictures on cards bearing our own name and the word "Copyright" should protect us, and that printers, lithographers, chromo-lithographers, and so on, should not be free, in fact to take just what photographs they think proper, and reproduce them without permission, or without acknowledgment of the source from which they are obtained. They do both.

3925. But you are aware that the law does give you a remedy at present, but you object to the trouble there is in availing yourself of that remedy?—Yes.

3926. (*Dr. Smith.*) May I ask, have you proceeded at law against any persons who have copied your photographs in wood or in any other material?—No, we have never done so.

3927. (*Chairman.*) Have you any further observations to make?—No.

The witness withdrew.

Adjourned to Wednesday next at half-past 2 o'clock.

T. H. Farrer, Esq.

31 Jan. 1877.

Wednesday, 31st January 1877.

PRESENT:

THE RIGHT HONOURABLE LORD JOHN MANNERS, M.P., IN THE CHAIR.

THE RIGHT HON. THE EARL OF DEVON.
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR JOHN ROSE, Bart., K.C.M.G.
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
SIR LOUIS MALLET, C.B.
SIR JULIUS BENEDICT.

FARRER HERSCHELL, Esq., Q.C., M.P.
DR. WILLIAM SMITH.
J. A. FROUDE, Esq.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS HENRY FARRER, Esq., further examined.

3928. (*Chairman.*) Perhaps it would be now convenient to ask your opinion on the state of the law affecting the Colonies, if you will give us the benefit of your opinion on that head?—This is a very important part of the case, and I am afraid that what I have got to say upon it is rather long; and if I might suggest, it would perhaps be the most convenient way that I should go through it if possible without being subjected to much cross-examination until it is concluded; subject, of course, to questions on any particular points on which I do not make myself intelligible. I think it will be more convenient to take it as a whole.

The questions that we now come to are far more important than any which have been raised in my evidence before; the questions, namely, concerning colonial and international copyright, and especially that which concerns English-speaking people. In the case of North America, the colonial and international copyright questions are inextricably involved. The American case raises the whole question of the principle of copyright. Its importance to the English author is obvious, and it is no less important to the English public. English-speaking people seem destined to cover a large proportion of the world, and the market is, therefore, immense. The result ought to be that the remuneration of the English authors should be largely increased, and that the price of English books should be much diminished. The problem is, how to attain this end. The English copyright owner (mind, when I say "copyright owner," I do not say author; I wish to speak of the copyright owner, whether author or publisher) claims a moral right in the United States, and a legal right in Canada and other colonies, under the Act of 1842, to control at his pleasure the reproduction of his book, whilst the American reader claims a right to purchase, and the American publisher to reproduce, at whatever rate suits them without reference to the English author. The extreme views will be found in some of the letters and evidence of the English publishers and authors, *e.g.*, Mr. Charles Reade, on the one hand, and in Mr. Morrill's Report on the other, which will be found, in Parliamentary Paper No. 1069 of 1874, page 10. Intermediate views have been entertained by the Canadian Government and by many Americans, for example, by Messrs. Appleton and other great New York publishers, who agree that the author should be fairly paid, but deny that he, or rather that his English publisher, should have a monopoly of the publication. The Canadian views will be found in the various papers laid before Parliament (*see* Parliamentary Papers 339 of 1872, 1067 of 1874, and 144 of 1875). I have already given the Commission some copies of a pamphlet with letters written in October 1871 by Mr. William H. Appleton of the well-known New York firm, which are well worth reading. I would refer also to Morgan's Law of Literature, published in the United States, Vol. 2, Chap. 1, page 79 and following; there is a very long discussion on the subject there. The views of the different American parties have been so well stated lately in Mr. Appleton's evidence before this Commission, repeated in the number for February of the Fortnightly Review, that I need scarcely further refer to them.

The facts as to the colonies are, shortly stated, as follows. The legal monopoly in the British Empire and consequent colonial difficulty created by the Imperial Act of 1842, has been dealt with in various ways. In Canada and other colonies foreign reprints have under the Act of 1847 been admitted under a condition that a duty or royalty upon them should be paid to the English copyright owner. This condition has not been fulfilled. Subsequently, especially since the case of Low v. Routledge, complaint has arisen on the part of Canadian publishers that English authors do not and cannot publish in Canada so as to obtain Imperial copyright. Whilst therefore English copyright owners have pressed for the repeal of the Act of 1847, Canada has pressed for an extension of the royalty system, by allowing Canadian publishers to republish English copyright books under condition of paying a royalty of 12½ per cent. to the English author; and this proposal has met with the approval of some eminent English authors and publishers, though not of a majority. A Bill founded on this principle was framed by the English Government in 1873, and was circulated in the colonies. A Bill founded on the same principle was actually passed by Canada in 1872, but disallowed in this country as contrary to the Imperial Act. All those different facts will be found stated in Parliamentary Papers 339 of 1872, 1067 of 1874, and 144 of 1875. Finally, in 1875 an Act was passed by Canada, enabling an English copyright owner to republish in Canada, and thus obtain colonial copyright there; and an Imperial Act was passed to remove the objection that this Colonial was contrary to the Imperial Copyright Act, which did not admit of a book which is copyrighted in England being subsequently published and obtaining copyright in a colony. The English Act is the 38th and 39th Victoria, chapter 53, and I shall have to refer to it a good deal more before I have done. That is the short history of the Colonial or Canada case.

In the United States, of course, the English Act of 1842 does not operate, and nothing has been effected. The English Government has made ineffectual attempts by negotiation, and American authors and publishers have endeavoured to come to some agreement, but in vain, as has been detailed by Mr. Appleton. But American publishers are in the habit of receiving early sheets or copies or plates from England, and as I am informed treat English authors with liberality. I will put in a list sent me from Mr. Appleton of New York, giving a statement of recently-published English books, with the American and English prices. (*See Appendix, Paper marked B.*) This is a list of English books republished in New York, partly I think by Messrs. Appleton and partly by Messrs. Harper. In Mr. Appleton's note it is stated that "the authors have been liberally paid for advanced sheets." The prices are given as furnished in the list from New York, and are converted into English money at the rate of one United States dollar (currency) equal to 3*s.* 7*d.* I will put in the list and I will only read the prices of two or three of the books. There is "Middlemarch"; "Middlemarch" is published in the United States in two volumes at a price of 10*s.* 9*d.*; in one volume bound in paper at a price of 5*s.* 4½*d.* The first

English edition was published in eight parts at 42*s.*; then in four volumes at a price of 21*s.*, and the subsequent edition at 7*s.* 6*d.* "Daniel Deronda" is published in New York in two volumes at 10*s.* 9*d*; in one volume in New York at 5*s.* 4½*d.*; the same book published in eight parts in England at 42*s.*; and has been subsequently published in England at 21*s.* The "Parisians," published in cloth in New York at 5*s.* 4½*d.*, and in paper at 2*s.* 8¼*d.*; published in England at 42*s.*, afterwards at 12*s.*, and also at 3*s.* 6*d.* "A Princess of Thule," published in New York in paper at 2*s.* 8¼*d.*; published in the three-volume edition in England at 31*s.* 6*d.*, and in the new edition at 6*s.* "Macaulay's Life," published in New York in two volumes at 17*s.* 11*d.*; published in England at 36*s.*; no subsequent edition. "The Prime Minister," published in New York at 5*s.* 4½*d.*, in paper at 2*s.* 8¼*d.*; and in England at 35*s.* Then I may mention in addition in connexion with this another circumstance. I sent to Paris to try and get some of the English books published on the Continent, to which I shall refer by and bye, and they have sent me at the same time a set of cheap American reprints of English books which are now for sale in Paris; and it seems to me a curious thing that the American books should come across the Atlantic and be on sale in Paris when there are very often cheap Tauchnitz editions of them also on sale, certainly better printed and more pleasant, and when also there is a copyright treaty with France which would enable the author to exclude the pirated American edition. These are the American reprints that are sent to me from Paris. (*See Appendix, Paper marked C.*) I will read you the list: "A Princess of Thule," published Harper at 75 cents; "Safely Married," published by by Harper at 50 cents; "Dead Men's Shoes," published by Harper at 75 cents; "The Three Brothers," published by Appleton at one dollar; "The Story of Valentine," published by Harper at 75 cents; "The Parisians," published by Harper at one dollar; and "Ombra," published by Harper at 75 cents.

It would be very interesting and instructive, if it were possible, to learn what in the above cases and in others American publishers give to the English authors; and how the price to the public, the remuneration to the author, and the number of copies sold compare with the same particulars in England. It must of course be remembered that however well the author of reputation may thus be paid, the American publisher would not be likely, without copyright, to give anything to an unknown English author.

With most other foreign countries we have copyright treaties, and I am told, though I have no positive evidence, that Baron Tauchnitz treats English authors with some degree of liberality.

Now these facts raise very wide and very important issues; they raise the question of what is the nature and origin of copyright, on what is it founded? and to what extent ought it to be carried? All will agree that the author's thoughts and writings are his own property as long as he keeps them to himself; and also that he should be so remunerated as to encourage him to give them to the public. But beyond this there is, as the above statement shows, endless room for dispute. An absolute monopoly of reproduction is claimed by the author and his assignee the English publisher; the analogy of land or goods is invoked, and interference with the right of reproduction has received in English a name, "Piracy," which properly belongs to the only human act which civilized mankind have by one universal law agreed to punish, wherever and by whomsoever committed, as the most odious and dangerous of crimes. On the other side it is alleged that when the author's thoughts are once given to the world they become the property of mankind; that the author has no further legal or moral right in them, and that the world has the right to get copies of them at the cheapest rate at which they can be produced. It is not for me to enter upon this controversy, exhausted as it is. But if anyone wishes to see what can be said upon the matter, I would refer him to the old law cases of Millar v. Taylor, and Donaldson and Becket in 4 Burrow's Reports, to the speeches on Mr. Serjeant Talfourd's Bill of 1841, and to Mr. Morrill's Report, and to Morgan's Law of Literature. The history of the law, as given in these books and documents, is very curious. It must be borne in mind that the monopoly of reproducing books did not take its origin in the modern notion of a private right of property. It was granted as a privilege or monopoly, on the rise of printing in the reign of Philip and Mary, to the Stationers' Company and its members. They acted as a sort of literary police, chiefly in order to prevent heretical and seditious publications; and this privilege was so continued, with more or less variation, until the expiration of the Licensing Laws in 1695. No doubt property in copyright had grown up under that system in the hands of printers and publishers, and it was a claim to such property that was partially recognised by the Act of Anne in 1710. But those who rest an absolute claim to monopoly on history ought also to be ready to submit to absolute State control. I will put in a sketch of the dates of the principal points in the history of the law of copyright (*handing in the same*). (*See Appendix, Paper marked D.*) It is, however, quite unnecessary to enter upon a discussion of these abstruse points of history and of jurisprudence. It is quite clear that the law can create and has created a property in a monopoly of this kind; and it is also quite clear that it has created and can create a limit to that monopoly. The real question is how to give to authors the amplest encouragement and reward without imposing on the public a higher price or more onerous conditions than are necessary for that purpose.

It will be said by those who uphold the principle of unrestricted monopoly that the best way of effecting this is to give the author and his publisher a complete control of the market; that their interest will lead them to offer to the public the sort of copy which the public requires, and at a price which will induce the greatest possible sale consistent with fair profits. I think it is demonstrable that this is not the case.

In the first place it is clear that the Canadian and United States public are extremely dissatisfied with the prices of English publishers, and, whilst apparently not unwilling to pay a fair remuneration to English authors, absolutely refuse to pay the prices which English copyright owners demand.

In the second place, it is clear from the list attached to Mr. Morrill's Report (*see* Parliamentary Paper 1067 of 1874, page 10) that the price of copyrighted books is much higher than that of non-copyrighted books. It would be an interesting question how far the excess is due to remuneration paid to the author and how far to a monopoly price, that is to say, a price fixed by the owner of the copyright without reference to the cost of production. This is a question only to be answered by those who know the working of the trade.

In the third place, it is not the interest of any person possessing a monopoly to sell at the lowest price which will produce him a fair profit, or, in other words, to sell at such a price as will give to the public the greatest number of copies consistent with fair profit. It is his interest to make the largest possible net profit without reference to the number of copies sold. If the owner of a monopoly can make as large a profit by selling one article at 1*s.* as he makes by selling two similar articles at 6*d.* he has no interest in selling the two rather than the one; whilst the public have a very great interest in his selling the two. The actual problem in the case of books is a complicated one, depending on the cost of production of a dearer or a cheaper form of book, on the higher or lower price charged, and on the number of copies sold; elements which no one unacquainted with the trade can put into figures without risk of making great mistakes. The following is an attempt at an

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illustration founded on figures which I believe to be correct as far as they go. I have obtained the figures, that is the cost of printing and paper, from a most trustworthy source; but I cannot tell, as I could not ask, whether there is any difference between prices paid by the publisher and prices paid by outsiders; or whether if there is such a difference the figures I give represent the one or the other. I am informed that the cost of producing 250 copies of an octavo volume, such as those of Macaulay's Life, including paper, print, and binding, would be 110*l.* 5*s.*, or about 8*s.* 9*d.* a volume. I purposely omit advertising, although I know it to be a very large item, because it is uncertain and elastic, and because I do not know how far any part of the sums paid for it returns to the publisher himself through the medium of his own publications. Supposing this number of copies, that is 250 copies, to be sold at 15*s.* or 16*s.* a volume (which is, I believe, the ordinary publishing price of an octavo volume, and the present actual selling price of Macaulay's Life) the aggregate receipts would be 200*l.*; and the profit, out of which to pay the author, advertising, and publisher's and booksellers' profits, would be 89*l.* 15*s.* Supposing, again, the number of copies to be 1,000 instead of 250, the cost of production as before would be 210*l.*, or about 4*s.* 2*d.* a volume, and a price of 6*s.* a volume would produce 300*l.*, leaving 90*l.*, or about the same sum as before, to pay the author, advertising, and publisher's and booksellers' profits. In this case therefore the owner of the copyright has the same pecuniary interest in selling 250 copies at 16*s.* as he has in selling 1,000 at 6*s.*, whilst the public are nearly three times as well off with a price of 6*s.* as they are with a price of 16*s.* Some deduction may be made from this on the ground that the author, if he first publishes a dear edition, has afterwards a cheap edition to sell; whilst if he publishes a cheap edition first he may spoil the sale of a dear edition. But this is a very doubtful point, as I will show later in my evidence.

3929. (*Mr. Daldy.*) May I interrupt you to ask whether you include the price of setting up the type in these estimates?—Yes, I do.

3930. (*Mr. Trollope.*) It includes printing, paper, and binding?—Yes. In the list from Messrs. Appleton of New York which I have put in I see that they, where there is no monopoly, publish a cheap and a dear edition at the same time. The cost of producing 500 copies of a number of "Daniel Deronda," including paper, print, and binding would, I am told, be 27*l.* 10*s.*, or about 1*s.* 1*d.* a number. Supposing this number of copies to be sold at the actual price, namely, 5*s.* a number, the aggregate receipts would be 125*l.*, and the profit out of which to pay the author, advertising, and publisher's and booksellers' profits, would be 97*l.* 10*s.* Supposing, again, the number of copies to be 1,000 instead of 500, the cost of production would be 37*l.* 10*s.*, or about 9*d.* a copy, and a price of 2*s.* 9*d.* a number would produce 137*l.*, leaving 99*l.* 10*s.*, or rather more than before, to pay the author, advertising, and publisher's and booksellers' profits. Supposing again the number of copies to be 3,000, the cost of production, including paper, print, and binding, would, I am told, be 75*l.* 10*s.*, or about 6*d.* a copy; and a price of 1*s.* 2*d.* a copy will produce 175*l.*, leaving 99*l.* 10*s.*, as before, to pay the author, advertising, and publisher's and booksellers' profits. So if 12,000 copies were sold at 8*d.* a copy, the cost of production being 6*d.* a copy, the balance to pay for author's, publisher's, and bookseliers' profits would still be 100*l.* The author, publisher, and bookseller would therefore get as much by selling 500 copies at 5*s.* a copy as by selling 3,000 copies at 1*s.* 2*d.*, or 12,000 at 8*d.* I am told (but this is a mere estimate) that the actual number of "Daniel Deronda" sold in this country is likely to be 20,000. But I see from a preface of Mr. Tinsley's to a novel called "The Mistress of Langdale Hall," (a preface which is well worth reading,) that of a late novel of Mr. Charles Reade, 370,000 copies have been sold in the United States. The author and publisher have, therefore, under the present system no motive whatever for selling at such a price as will unite cheapness to the public with profit to the author; indeed, their interests or their habits may lead in a contrary direction, and the loss which the public sustain by the high price of the book is, or may be, out of all proportion to the profit which that high price brings to the author.

In the fourth place, this is not all. The above figures do not take into account the additional sale, and the diminution of price which might accrue from making the character of the book, in point of type and paper, of the earlier editions, less expensive than they are now.

To try and test the practical results of this system by two or three books, take some examples of recent books from the list furnished to me by Mr. Appleton, of New York, which I have already put in; from a list furnished to me through the Colonial Office, and by Sir John Rose, of books sold in Canada; and from the prices which have been given to me of these same books by a retail London bookseller. Take first, "Daniel Deronda;" the price in England of the first edition was 42*s.*, of a subsequent edition 21*s.*; the price in the United States, published by Appleton in two volumes, was 11*s.* 6*d.*, one volume in paper 5*s.* 9*d.*; the price in Canada of the English edition, as given to me, is 52*s.* 6*d.*; the price of the edition published in Canada, and published, be it remembered, as a copyright edition with the consent of the author, under the recent Act, is 6*s.* 3*d.*; the price of the same book, published by Baron Tauchnitz in four volumes in paper, and published with extremely nice print and paper, which also must be copyright, since we have a copyright treaty with Germany, is 6*s.* 8*d.* for the four volumes. Then we come to the "Prime Minister;" the publishing price in England at present my retail bookseller gave me as 35*s*; the publishing price in the United States, published by Appleton, 5*s.* 9*d.*. in paper 2*s.* 11*d.*; the price in Canada of the English edition is 40*s.*; the Canadian copyright edition, 4*s.* 2*d.* Then we come to "Macaulay's Life;" the actual selling price in England is 30*s.* or 32*s.*, the publishing price 36*s.*; the price in the United States 19*s.* 2*d.*, and the price of the Tauchnitz edition (which must be a copyright edition), in four paper volumes, 6*s.* 8*d.*

I shall put in presently a list from Canada of the books republished under the Canadian Copyright Act, with the Canadian prices, and with the English prices. It will be seen, when that list is referred to, that school books are as cheap in England as they are in Canada. The reasons (at least what I believe to be the reasons,) are interesting, namely, that there is necessarily an immense demand for school books; that the price must be low, or they would not be bought; and, above all, that a school book is a thing in which there cannot, in the nature of things, be a permanent monopoly. If one school book is dear or bad, a cheap or good one will soon be written. It can be produced to demand. Consequently, the equality of price in these books in the two countries goes far to prove my position, that it is monopoly and not fair profit to the author which is the cause of the higher price of other English literature. Another curious fact (if it is a fact) connected with this question of price is the addition made to the price of foreign books when translated and adapted for the English market. I am told that there are many foreign books, with excellent illustrations, which are translated and republished in this country. The original plates are actually used, translation is cheap, and one would think that under these circumstances the English copy ought to be at least as cheap as the German or French copy. But I am told that the English copies of these books are published at a price 25 per cent. higher than French and German copies. I speak only from what I am told, and I should be glad to know whether this is the fact, as I believe it is, and if it is, to know what the reason is.

Now I know that there are many answers which can be made to these arguments. We shall be told,

in the first place, that publishers know their own business, that they are the best judges of the public taste and of their own profits, and that if the public desired less costly editions the publishers would soon answer the demand. And we are also told as a matter of fact that if a cheap edition is required it will sooner or later appear. In this last statement I admit there is a great deal of truth. The later editions of English books are much less dear than the first editions, though still generally much dearer than the foreign editions. Well, now, as regards the fact that the publishers will meet the public taste, I think I have already shown that under a system of monopoly it is not true that it is the interest of the seller to follow the market; it may not be to the interest of the publisher to sell numerous copies, however much in demand. And when we remember that books used not long since to be first published in the handsome, but impracticable form of quarto, and when we remember also that within a very few years the absurd and objectionable practice prevailed of compelling the retail booksellers not to sell under a certain fixed percentage of profit to themselves, we may doubt whether the bookselling trade is quite as open to the invigorating atmosphere of ordinary free trade as this argument supposes; one hears on all hands that it is in a most artificial condition, whether as between author and publisher, or publisher and the public.

Then another thing that we are told is that the English public are not naturally readers like the Americans. Now, I should be very glad to know if this is really the case. Some important facts, such as the excellence and quantity of our periodical literature, seem to point the other way. But, supposing it to be the case, is it not as likely to be effect as cause? And, if true, would it not show the additional importance of making good books as cheap in this country as possible?

And then another thing that we are told is that our circulating libraries are the cause of our dear editions. But I should like to know whether it may not rather be that the dear editions have been the cause of our circulating libraries. I can remember myself how when I was young the difficulty of buying new books used to be met by local book clubs. Those have now given way to the much more convenient arrangements made by Messrs. Mudie and Cawthorne and others; but I used to fancy that the reason for those book clubs, as for the circulating libraries, was that the books when first published were too dear for people to buy.

Then another thing we are told is that there is a great demand in England for *éditions de luxe;* that a certain number of people require them for their libraries, and that these fine editions would not be published if they had not the command of the market given by a first edition. But it seems to me that it is an answer to this argument, that if there is really this demand it will make itself felt, even though there is a pre-existing cheap edition. Messrs. Appleton, as I have shown, in New York publish a comparatively dear and a cheap edition at the same time, they having no monopoly. I observe with respect to good books that have been a long time in the market, there are both cheap editions and dear editions selling at the same time. There are three complete editions of Carlyle now selling, all of them good editions, but two of them very much more expensive than the other; they all sell at once. And if a book is not good enough to create such a demand, why should there be an *édition de luxe* at all? Indeed, there seem to me to be strong arguments the other way. If I want a really good edition for a library I want above all things an edition free from errors. Now this a first edition seldom is. So that I buy the edition which is to be the permanent ornament and furniture of my library full of errors, from which the subsequent cheaper editions are free. Even Macaulay corrected passages in his History. Take the case of Jowett's "Plato," published at a cost of 3*l.* 3*s.*, in four octavo volumes. The author has, since the first edition was published, almost re-written the book, and those who have bought the first edition must either remain content with an imperfect book or buy a second expensive edition, 5 vols. at 3*l.* 6*s.* Now there is another case of an opposite kind which has been brought specially to my notice, namely, Green's History. That fortunately was published in a cheap form at 8*s.* 6*d.* as a school book. It has had an enormous sale; it is a book of very real value, but there have been a great number of small errors found in it. These errors will no doubt be corrected before the proposed library edition is published. And I am told that in spite of the great sale of the cheap edition the number of orders for the dear forthcoming edition are greater than have ever been given for any book. The forthcoming edition is, I am told, to be five octavo volumes. If these are at the usual price, 16*s.* a volume, it will cost 4*l.* It is a natural result of the present English system to make a conscientious author shrink from improving his work. One author said to me, "I think I am bound to give you my new corrected "edition, as you bought my first expensive and un-"corrected edition."

These considerations make me doubt whether the publication of dear first editions (out of all proportion, it will be borne in mind, to the cost of production) is to the interest of the public. Is it to the interest of the author, and is it by his desire that it is done? It would be difficult to answer this question without knowing more than an outsider can know of the relations between author and publisher, and of the share of the profit which goes to each. But I have certainly heard more than one author express regret that his books could not be published at a price more nearly approaching the cost of production; and it is only to be expected that in a matter of this kind the publisher, as capitalist and man of business, will have a more potential voice than the author. There are one or two points in which their interests are clearly not the same. It is or may be the interest of the author to have a publisher in two markets, and thus to have some kind of competition between publishers. It is the interest of a publisher to have a complete monopoly. Again, it is the interest of the author, looking to his reputation and influence, to have the greatest possible number of copies of his book sold and read. It is the interest of the publisher simply to get the greatest amount of profit whether by few or by many copies. Further, it is the interest of the English author to publish and sell wherever he can find the best and most liberal publisher, whether in this country or in the colonies, or in a foreign country. It is the interest of the English publisher to confine publication to England. But of this I shall say more later on; I only mention it here for the purpose of showing that there are considerations which make one doubt whether the author and publisher are entirely in the same interest.

To return to the Americans. For all the above reasons I think it is clear not only that they will, as a matter of fact, never grant a monopoly to English publishers, but that there are really good and sound reasons why they should not do so, and good reasons for doubting whether the plan of monopoly has worked satisfactorily for the English public. And if we look to history we find that by the Act of 8 Anne c. 19., which created present copyright, it was not intended to confer an unrestricted monopoly on publishers. That Act contained a clause by which any one of a large number of high officials was enabled to reduce prices which might seem to them unreasonable. The clause is obviously unworkable and has been repealed, but it no less shows the then intention of Parliament. It was no accident that this clause was introduced. It was inserted in the bill as it passed the House of Commons; the House of Lords struck it out, but the Commons insisted on its insertion, and the Lords gave way.

I particularly wish not to be mistaken in what I have said. I do not think authors receive too large a remuneration. I do not think that we as individuals pay more to good authors than they

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deserve from us; indeed, not nearly so much as they deserve. The value of what we get from them in ideas is incommensurable in money. Nor do I mean to suggest that authors are to work for fame solely, and not for pay; but in proportion to the value I set on what the author gives us, in that proportion do I desire that the arrangements made for remunerating him shall be such as to give to his works and ideas as wide a circulation and as great an influence as possible consistently with remunerating him, and I believe that our present system does not do this.

What is true of the United States is true also of Canada. Canada will never admit the monopoly of the English publisher, and is quite right, in my opinion, in refusing to do so. What is true of Canada is or will be true of all other British colonies; they will not hear of the exclusion of American reprints, as we see by the Blue Books, even in the case of small colonies. Their book trade has as yet been small, and the question has not assumed great importance; but we may assume that they will never submit to be compelled by any Imperial monopoly to buy books made artificially dear for the English market when those books can be produced at a much cheaper rate after paying a fair profit to all parties concerned. Whatever, then, be the future of this question, I am satisfied that the English author must not look for remuneration either in America or the colonies by means of a simple extension of his monopoly or that of his publisher to those countries. These markets are rapidly becoming more and more important, more important even than the home markets. I have already mentioned one fact which struck me, that of a novel of Mr. Charles Reade's not less than 370,000 copies were sold in the United States alone. I have endeavoured to get something that would show what the book trade with our colonies is, but I am sorry to say that I can find nothing throwing any real light on the subject. I will put in a return of the quantities and value of printed books exported from the United Kingdom to various countries in each of the years 1870 to 1876, inclusive; it gives the books in hundredweights and the declared values (*handing in the return. See Appendix, paper marked E*), and the most important fact that I see in that there is a large and increasing export to Australia; but I have been unable to ascertain what is the nature of the book trade in Australia; whether they buy and read our expensive English editions, or whether they get cheap American reprints, or whether they reprint for themselves. That would be a very interesting subject of inquiry, and it would be also a very interesting subject of inquiry what is the nature of the book trade in India and China.

Then comes the question, how can this colonial case be dealt with? One simple plan would be to treat copyright as a matter for colonial legislation, and give up all endeavour to apply Imperial copyright in the colonies. This would be following the analogy of patents, and I know no reason, if the matter were *res integra*, why Imperial copyright law should extend to the colonies rather than Imperial patent law. The colonies would then be in the same position as a foreign country, but with the great difference that, being English-speaking people, they would read English books, and might do as the United States have done, namely, publish cheap editions of English books without paying the author for them, or at any rate without any obligation so to pay him. If it be possible by Imperial legislation to preserve for the English author some benefit from colonial publication and sale, and to remove the bitter feeling amongst our authors which American piracies have created, it is no doubt desirable to do so. Still more is it desirable to do this, if it is possible, by extending the field of the author's remuneration, to make books cheaper in this country. Therefore one would not willingly abandon all attempts to maintain Imperial legislation, though it must be admitted that it is a very difficult proceeding, and is likely to involve cumbrous expedients, such as the recent Canadian Act. One thing I would say, that if we are obliged to follow the analogy of patent law, I trust we shall follow it altogether, and not exclude from our own market articles which the monopolist produces at a profit to himself for other markets. I shall have to say more on that question further on.

The following is a concise statement of the attempts hitherto made to apply Imperial legislation in the colonies, and of the results:—First, the attempt to extend to them pure unrestricted English monopoly made by the Act of 1842 has failed, no doubt will fail, and in my judgment ought to fail. Secondly, the plan of a duty on foreign reprints has failed. Thirdly, the plan of allowing republication in the colony with a royalty to the English copyright owners has been rejected by English copyright owners, and is at present in suspense pending the trial of the Canada Copyright Act; but if the present Canada Copyright Act fails, as is not improbable, it will be for the consideration of English copyright owners whether it may not be wise to return to the plan of republication with a royalty. Fourthly, the plan at present under trial is that contained in the Canada Copyright Act 1875 confirmed by the Imperial Act of the same year. It enables, by section 4, any person who is "domiciled" in any part of the British possessions, or any person being a citizen of a country having a copyright treaty with the United Kingdom, to obtain copyright for works printed and published or reprinted or republished in Canada. The copyright is to last for 28 years, with power to the author or his widow, child, or children to renew for 14 years. By section 15, works of which copyright has been granted and is subsisting in the United Kingdom can, upon being printed and published or reprinted and republished in Canada, obtain copyright under the Act. There is a curious difference between the case of new books and the case of old books; the two sections differ: apparently an old work must be reprinted in Canada, but a new one need not be. By section 22, if a work copyrighted in Canada is out of print, the minister may grant a license to print on payment of a royalty. I do not think it can be denied that this is a cumbrous expedient. You will have two copyrights running alongside one another, derived from different laws and differing in their conditions; a state of things which must create complexity if not conflict. For instance copyright under the Canadian Act expires at the end of 42 years; then if the author be still living the colonial copyright will expire, but copyright under the Imperial Act will still continue in the Colony for 7 years longer. But the interesting point will be to ascertain whether anything of importance is effected by this Act. If the Canadian publisher can undersell the New York publisher it may have a considerable effect. Canadian reprints may not only supply the Canadian market, but will be imported into the United States, and may possibly either bring the American publishers to terms or may drive them into cheaper editions, out of the profits of which they may not be able to pay what they now pay to the English author, and in that case the English author will have to elect between the Canadian and the United States publisher. But I much doubt the probability of this. The Canadian publisher will probably be at a considerable disadvantage as compared with the New York publisher in command of the market, and his books, unless smuggled, will have to pay 25 per cent. duty. Under these circumstances it seems likely that the United States publisher will still, even without copyright, be able to give better terms to the English author than the Canadian publisher, to outsell the Canadian in the American market, and even to get his editions smuggled into Canada; for if he can undersell the Canadian publisher, who, it must be remembered, will be burdened with copyright, it is not to be expected that Canadian readers will remain content with the dearer books even though published in Canada. On the other hand I think it is curious to observe that in that book of Morgan's to which I have referred he states