that the American publisher is at 170 per cent. disadvantage as compared with the English publisher in point of expense for labour. In these lists which I put in, I see the price of "Daniel Deronda" published in New York in two volumes is 10*s.* 9*d.*, in one volume in paper 5*s.* 4½*d.*; the price of the book as republished in Canada with copyright is 6*s.* 2*d.* The price of the "Prime Minister" in New York is 5*s.* 4½*d.* and 2*s.* 8*d.*, and the price in Canada 4*s.* 1¼*d.* These are the only two I could find which are reported in my lists as having been published in both places. The time which has elapsed since the passing of this Canada Act is short. But we have obtained through the Colonial Office a return concerning the effect of that Act, and I have also obtained through the kindness of Sir John Rose a letter from the Canadian Minister, stating his view of the operation of that Act, and I think it would be interesting if I were to read it. I will put in this correspondence. (*See Appendix, paper marked F.*) This is a letter of the 6th of October 1876, from the Minister of Public Works in Canada to Sir John Rose, on the working of the Canadian Copyright Act, 1875:—"My dear Sir John,—I duly "received your telegrams of September 23rd, informing me that the Copyright Commission were desirous "of being informed of the practical operation of the "last Canadian Act. Before your telegram arrived a "suit instituted by an English author against a Canadian publisher had called the attention to the matter "of the public as well as ourselves. I requested Dr. "Taché to write a memorandum on the subject, and "to cause a copy to be made of the various tables of "statistics. These I enclose herewith. They will "inform you, as far as we can do so at present, of the "precise results consequent upon the operation of the "Act, as contrasted with previous years. You will "also find herewith the 'Toronto Globe's' report of "the case before Vice-Chancellor Proudfoot, and also "a copy of the judgment. I likewise send you copy "of the 15th section of the Bill as introduced here" (that was the section which enabled the Canadian publisher to republish in Canada without the consent of the English author). "This clause was changed "in the Senate to meet the views of English authors "and publishers, and the comments which have appeared in some of the newspapers have evidently "been predicted upon the Bill, as originally drawn, "and as it passed the House of Commons. The Act "has been of really little practical effect, but such as "it is it is wholly in favour of English publishers. "The Act only came into operation on the 11th of "December last, and therefore we have not a whole "year to compare with the year previous." Then there is a memorandum enclosed by Dr. Taché, which I will put in with the rest of the papers, but I think I need scarcely read, because we have it again in a reply which we received to an official letter through the Colonial Office. We sent to Canada a number of questions, and we received through the Colonial Office a memorandum from the Department of Agriculture, dated 9th of November 1876. I will put in all these papers. (*See Appendix, paper marked G.*) I need not read the questions, but I will read the answers to them. These answers are as follows: "Thirty-one works of British authors have been "published in Canada under the Act to this date, "a list of which is hereunto appended. As it is "no condition that the fact of being English productions should be stated in the application, it is "only presumed that these works have been published "in Great Britain. To ascertain the fact beyond "doubt would require to compare the list with the "book of registry in London. Most of these books "have been also published in the United States; a "reference to the fifth column of the annexed list "will indicate those that have (which are marked by "'the price,' or the words 'Not sold') and those that "have not (marked 'None'), as far as the Department of Agriculture has been able to ascertain. "The cost prices of the publication of the said books "and the wholesale prices, which vary, cannot be "ascertained, but the third and fourth and fifth "columns of the appended list show the retail prices "at which the English, Canadian, and American "editions are sold in Canada, so far as the Department has been able to ascertain from booksellers. "The copies of American reprints of books copyrighted in Canada on which the prices have been "ascertained were isolatedly introduced for special "objects. As a rule, very few of the costly English "editions are sold in Canada. So far as it can be "ascertained the United States reprints of English "books, copyrighted in Canada, are as a rule successfully kept out" (that is important). "There has "been so far ten interim copyrights entered under "the 10th section of the Act, of which only one has "not yet been followed by publication. There has "been no complaint lodged under the 22nd section of "the Act." Amongst the papers I now put in is a list sent from Canada, a "list of copyrighted Canadian "reprints of books previously copyrighted in the United "Kingdom, with the prices in Canada of the English, "Canadian, and United States editions respectively;" and I have had them turned into English money, at the rate of 4*s.* 1¼*d.* a dollar, which I am informed is the rate at which the Canadian dollar is taken. The majority of these books are, as I mentioned before, books of education, and with respect to them the prices, the print, the paper, and everything are the same in Canada as they are in England. With regard to the other books, I will read the prices of the Canadian editions, and the prices of the English editions, and I have here, I believe, all or nearly all, of the books in both editions, so that the Commissioners may examine, and see what the difference is in the type and in the character of the book. First of all, here is a book called "The Devil's Chain," by Edward Jenkins, published by Dawson Brothers, Montreal; the price of the English edition (I am giving these prices as they are given me from Canada, not the prices in the English market) in Canada is 6*s.* 1¾*d.*; the price of the Canadian edition is 2*s.* 0½*d.* There are the two (*producing them*). Then I will take "Pausanias the Spartan," published by Belford Brothers; the price of the English edition is 13*s.* 4*d.*; the price of the Canadian edition 3*s.* 0¾*d.*; there are the two (*producing them*), and I think you will see that in that book the Canadian edition is quite as good an edition as anybody could wish to have. Then I take the "Memoir of Norman Macleod;" the price of the English edition is 32*s.*; the price of the Canadian edition 10*s.* 3*d.* I have not got that book. "The Prime Minister," published by Belford Brothers; the price of the English edition sold in Canada is 25*s.* 10¼*d.*; the price of the Canadian edition 4*s.* 1¼*d.* I have not got that. Then "Reid's Dictionary of the English Language;" the price of the English edition is 6*s.* 1¾*d.*; the price of the Canadian edition 4*s.* 1¼*d.* There are the two books (*producing them*). Then I take "The Two Destinies," by Wilkie Collins; the price of the English edition is 25*s.* 10¼*d.*; the price of the Canadian edition 3*s.* 0¾*d.* "Daniel Deronda;" the price in Canada of the English edition is 51*s.* 8½*d.*; the price of the Canadian edition is 6*s.* 1¾*d.*

The principal points to be noticed in these papers are, first, that United States reprints of English books, copyrighted in Canada, seem to have been hitherto kept out of Canada. Though it gives the prices of United States reprints the Canadian memorandum says that those are only exceptional cases of books imported for a particular purpose. Secondly, that the Act fails to give satisfaction in Canada because it does not enable a Canadian publisher without the leave of the English copyright owner to republish in Canada. I think that there has been a very considerable misunderstanding about it in Canada; people thought that they were going to get by that Act a power of republishing without the consent of the English copyright owner, and it is perfectly clear that the Act does not give them any such right, and it has been so decided. The third point, which is extremely important for

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our purpose, is that the prices of the Canadian editions are far less than the prices of the English editions, —not only than the prices of the English editions in Canada, but far less than the prices of the English editions in this country. I am not now speaking of the price of the English editions in Canada, but of the price of the English editions of the same books at the same time in the English market, which will be somewhat less than the price of those editions in Canada. I wish to call again attention to the fact that in that list the prices of the school books are precisely the same in the Canadian books as in the English books; in one case indeed the price of the Canadian edition is higher than that of the English one. The point which we must remember, and which it is very important to remember in looking through this list, is that these prices are fixed in Canada with the consent of the English copyright owners, who must therefore expect to make some profit on them. And another point which I would ask the Commissioners to attend to is the character of the books, which I now produce to them, and see whether there is any such difference in the character of the books as to account for the difference of price, and whether, where there is such a difference, the character of the Canadian book is not quite satisfactory.

These considerations lead me to a further point, and a very important one. Supposing this experiment were to succeed so far as Canadians are concerned, there is, as it seems to me, one fatal blot in the Imperial Act by which it was sanctioned. This blot is contained in the 4th section of that Act, which forbids the importation into the United Kingdom of any author's Canadian edition of a book of which there is copyright in the United Kingdom, without the consent of the owner of the copyright. This clause was, I believe, inserted at the instance of English copyright owners, who would otherwise have opposed the Bill, and whose opposition at the late period of the session at which the Bill was introduced would probably have been fatal. This clause was objected to in the strongest terms by the Board of Trade, and I will put in their correspondence with the Colonial Office on the subject. (*See Appendix, paper marked H.*) This clause gives up that interest which for us here is the most important interest of all, namely, the interest of the readers of the United Kingdom. It sacrifices that interest in the special interests of the Canadian publisher and the English copyright owner. It affirms and extends the principle of monopoly in its most objectionable form. It says to the English copyright owner, "You shall have the sole right of supplying the Canadian market at a price which to suit that market must be moderate, but which, *ex hypothesi*, will give you a fair profit; and you shall at the same time have the power of limiting the supply and charging a far higher price in the English market." Copyright is often put on the same ground as patent-right. What would be said of an Imperial law under which a patentee should be authorised to sell (say) a steam-engine to Canadians and others at 50*l.* as a remunerative price, and to enjoy a monopoly of selling the same articles to residents in the United Kingdom at 100*l.* Yet this is just what is done by the Act in question. It is a step the more fatal because it is difficult to retrace. The same interest which prevailed to get it passed will be powerful to prevent its repeal. Further, it is an example sure to be followed. We cannot deny to any other colony the privilege which has been granted to Canada, and when it is granted to other colonies it will probably be on the same conditions. If we make a treaty with the Americans on any footing which they are likely to accept, this Act will be a precedent for excluding from the English market the cheap editions which the Americans are sure to insist upon. As it is, we do not pretend to exclude the Canadian cheap editions from the other colonies. The end will be that the residents in the United Kingdom will be the only English-speaking people in the world who remain at the mercy of English publishers, and they will be condemned through the medium of an Imperial Statute to pay a needlessly high price for the works of their own authors, or in other words to forego the advantages of a cheap literature, in order that their offspring all over the world may have better opportunities of reading and of education than themselves. This is indeed something more than justice to the colonies. A great opportunity will have been lost if this legislation stands. The condition of things in America demands cheap literature, and makes it to the interest of authors to sell books cheap there. If this state of things had been allowed to react in a natural way on the United Kingdom, if Parliament had said to the English author, "We will do our best to give you the benefit of the "Colonial market, but in so doing you shall treat the "English reader as well as you treat the Colonial "reader," the worst features of the monopoly might have been got rid of. But to please copyright owners the contrary has been done; and I fear that the English public will suffer indefinitely.

There is no doubt that a precedent for this legislation may be found in the law concerning International Copyright, but I believe that this has been rather an accident than a deliberate purpose of the Legislature. The Act of Anne, and finally the Act 5 & 6 Vict. c. 45. sec. 17, prohibited the importation by any person except or with the consent of the English copyright owner of English copyrighted books reprinted in foreign countries. This of course was right and consistent so long as those books were, as in the absence of treaties they would be, unauthorised by the English author or publisher. Subsequent treaties made under the International Copyright Acts have since given the English author in the case of certain foreign countries a right to copyright in those countries. He can in consequence obtain copyright for his books, say in France or Germany, and can, at the same time, refuse to the English public the right to buy his books so copyrighted and published in those countries. It is curious to see how this prohibition has grown. In 5 & 6 Vict. c. 45, it extends to importation for purposes of sale. But in the Customs Consolidation Acts, the last of which was passed last year, all importation whatever is prohibited, and any traveller is liable to have his portmanteau searched for Tauchnitz editions. It is curious to read the words of the section in the Customs Act, 39 & 40 Vict. cap. 36 s. 42. The most valuable productions of the human mind, even though produced with the sanction of their author, are proscribed and kept from the English public with the same stringency and in the same clause and terms as false coin, obscene books, and the rinderpest.

3931. The author can allow them to come in if he pleases?—The author can, but he can keep them out, and of course the arrangement made with the English publisher is that he shall keep them out. I have here some of these books procured through the Foreign Office (*producing them*); I could not get them any other way. It is not yet penal to have them; I believe it soon will be. I will read and put in the list of them, and of the prices in the two countries. (*See Appendix, paper marked I.*) I have here the books, and I have got Messrs. Cawthorn to let me have the English editions of the same books, in order that the Commissioners may compare and see what the German publisher can produce, and at what price he can produce them; and what the English publisher can produce, and the price at which he produces them. These are books which I asked the Foreign Office to get me at random. I did not name any, but I simply asked for some recent books. These are the books, with their prices:—"Coming through the Rye," published by Asher, of Berlin. The price in English money of the German edition is 5*s.*; the price of the English edition, 31*s.* 6*d.* "Middlemarch;" the price of the German edition, published by Asher, of Berlin, is 13*s.* 4*d.*; the price of the first English edition, 42*s.*; of the second, 21*s.*, and of the last edition, 7*s.* 6*d.* Bulwer's "Parisians;" the price of the German edition is

6*s.* 8*d.*; the price of the first English edition, 42*s.*; of the second edition, 12*s.*; of the third, a very cheap edition, 3*s.* 6*d.*

3932. (*Sir D. Wolff.*) Do you know at all at what intervals the editions were published diminishing in price?—No, I could not tell you that, but some of them have come down very quickly. "Deronda" has already come down from its original 42*s.* to 21*s.* In the case of "Daniel Deronda" the price of the German edition is 6*s.* 8*d.*; the price of the first English edition, 42*s.*, and the subsequent one 21*s.* "Three Feathers;" the price of the German edition is 3*s.* 4*d.*; of the first English edition, 31*s.* 6*d.*, and the second English edition, 6*s.* "Fated to be Free;" the German edition is 3*s.* 4*d.*; the first English edition, 31*s.* 6*d.*, and the second English edition, 6*s.* "The Hand of Ethelberta;" the German edition is 3*s.* 4*d.*; the first English edition, 21*s.*; no subsequent English edition. "Lord Macaulay's Life;" I should like particularly to call attention to "Lord Macaulay's Life." There it is upon the table (*pointing to it*), and I should like the Commissioners to look at the print. I confess, for my own part, I would rather have the German edition than the English edition; the price of the German edition is 6*s.* 8*d.*, and of the English 36*s.*, sold at a very small reduction, at 32*s.* or 30*s.* I believe.

3933. (*Chairman.*) The binding is better in one case than in the other?—Yes, certainly; but if I wanted to read the book myself I should prefer the German edition to the large English edition. I could hold it in my hand and sit over the fire and read it more pleasantly than I could the large octavo edition. I think it does not require any very particularly good eyes to read that (*handing the German edition of "Lord Macaulay's Life" to the Chairman*), and my eyes are no longer very young; and at any rate I think the young eyes ought to have the benefit of a lower price if they like. This seems to me wrong in principle. I know no reason why the English who are rich enough to travel abroad should be able to buy the Tauchnitz editions whilst those who are obliged to stay at home cannot do so. Consider the case of patents which are only for 14 years. No English patentee can, I believe, charge a higher price in England than he does abroad. If he did, the cheaper foreign article would come into this market. No legislation exists enabling him to exclude it; and I think the patentee would be very much laughed at if he asked for such legislation. It seems to me perfectly fair and right to say to an author, "We will do our best to secure you "the command of the market here and elsewhere, but "you shall treat our public here as well as you treat "any other public elsewhere." Indeed, I do not believe it to be so much an author's question as a publisher's. It is clearly to the interests of the English publisher that foreign editions should be kept out of the English market. But if the author gets a profit upon foreign editions as well as upon English editions it does not follow that he has any such interest. This has been looked at and legislated on too much from an English publisher's point of view. I would therefore at once repeal the fourth section of the Act of 1875 and make it an absolute rule that any edition published with the consent of the author in any part of the world shall have free access to the market of this country.

Another thing which all persons seem to admit should be done is to repeal the decision in Routledge *v.* Low, and to make publication in a colony under the Imperial Act equivalent to publication in the United Kingdom. A Bill for this purpose has been prepared and will be found in the published papers. This raises, however, larger and very interesting points. Is it desirable, as a condition of English copyright, that first or any publication should take place in this country? I have already said that I thought there was no reason why a play first represented in America should not obtain copyright or stage-right in this country. And for the same reason I see no reason why previous publication of a book abroad should prevent copyright here as it does now under 7 Vict. c. 12. sec. 19. But is there any reason why English copyright should be withheld from books which are not published at all in this country? The decision in Low *v.* Routledge was founded upon the principle that it was the intention of the Imperial Act to encourage publication in the United Kingdom, not, it is to be observed, in the interest of the publisher or copyright owner, but in that of the public. But have the public any such interest? The interest of the English public is to get the best and cheapest books wherever they may be produced or published, and if books can be printed and published more cheaply or better in a foreign country than in this, it is better for the English reader that they should be produced there and imported into this country for sale. Nor has the author any interest in confining publication to England. It is his interest to employ the publisher or publishers who can print best and most cheaply and can procure the largest market. The fact is that confining publication to England is protection to the English publisher and printer, and not for the benefit of the English author or public. Should not this restriction be done away with, and should not we permit an author to obtain by British registration copyright for any book wherever published? In the case of countries with which we have copyright treaties, the author can, I imagine, do so at present if their law will permit him to publish and obtain copyright there; but even then it would be a roundabout process. In America he certainly cannot. Why should he not be allowed to do so? It might, no doubt, if an author were to publish exclusively with an American publisher, give the American publisher the command of our market. As things now stand in America this would probably not do harm to the English public; but since the English printed book is burdened with a heavy duty in the American market, 25 per cent., whilst the American printed book is subject to no duty in this country, the English publisher would *pro tanto* be at a disadvantage in competing with the American publisher. This disadvantage, however, is probably far more than counterbalanced by the difference between the price of labour in this country and in the United States. This difference is stated, as I have already mentioned, by Mr. Morgan in his "Law of Literature" (Vol. II., page 84) to be not less than 175 per cent. If this is true our publishers need not fear competition for the home or any other market. On the whole I can see no reason why we should continue to make either manufacture or publication in this country a condition of English copyright.

The case of Routledge and Low raises another important point. A foreigner resident in the British dominions can clearly get English copyright, and Lord Cairns and Lord Westbury thought that residence in the British dominions was not necessary. Other law lords, Lord Cranworth and Lord Chelmsford, doubted, or thought it was. In France it seems nationality is not a necessary condition. In the United States an author must be a citizen of the United States, or resident therein. In Canada he must, in order to be entitled to coppright, be domiciled in Canada or in some part of the British possessions, or a citizen of a country having a treaty with the United Kingdom (*see* Canadian Act of 1875, sect. 4). The result of this is that whilst an English author cannot get copyright in the United States, or at any rate cannot do so under their Copyright Act, an American author, certainly if resident, and probably if not resident in the British dominions, can get copyright here. Ought this to be so? I put aside the notion of retaliation, and also the notion that by excluding the American author from copyright here we shall bring his influence to bear in favour of a copyright treaty. This influence is apparently small as compared with that of publishers, printers, and readers in the United States, and we have it, such as it is, already on our side. The present state of things is favourable to English publishers. An American author, by publishing simultaneously here and in America, can get a monopoly of both markets, and his English publisher benefits accordingly; but

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from the point of view of the English public, I am disposed to think that we ought to adopt the same conditions as the United States and Canada. If we must have the early editions of Macaulay and George Elliot dear, let us have the early editions of Motley, Bancroft, and Hawthorne cheap. I would therefore suggest that English copyright be confined to authors domiciled in some part of the British Empire, or being citizens of a country having a copyright treaty with the United Kingdom.

Some of the above suggestions may appear new and strange, but I have been led to them by observing what a complete system of protection has been created in favour of the English publisher by our present law. Consider what the Legislature has done for him. He has, first, a law requiring first publication in this country as a condition of English copyright; secondly, a law preventing publication elsewhere, even in the British colonies, from giving English or Imperial copyright; thirdly, a law enabling a foreign author publishing first or simultaneously in this country to obtain English copyright; fourthly, a law prohibiting the importation into this country of English books published in foreign countries, even though the English author has copyright in them; fifthly, a law prohibiting the importation into this country of English books copyrighted by English authors in Canada. These, it will be observed, are all in favour of the English publisher. How far they are needed for the protection of the English author may well be doubted. That they are injurious to the English reader there can be no doubt.

In dealing with the case of Canada I have been led to deal with that of other colonies and of the United States. As regards the special case of the United States it seems hopeless at present to attempt any further negotiation. In addition to the real and well-founded objections of the American public and the American publishers to any extension to America of the English publisher's monopoly, there are at present ill-founded objections arising out of the interests of American printers, paper-makers, &c. So long as the Americans remain subject to the delusions of protection these difficulties will remain. If, as we may hope, they should discover that the interests of their own authors and of their own readers are the things to be considered, we may trust that this difficulty will disappear, and it will then be for consideration how to reconcile the interest of the English author with the interest of the American reader. In any case we may be quite sure that that they will not allow the English publisher to have control of the American market; and we, I trust, shall on our side, in making terms for the English author in America, not forget the reading public in England. I have discussed these question of Colonial and American copyright together, and at length, because they are inseparable, and because they raise large questions of principle, which pervade every branch of the subject.

I have only one point more to refer to, and that is, a suggestion which has been made before this Commission, and elsewhere, namely, to substitute for the present plan of monopoly a system of a right of republication, with a royalty to the copyright owner; and I have without discussing it adverted to it in speaking of the Canada case, because it has been actually suggested in Canada. It has also been suggested in the United States. Looking at it as a general question, I would say that it may be doubted whether it might not have been better to have had in place of a system of monopoly a system of royalty, that is to say, a system by which a second publisher should be enabled to publish a copyrighted work on paying a certain percentage to the original publisher or author. It is, however, at the present moment in this country, scarcely a practical question. The plan of a royalty to the author might possibly have avoided many of the difficulties which now beset this question, and might have given to the author a larger market, and to the public cheaper literature. It will be remembered that the charter of copyright, the Act of Anne, never contemplated unrestricted monopoly. But the present practice of mankind is different, and whatever advantages a system of royalty might have, it would require new machinery of an elaborate kind, and it would disturb existing arrangements, and be opposed by existing interests. It is, therefore, not worth while now to discuss it, nor am I prepared to meet the various difficulties of detail which would no doubt arise in considering it. To do so would require a far greater knowledge of the practice of the trade than an outsider can pretend to. But judging from the little I have been able to gather I should not think them insuperable. If it is true that American publishers, and I believe some English publishers, are in the habit of remunerating their authors by a percentage on the number of copies sold, it seems to follow, without entering into the mysteries of the trade, into publishing price, trade price, trade sale price, or price to the retail buyer, that it is not impossible to devise a scheme under which a similar royalty or percentage should be paid by the second publisher to the first. And it is to be observed in favour of such a system that its operation would probably be, not to cause numerous reproductions by different publishers, but to lead the original publisher so to fix the price as to prevent other publishers from interfering. Whilst, however, I think it needless at the present time to discuss this subject in detail, it is but fair to say that the discussion may at any moment be forced upon us. If the present Canadian Act should fail, as I am inclined to think it will, to satisfy the Canadians, English authors will probably have to take their choice between the system of royalty which the Canadians have offered, and are ready to offer them, and the loss of the Canadian market. And if the people of the United States should change their views and be ready to come into some arrangement, such an arrangement will also in all probability raise the question of royalty. For a copyright treaty with America would mean a right to any author, British or American, to publish in any part of the British dominions or of the United States, and to obtain thereby a monopoly throughout the whole of the territories of both nations. The Americans will certainly not submit to such a monopoly without some restriction; and I think and hope we should not do so either. With such a market we should not, I trust, think of placing it in the close hands of any one publisher, whether in New York or in London. The ideal of a copyright system is that it should be co-extensive with the English language, giving the author the benefit of an enormous market and the reader the benefit of a price proportionately reduced. But in order to effect this, monopoly must be in some way restricted. And I have heard of no means of doing this which sounds practicable except that of a right of republication with a royalty.

The witness withdrew.

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

Thursday, 1st February 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 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.

B. Field, Esq.

1 Feb. 1877.

BASIL FIELD, Esq., further examined.

3934. (*Chairman.*) I believe you wish to supplement in some respects the evidence you gave to the Commission the other day?—With your Lordship's permission, and to correct it on one or two small points. I was asked how the term of years, which was originally for life and 30 years in the first draft bills, became reduced to the term of life and seven years in the bill as brought into the House of Commons which became the Act of 1862. Since my last examination I have inquired into this matter, and although I cannot ascertain the exact reason of the change, it appears that at that time copyright was by many people considered a monopoly, and there was some danger it was thought in putting the Art Copyright any further than that given to literature under Talfourd's Act, which as far as the term of copyright went was only for life and for seven years: it was thought unwise to put it higher.

3935. Are you aware of the reason why the actual existing copyright term was not applied to fine art?—I explained last time that Justice Talfourd's intended to include fine arts in his bill but that there was an opposition and the proposal was withdrawn.

3936. But with respect to the Act of 1862 are you aware of the reason why the existing term of copyright in books was not made applicable to fine art productions?—As I take it, the existing term of books at that time was for life and seven years, but with an alternative. The alternative was not given with regard to fine art because it was considered that it would be most difficult to fix the date of first publication in the works of fine art; I am speaking of pictures, not of engravings or sculptures. Then, too, on the last occasion I said that I considered that a term for life and 20 years would be sufficient. Mr. Trollope a little pressed me upon that point, and I have reconsidered and had the advantage of talking the question over with several eminent artist engravers, and, with permission, I should like to withdraw that part of my evidence and to say that I consider it should be for life and 30 years.

3937. (*Mr. Trollope.*) Life and 30 years I think was the counter proposition which was being discussed when you attended here before?—It was.

3938. (*Chairman.*) Will you now pass to the next point?—As you asked me about the date of first publication I may observe that Mr. Blaine in his reasons for the Bill of 1869, which I believe the Commission have, says: "The principle of giving copyright only "for the author's life, and a term of years after his "death, instead of the alternative of giving it for a "term dating from the first publication of a work, "was for the first time in England adopted by Par- "liament in the Copyright Works of Art Act of 1862, "which gave copyright in drawings, paintings, and "photographs. It is most valuable as respects all "copyright, but especially so in that which may be "given in works of fine art, where the difficulty and "danger of fixing the exact day of first publication is "very great." Then there was one other point on which I wished to supplement my evidence. I proposed to the consideration of the Commission whether there should not be some clause in any Act that might result from its report enabling an artist to sell his *bonâ fide* sketches and studies, notwithstanding that he might have parted with the copyright in the main work. I was asked whether there was any decision or any counsel's opinion upon that subject. I find none; but I find that Lord Westbury in his Bill of 1869 took the same view of the law that I ventured to put forward last time, and that the Bill has a clause very similar to that which I proposed. It is subsection 3 of section 3. "At any time after the regis- "tration of the copyright in any work of Fine Art the "author thereof and his assigns shall be at liberty to "sell his *bonâ fide* sketches and studies for such work "without prejudice to any copyright which may be "subsisting therein at the time of such sale."

3939. (*Sir H. T. Holland.*) You would desire to have a clause of that kind inserted in any future Bill upon this question?—Yes, and I think it would be as well to put in the words, "May use in future compo- "sitions, so that he does not repeat or colourably "imitate the design of any such work," or something to that effect. Last time I gave the exact words I will not dwell on that any longer, excepting to say that in the "Jurist" of May 18th, 1861, in an article on this question, they quote from the work of Mr. Roberton Blaine, in which he says, "As the Bill "stands, assuming an artist sells all his copyright in "a picture, and makes no special contract that he "shall be at liberty to sell his sketches, his doing so "would be an act of piracy of the copyright he has "sold, and thus he would be deprived of the pecuniary "advantage of a considerable portion of his labours, "the full benefit whereof ought to be secured to him." I have not been able to find any decision; but I think what I have quoted will be sufficient to show that it is at any rate worthy of consideration.

3940. (*Chairman.*) Have you considered what effect any provision of that nature might have upon the sale of the original copyright?—I do not think that it would affect it because this clause would say that the artist may sell these sketches and studies without prejudice to the copyright in the main design, the first picture.

3941. I mean what effect practically might be produced upon the value of the original copyright, it being understood that it would be sold subject to the provision which you now propose?—I do not think it would affect it at all. These studies are much smaller and very often in different materials, in water colour, or in black and white. It is the opinion of artists that it would not hurt the sale. Then the only other correction I have to make, before I come to the fresh part of my evidence, is this: I was asked about commissions for pictures in the nature of portraits, as of dogs or of a person's house or rooms or grounds. Now, in cases of sales, particularly sales from an exhibition, there is of necessity no communication between the artist and the purchaser; but in all cases of this kind the commissioner would have to be in correspondence with the artist to tell him when he could come, when he could have his sittings, when he could see the place, and there would be no difficulty whatever on the part of the commissioner in his then stipulating for the copyright if he wished it. If he desired particularly that the portrait of his dog, for instance, or his house should not be published, as he is in communication personally with the artist, he could very easily reserve it.

3942. (*Mr. Trollope.*) Then you recommend that the

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copyright of such pictures should remain with the artist unless there be a special stipulation to the contrary?—I do.

3943. Do you mean to comprise portraits in that recommendation?—I should confine portraits to human likenesses, and, as was suggested I think by Mr. Daldy, say that the copyright in such portraits shall in the absence of agreement belong to the artist, but that he shall not be at liberty to reproduce or publish them in any way without the consent of the person giving the commission.

3944. We are to understand that you recommend that no copyright shall be conveyed, in regard to a portrait, to the purchaser of the portrait except on a special stipulation?—I first thought that it would be better to give it to the person giving the commission for the portrait, but I think Mr. Daldy suggested the other, and it seemed much simpler to me.

3945. You therefore intend to propose that no copyright shall go to the purchaser giving the commission unless he specially contracts to have it?—I do; but you may, if you please, say the artist shall not reproduce any human likeness without the consent of the person giving the commission.

3946. Would that forbid the artist to reproduce a picture in which there were houses, dogs, or other figures, merely because there was a single portrait in it?—It is a very difficult question. There was a question about a photograph of Mr. Herbert's great fresco in the House of Lords which rather raised that; it is as I have said a difficult question, but I do not think there would be any harm in the artist asking leave of the person who gave the commission; he would be the best judge of whether he objected to the single portrait being reproduced.

3947. The person represented may be dead. Do you not think that it would be simpler to comprise the whole matter in one clause giving the copyright to the artist, and leaving the person whose portrait is painted to arrange for special copyright in that special case?—I certainly think it would be simpler. I have suggested before that I feared there might be opposition from gentlemen in the Houses of Parliament who will not consider this as carefully as the Commissioners have done.

3948. (*Dr. Smith.*) Is it not the fact that in the letters from Mr. Herbert and the other eminent artists which you put in in your former evidence, they all, without exception I believe, recommend that the copyright should vest in the gentleman who gives the commission and not in the artist?—Only in the case of portraiture.

3949. I meant in the case of portraiture?—It is the fact. They have not considered the other as being probably palatable to legislature.

3950. And you imagine that is the reason?—I know that is the reason in those cases.

3951. That while they insist very strongly that as a general rule the copyright should vest in the artist when he has no special agreement to the contrary, yet they make an exception in the case of portraits?—Yes.

3952. (*Mr. Trollope.*) The difficulty exists in the fact that a portrait cannot always be defined?—It is a difficult thing to define a portrait certainly. If it were defined as a human likeness I think that would practically meet the case.

3953. (*Mr. Daldy.*) Do you think that if a portrait painted on commission were to be re-published by the artist, it would have any effect in diminishing the number of commissions given; would those who sit for their portraits hesitate to sit for their portraits because they were liable to have those portraits reproduced in various forms after they had been painted?—I do not think that any artist of standing would reproduce anything like a portrait without consent; and I think that if one portrait painter was known to do that, people would not go to him; that it would deter sitters from employing him.

3954. Then it would not be any detriment to the artist to compel him to ask for that consent?—No, certainly not in cases of portraiture.

3955. (*Chairman.*) I understand you to say that the only reason why the portrait painters of eminence proposed that the copyright of a portrait should vest in the commissioner of the portrait was their apprehension of the view that might be taken by gentlemen in the House of Commons?—I will not say that was the only reason, because most of the eminent portrait painters tell me that, as a matter of fact, they always treat the copyright as belonging to the sitter; but there was difficulty on that point when the Act of 1862 was a Bill and was before the House of Commons; suggestions were made as to the danger of private portraits being improperly repeated and exhibited. I believe that arose chiefly from photographs having been mixed up with Works of Art properly so called.

3956. The objection, whatever it is, would apply equally to gentlemen commissioning portraits, whether they happen to have seats in the House of Commons or not?—Certainly; it was merely that the House was jealous for itself and for other gentlemen.

3957. Will you now go to your next head?—The next point on the list is registration. I have already referred to a large and influential committee, the Artistic Copyright Committee, who were appointed by the Royal Society of Arts in the year 1857, for considering the whole question of Art Copyright. I may, perhaps, be allowed to read some extracts from their Report, as far as it bears upon registration—only premising that I have taken the liberty of striking out some parts of these resolutions which refer to laws which have been altered, and to other matters.

"Very considerable discussion took place upon the point, whether the registration of works of art ought or ought not to be made a condition precedent to the acquisition of any copyright therein, and your Committee ultimately resolved that no such registration ought to be required, and thereupon passed the following resolutions:—

"1. That having regard to the number of works of art which are daily produced, to their nature, and to the circumstances under which they are produced, it is the opinion of this Committee that a complete copyright registration by all British and Foreign artists, so arranged as to show through drawings, models, or the like, all the matter for which copyright is proposed to be conferred, would be wholly impossible. That its attainment is not desired by artists or publishers, and that no advantage would arise from it to the public."

"2. That to make registration a condition precedent to the acquisition of artistic copyright, would render it necessary that every work tendered to exhibition, although refused, and every sketch in the folio of the artist, should previously have been sent to London and registered, and by the difficulty of the task imposed and the expense involved, and by the unnecessary centralization of the office, would debar the bulk of the body from the benefit of the proposed law.

"(3.) That to make registration a condition precedent, would further be to encourage the commission of piracies on artists, and frauds on the public, because the parties dealing in such piracies and frauds would be always on the alert to avail themselves of every slip in the registry, just as has always been the case with respect to patents." I may say that I have known cases myself of pirates searching the register to find prey that they may safely feed upon.

"(4.) That in considering this subject, it should be borne in view that artistic piracies are, in their nature, more injurious to the public than those committed on authors or ornamental designers, because, in the latter cases, the purchaser is as well served and contented with the pirated work as he would have been with an original; whereas, upon infringements of artistic copyright, the purchaser of the pirated copy is often much more injured than the artist."

"(5.) In considering the subject of imposing registration as a condition precedent to title, it should

further be borne in mind that such a law makes title always turn on points wholly immaterial to the justice of the case."

"(6.) That the position in life and want of business, training of artists, the pecuniary difficulties which so many of them have to contend with, the remote places in which their studies are constantly made, and their works often produced, the frequent changes made in them, often long after their first publication and sale, should be had in view before a condition is imposed so onerous to them in its performance and so sure to be neglected, and which would make it necessary that they should, as authors now do, only connect themselves with the purchaser and public through publishers or dealers, a state of things as regards the influence of art to be deprecated." As an illustration of that last clause, you will remember that when the President of the Royal Academy was examined here, your Lordship asked him about registration, and he knew nothing about it; he said, "Oh, Mr. Graves manages that for me." That really is very much the case with artists who are in a position to employ the dealers and professional men. The rising artists who have not come to that position have to do it themselves, or practically do not do it, and lose their copyright, or rather lose their remedy."

3958. (*Mr. Trollope.*) You think, as a rule, they do not do it?—They certainly do not. This was carried all but unanimously; there was a large committee of 62 present, and out of those 62, only three followed the leading of Mr. Roberton Blaine, who was one of the committee, and who has always been a champion of registration from the beginning, and voted against it; but all the others of this large committee of mixed artists, lawyers, and men interested in art, took the views that were put forward in those resolutions. Mr. Roberton Blaine entered a protest against the decision of the committee upon the question of the registration of works of art, "which protest was ordered to be "entered on the minutes of the committee, and is as "follows." If I might I should like to read Mr. Roberton Blaine's reasons in favour of registration, and very shortly comment on each as I go through, if that meets with your Lordship's approval. I think it will show (most briefly), what my views upon the question of registration are. Mr. Roberton Blaine says: "(1) That as between the author of "a work of art and the public, it is the only means "by which a reliable record can be obtained of "the time when the copyright in such work will "commence, and consequently when it expires." Now I have already said, on the last occasion that I was before the Commission, it does not matter when it begins if you know when it expires, and if it is for life and a term of years, the registration is no use at all for that purpose. "(2) That in cases where the "author of a work of art sells it, but reserves his "copyright therein, registration is the only certain "and equitable mode by which the evidence of any "such reservation can be preserved and made to run "with the possession of the work to which it relates "so as to be binding on all persons through whose "hands the work may pass from the first purchaser." Now if it is laid down as a law that no one shall copy until he shows his title to do so, if it is not only *some* works that are to be protected, but if *all* works are to have copyright and be protected, that does not apply at all. Registration may be necessary, in order to show that copyright runs with the particular work, if there are copyrights in particular works only; but if you say, "Copy no work until you "show that you have a title derived from the artist to "do so;" there is nothing whatever in that second protest. "(3) That registration would always afford "the authors of works of art a certain and indisputable "record that they are entitled to the copyright of "such of their works as are registered, unless their "contracts for sale thereof appear upon the register." Now as to that, the copyright would be in the artist until he parts with the copyright; when he has parted with it there would be less objection to obliging the purchaser to register; he would do so and does do so as a matter of course. A person who buys a copyright from an artist, as a publisher or dealer, wants it for some purpose, and he will take the proper steps to secure it.

3959. Does not a gentleman who buys a picture ever buy the copyright too?—It is very rare indeed, unless the artist starts the question about copyright the purchaser never asks any questions about it.

3960. (*Sir H. T. Holland.*) Why should not artists register? Are you not libelling artists when you say that there is such a want of business habits about them, as distinguished from all other people, that they cannot actually go through the form of registration; because really your evidence amounts to that?—I should say that they libel themselves too, for they all say the same thing.

3961. Because they do not want the trouble of going down to register?—I assure you, if you will forgive me for saying so, that that is not the reason. There are artists like Arthur Glennie; he paints all his pictures at Rome; he sends them home for exhibition; he does not know, at least he would not if he sent them to the Royal Academy, whether they are going to be accepted or rejected, and they may be exhibited without registration and he will lose his copyright in them.

3962. He will not if he takes the trouble to employ an agent to register his pictures when they arrive. I do not say that he should pay a large fee for it, but why should not his agent register them?—Artists as a rule have no agents. They send their pictures direct to the exhibition, they are taken in by porters who are hired by the committee that governs the exhibition, and after a time they are rejected or accepted. An artist usually writes to a friend and says, "If this is "rejected I have told them to send it to your studio, "will you let it lie there waiting my orders?"

3963. I can quite understand that practice prevailing now because there is no necessity for registration, but I am totally at a loss to see the difficulty of Mr. Glennie writing to a friend or agent: "I am "sending over two pictures to the exhibition, would "you see that they are registered?"—It is giving a great deal of trouble to the friend who is working hard himself just before the Academy opens.

3964. His friend need not be an artist, need he?—The promising young struggling artists have no friends, they work alone in a room, with a north light, at their picture, and have nothing near them but their models, and their colours, and they are not the least in the world men of business.

3965. (*Sir D. Wolff.*) Supposing that registration is made obligatory, could it not be made obligatory that the exhibition society, whether it is a Water Colour Exhibition or the Royal Academy, should be bound to register every picture they receive, whether they exhibit it or not, and that such registration by them should be a sufficient registration?—It is a difficult question to answer without having considered it.

3966. (*Mr. Trollope.*) Is not the great difficulty in the way of registration the fact that you cannot limit the pictures which are to be registered, and that if you make it compulsory it must descend to every sketch that is made and sold?—That is so.

3967. And would it not be practically impossible to enforce a registration of that nature?—I think it would be quite impossible, that it could not be done; artists only register very important works.

3968. If a picture which we will say is to cost 500*l.* must be registered, so under a system of compulsory registration must a sketch which is to cost 2*s.* 6*d.* be registered. Would it not be absolutely impossible to effect a registration of the enormous number of small works of art which pass from hand to hand every day and every hour?—Quite so.

3969. (*Sir H. T. Holland.*) Probably the infringement is not very great in the case of those small sketches. If the sketch was valuable why should they not pay the shilling for registration?—It is not the shilling they object to. Artists do not know in the

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least the value that is going to accrue to their copyright. Millais's picture of "The Huguenots" sold for 100*l.*, and Miss Thompson's picture of the "Roll Call" sold for 100*l.* The copyright in the first realized many thousands of pounds, the copyright in the second sold for upwards of 1,000*l.*

3970. (*Sir D. Wolff.*) She might have registered it?—Artists cannot foresee the value of their copyright.

3971. (*Earl of Devon.*) As regards the United Kingdom, would there be any difficulty in the way of artists residing at Manchester, or Newcastle, or elsewhere registering locally in the office of some existing public office; say the town clerk of the borough or something of that sort?—I have always been at a difficulty to know what the use of registration was; but I think that if it is of any use, if people had to go and search at Manchester and elsewhere locally, it would do away with any good there is supposed to be in it.

3972. You think, therefore, if registration is to be carried out compulsorily it must be carried out through the intervention of a London office?—I think so.

3973. (*Mr. Daldy.*) Are you under the impression that registration necessitates personal attendance?—I know that it does not; but I know that the entries on the register made by incompetent people give rise to the greatest trouble possible, that courts of justice have to be moved to expunge and set aside entries which have been made in pure ignorance, and that a great deal of trouble arises in that way.

3974. Can you see any objection to an entry being sent to the registrar by post just as in the case of a book. In the case of a book, as perhaps you are aware, no personal attendance is required?—It is very difficult for me to assent to that, for this reason: it seems to me that if registration of works of art is to be of any use it must identify the particular works of art, and must trace the title to the copyright in them completely.

3975. I am merely directing your attention to the trouble which you say is involved to the artist himself in registering his work. I ask if he be able to fill up a form, as in the case of the book copyright, and sent it by post to the office of registration, does that entail upon him any extraordinary trouble?—No, excepting in this way, that when Mr. Goodall or Mr. Haag, we will say, returns from the east, he brings back with him 100 or more studies of subjects which he thinks will paint. If he has to set them all out in a letter and describe them all sufficiently to identify the design in each, it would be an enormous labour.

3976. Would it not be possible to include under the registration of a picture all the sketches which are auxiliary to the production?—But how could you identify them except each by a separate description; besides the sketches may be pirated long before the production exists.

3977. Do you mean in the artist's studio; do you assume that the artist has parted with these sketches?—I do not mean in his studio, because an action no doubt might be brought in that case; but there are several annual exhibitions of "sketches and studies" in London at which such sketches are exhibited.

3978. (*Sir D. Wolff.*) If you force every exhibiting society to register their catalogue, and say that that catalogue should suffice for registration, it would cover the artist?—If that were considered sufficient registration, certainly.

3979. It might be made a provisional registration at any rate until the artist had finally done it?—It is very difficult to register a "study of light and shade," for instance.

3980. I suppose an artist keeps himself a register or record of his own pictures?—They do not all do it, but they should keep some note of them.

3981. If the law were made that he was to keep a register of his own pictures, and that that register of his own pictures was to have a certain legal value, and he found that it had a real value, he would soon learn to do it, would he not?—When he has found it all out and learned to do so he would probably be President of the Royal Academy.

3982. Why should not the artist be obliged to know the law of his own profession as much as a publican or anyone else?—If it is for the advantage of the public or anyone else you must make him register; but if I might say so I very much question the advantage which would arise to anyone.

3983. Would it not prevent people from plagiarising his pictures or pirating them unknowingly, because an engraver or photographer would think twice before he pirated anybody's picture when he knew there was a very stringent law against it?—They go and search the register for the purpose of finding out works which they may pirate. If you say, "You shall not copy anybody's picture without his leave," the law would be just as stringent and more complete. It is very well to have a register, and it is a most useful thing for engravers and publishers to have a register, that they may register their copyright when they have bought it from the artist in order to be able to give *primâ facie* evidence of their title; they do not have to produce their agreement with the artist, or trace their title, but they immediately go before the police magistrate, hand in an official copy of the entry on the register, and that is *primâ facie* evidence of their title to the copyright. They then say, "We found this man with so many prints selling them"; and it facilitates the prevention of frauds in that way. But a voluntary registration is all that is wanted for that. It is now voluntary excepting (and that is the only objection to the present registration that I have) that it says, "No "one shall have the benefit of the Act until regis- "tration, and no action shall be brought for any- "thing that has occurred before registration." I am not quoting the words of the Act, but that is the meaning of it. Now the result of that is (I have known many cases of this sort) that the innocent holder or purchaser is punished, and not the guilty man who knowingly committed the piracy. I have known copies of Stacy Marks's decorative designs used for the purpose of decorating looking glasses and furniture; I have known them sold in all parts of England and even Scotland to large furniture shops. It is not till they come into the market that the artist hears of it. Somebody says to him, "Marks, I saw your design of 'The Seasons,' or your "design of 'The Banquet' in such a shop." He comes to his solicitor; the solicitor says, "Well, have you the copyright?" "Yes"; and he shows that he has. "Have you registered it?" "No, no artist ever registers." "Register it at once," and he registers it. We then write to these different people, and say, "You have a pirated copy of such a design of the "copyright in which our client Mr. Marks is the "registered proprietor; we give you notice not to "sell or part with it." Now these unfortunate men who have got the designs and paid for them cannot recover against the original pirate, because what was done was done before registration, and there was no offence committed.

3984. But do you think that when an artist does decorate a house he ought to be protected in designs for decorations? You have mentioned about Mr. Marks's designs; they are very beautiful, but at the same time if you protected him you could not refuse to protect a very inferior artist who decorated a room, could you?—I did not mean that he paints them in the house, he sells them as decorative designs. They are often let into panels but they are not painted on purpose for that, and the person who buys them places them where he likes.

3985. Mr. Marks also paints some of these things as frescoes?—Yes.

3986. And other things are let into a cornice or something of that kind and become part of the furniture of a room?—Yes.

3987. Therefore if you protected Mr. Marks you could not refuse the same protection to a far inferior

artist, and do you think that pictures of that kind which come more into the category of decoration of a room should have the same protection as pictures which are merely sold as pictures?—I do certainly, the cartoons at Westminster for instance.

3988. Do you think that if Mr. Marks decorates a person's dining room he ought to have the copyright of the reproduction of the decoration of that dining room?—Certainly, unless he bargained to the contrary with the person for whom he does it.

3989. Do you think that if anybody decorates a room, the owner of that room has no right to have the interior of his room photographed or copied and that copy published?—Certainly he has the right so to do.

3990. Would the reproduction of the decorations of that room made by Mr. Marks be an infringement of his copyright?—Yes, but not a representation of the room. There may be copyright for instance in the statues at the entrance of the House of Commons we will say, and you may not photograph those statues alone, but you may photograph the doorway with the two copyrighted statues in it.

3991. Would not that be very hair-splitting in a law case?—I think not.

3992. Then if you go down lower in the scale and have a man far inferior to Mr. Marks, who has invented, we will say, some system without a patent of decorating a room with certain colours, and a certain sequence of colours, could that be reproduced?—That I imagine would not be a pictorial design of imaginative art, but one which would come under the Ornamental Designs Act.

3993. I should like you to think over the question whether a person painting another person's house for the sake of decorating that house should be entitled to the copyright of the designs he puts into it. It appears to me to be in a very different category from a person painting a picture which may be taken from one house to another?—These are painted on panels.

3994. Some of them, but others not?—It must be a matter of bargain. Whether they are in a frame or in a panel makes very little difference it appears to me; they are equally the product of the artist's brain. For example, the cartoons of Michael Angelo in the Sistine Chapel.

3995. (*Chairman.*) Supposing the system of registration was to be adhered to, do you see any practical difficulties that would arise from the suggestion which I understood Sir Henry Drummond Wolff to throw out, that the different societies at which pictures are exhibited might keep a register for the registration of the pictures exhibited in their rooms?—No, I see no reason why they should not send their catalogue to the Stationers' Hall, or any place you like.

3996. And that would apply to societies in the country as well as to any societies in London, Dublin, or Edinburgh?—Here is this difficulty, that at many country places there may be no catalogue. Exhibitions are constantly got up which are very useful for the encouragement of Fine Art, and for the education of the people, in which they have no catalogue.

3997. Practically, therefore, you would see a difficulty in the adoption of that proposal?—Yes.

3998. (*Dr. Smith.*) I should like to ask you a general question on this objection to registration. Do you not proceed on the assumption that artists are a particular privileged class who are to be exempted from obligations which fall upon other members of the community?—Not in the least. I say practically that 15 years' experience has shown that they do not register; and that they lose constantly most valuable copyrights because they do not do it. I am afraid they will scarcely change their nature in the next 15 years, or the next 50 years. But I was more trying to show, as far as is possible, that it is quite unnecessary; that you can always say, "The copyright belongs to the artist;" you must know his name before you can search in the register, and you must identify the work before you can search in the register; knowing the work and the artist you can always say, "The copyright is in the artist unless I find another man's name on the register."

3999. But if it is considered to be beneficial that they should conform to the same regulations which are prescribed to owners of other copyrights, such as books, is there any particular reason why artists should not be able to take the same trouble which authors take?—Artists and authors are in a very different position in this way. You gentlemen know as well as anyone that the author is in the hands of the publisher who is a business man, and who will see to any registration that is necessary. It would throw artists entirely into the hands of professional middlemen between them and the public; and I cannot help thinking that that would be very objectionable.

4000. But is it not easy to assume that if it was necessary there might be a class of agents arise who would take the trouble off the artists' hands for a small fee. We find in all other businesses that such middlemen arise who have no advantage, but who would be simply paid to act for those who employed them?—I have no doubt that such would be the result if registration were made compulsory.

4001. You will excuse me, but I do not exactly understand the difficulty which artists would have, if such were the law, that registration was compulsory. I do not see why they in particular should find it more difficult to comply with the law than any other person upon whom a similar obligation might be laid. You do not mean to claim for artists, that they being careless, the law should take notice of their carelessness?—Not at all.

4002. And yet from what you have said previously, you seem to imply that they are a particular class who are not provident, who keep no account of their works, and arguments of a similar kind; but do you think that the law should take cognizance of such habits, and that we should have special enactments in favour of such persons?—Certainly not. But in considering what the law should be in future, I thought it well to let the Commission know, as far as my experience of artists goes (and I know more than 200 artists: I happen to know the number), that they do not, and I fear will not, register, and what their habits are; but certainly if the Commission think that there is any real reason for assimilating the Art copyright, with other copyright, in respect of registration. they will no doubt decide that they must report that such should be the case, and artists must conform and they must have these middlemen arise between them and the public. I think it would be very deplorable in many ways.

4003. You will understand that I am not expressing an opinion that I consider such registration should be compulsory; I only wish to learn from you if there is any particular reason why artists should not be able to do that?—None beyond what I have mentioned already, and that they have no one to do it, and a new class of middlemen would have to arise.

4004. (*Sir D. Wolff.*) You were talking about Mr. Glennie's doing pictures at Rome. I suppose he sends those pictures to an agent, say Mr. McCracken, a man who is at Rome or Florence. Why should not Mr. Cracken register his pictures for him before he sends them to the Exhibition; there would be no harm in that?—If the registration is merely of a "picture by Mr. Glennie," it would be of little use.

4005. Mr. Glennie may give it a title and no difficulty need arise to Mr. Glennie?—No, but I do not see the use of such registration. A much more complete registration is wanted than that. If it is merely that Mr. Glennie has registered at a certain date a landscape of an evening effect on the Tiber, I do not see that that will identify the picture.

4006. Since you were here I have consulted one or two private purchasers, people whose opinions are considered very valuable by artists, and they are very much against your idea of the copyright of a commissioned picture belonging to the artist in the absence of an agreement. They want this question to be settled and they say it is very important for their own

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interests. But, however, supposing that Mr. Glennie finding that the law is established in the kind of way I suggested, keeps a register in his own studio, that on such and such a date he sent off either to the purchaser of the picture or to an exhibition a picture called so and so, the name of which he might write upon his picture, and they might do it as they do with musical things, put a mark, "Op. so and so, number so and so," enter it in some kind of way to identify it; that he sends that to McCracken and McCracken receives it and before sending it out to the purchaser or to the exhibition registers it with that title and that number, surely that would be sufficient identification?—Pictures, as you are aware, are constantly not only touched over again, but almost repainted by artists. I have known a picture re-touched more than once.

4007. But it is the same picture practically?—It is, but it would be most difficult to identify it with the description on the register. The artist might paint out the foreground, and with it the little mark you suggested. Such an accident has actually occurred to the date of publication on an engraving. But if it is necessary to put a mark on a picture it could be done.

4008. And without very great inconvenience to the artists?—No, they would get used to it perhaps.

4009. Knowing that a valuable consideration depended upon it they would learn the law in fact in time, and follow it?—Yes.

4010. (*Sir H. T. Holland.*) You are aware possibly that compulsory registration is required both in the United States and in Italy?—Yes.

4011. Have you ever heard whether there has been any complaint on the part of arts there?—I know nothing about either country.

4012. I think the provision as to compulsory registration in America is as follows: No person is entitled to copyright unless he, before publication, delivers or sends by mail to the Librarian of Congress a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or model, or design for a work of the fine arts for which he desires copyright; nor unless he within 10 days after publication delivers or sends by post to the Librarian of Congress two copies of the book or other article, or in the case of a painting, drawing, statue, statuary, model or design, a photograph of the same. There is also a penalty of 25 dollars for failure to deposit or send such copies. The postmaster is to give a receipt for any book or title sent by mail, if required?—Yes.

4013. (*Mr. Trollope.*) As to the registration which Mr. Roberton Blaine recommended, was it to be compulsory registration, or registration that should simply be necessary to obtaining copyright?—Compulsory; that it should be as he says a condition precedent to copyright. I may say that my opinion is this, that there should be no registration whatever required, at any rate until the artist has parted with his copyright; that all the world should know that a copyright in a Millais would belong to Millais unless and until you found some other name on the register. That would save an immense deal of trouble to artists and to anyone searching the register, and it seems to me would answer every purpose.

4014. (*Chairman.*) Would it not impose a great deal of trouble and confusion on the general public?—It seems to me not, for this reason, that the general public must know the name of the artist of the work before they can go and search any register, then as soon as they know that, if they find that there is no name on the register, they will know it belongs to the artist, and the fewer the entries on the register the sooner the search is made.

4015. (*Sir D. Wolff.*) But is not the artist much more likely to know the law affecting his own profession than the purchaser. Supposing a man orders a picture of some family incident, and the artist makes what he thinks a very pretty picture, and immediately gets it photographed or engraved; the man who has ordered the picture would appear to me to be very much aggrieved by that; and yet by your own proposal the artist would have the copyright?—He would, unless the commissioner had bargained for it. If there was registration it would make no difference to that particular point. That is against giving the artist a copyright at all. I will now proceed with Mr. Blaine's reasons for his protest: (4) "That in cases of piracy "of the copyright, registration would form a most "valuable record, at any distance of time, of the "indentity of the work pirated, the time and place of "its first publication, and the name of the author; "evidence of all which essential facts it would, after a "considerable lapse of time, in most cases be found "impossible to obtain except by means of a register." Now on that I have to say that until you have identified the work and know the name of the author, the register is of no use to you at all; you cannot find it; and as to the time and place of first publication, which is the only other fact mentioned, that is immaterial if, as I hope they will do, the Commission recommend that the present system should be followed of giving it for the term of life and years. (5.) "That the publicity "of registration will materially aid in preventing a "continuance of these acts of piracy and fraud to "which artists and purchasers of works of art are "now exposed." Now, I know from my own private experience in these cases (I have had amongst other things to deal with the pirates themselves) that persons do go and look at the register to see whose works they can take without being punished; that instead of registration being a protection in that way, it materially aids the pirate to find out what works he may pirate. (6) "That the principle of compulsory "registration has already been repeatedly established "by the Legislature, namely, as to copyright in useful "and ornamental designs." Now, the case of ornamental designs is quite different. The copy is exactly as good as the original, and you cannot tell the author of the work; it is not a matter of notoriety that a design has been composed by a particular man; there must be registration for that. Then he goes on to say, "And also as to works of literature and of the "fine arts under the International Copyright Act, "and the various conventions entered into by Her "Majesty with foreign states." Well, of course, it will be for the Commission to consider whether for the mere sake of uniformity, if there is no other object, they will make registration which is so very strongly objected to, and which I am sure from all experience would result in very many copyrights being lost, compulsory; whether they will insist on it for the mere sake of uniformity if there is no other object. Then it goes on: (8) "Because by the existing En-"graving and Sculpture Copyright Acts, no copy-"right can be acquired in a work of art unless "the date of its first publication, and the name "of the proprietor of the copyright appear thereon, "so that the public may know that a copyright therein "is claimed by the author, and when it will expire." As copyright is now given to *all* original paintings and drawings, the author must be deemed to claim copyright in all and every such work of art unless he has parted with it to somebody else; and as a means of ascertaining when it expires registration is of no use. "(9.) Because a system of registration "would afford a cheap and easy mode of assigning "artistic copyright, by entry in the register, as may "now be done with respect to literary and musical "copyright, as well as those in maps, charts, and "plans." It is neither cheaper nor easier to assign artistic copyright by an entry in a register than by writing.

4016. (*Mr. Daldy.*) In the case of literary works no agreement is required?—Yes; but not so in artistic works.

4017. You say that a stamp is required?—In my opinion it is. I have not seen any decision on it. The next is, "(10.) Because as the law now stands "with respect to literary and musical productions, "&c. no proceedings at law or in equity can be maintained for piracy, unless the work in respect of

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" which copyright is claimed has been previously re-
" gistered." That merely means registration before you bring an action, as it was under the old law as to literary works; that has no bearing on the case of making registration a condition precedent to copyright. The last reason merely refers to what it is reasonable or unreasonable to suppose that Parliament will do, and that has no interest to us now as we know what it has done. Now when this Report was read the Council unanimously decided, after carefully considering the suggestion, "That registration was
" practically impossible, would be of no public utility,
" and would make any enactment including such a
" scheme virtually a dead letter, an opinion in which
" they believe all artists without a single exception,
" entirely concur." I may say that Mr. Underdown in his little book on the "Law of Art Copyright," with a collection of the Art Copyright Acts, says at page 17 of the Introduction, "It has been much
" debated whether the artist should be compelled to
" register his painting or other work before he can
" call in the aid of the law to secure to himself the
" rights and profits of copyright. And I incline to
" the opinion held, I believe, by a large number of
" artists, that if such a legal right exists it should
" be secured without the adoption of formalities,
" which are in reality no evidence of originality,
" and which themselves may give rise to the dis-
" putes which they are intended to prevent. Indeed,
" the Acts themselves show that it is necessary
" to guard against fraudulent registration made for
" the purpose of founding wrongful claims (*see* 5 &
" 6 Vict. c. 45. sec. 12). So that as the entry is
" *primâ facie* evidence of proprietorship, the real
" proprietor, in order to assert his civil right would
" have to prove the wrongful entry on the register.
" Although well known to the lawyer it may not be
" out of place to call general attention to the great
" complication of questions respecting priority and
" notice of registration which arose constantly where
" titles and title deeds had to be registered under the
" old system. But, perhaps, more formidable ob-
" jections may be urged against compelling a busy
" class of men, often far from home when at work,
" to register every small work before it can be secured
" from piracy, the extent and frequency of which,
" and the skill and ingenuity employed in its perpe-
" tration, will be seen from the valuable evidence
" contained in the Appendix."—(I do not think I need go into that.)—" It is to be feared that the bene-
" ficial operation of this Act" (of 1862) "may be
" materially affected by this; for let it not be for-
" gotten, that the omission to register will most often
" happen at an early period of the artist's career, and
" he in later life or his representatives will suffer as
" much from piracy as at present; the more so as a
" large class of unprincipled copyists and imitators
" will be on the watch to take advantage of every
" informality." I now come to this, that registration was not in any of the early draft bills that I referred to last time. I have searched through a number of the draft bills in different stages, and registration is not mentioned in any one of them, nor in the last proof which I was able to find of the bill which became the Act of 1862. Mr. Blaine succeeded in getting this modified form of registration that we now have introduced into the bill some time before it became an Act. At that time there was an idea that copyright was a monopoly, and that it ought to be limited as much as possible, and registration was the fashion in all other cases, and Mr. Blaine as a draftsman had a great taste for uniformity, and fancied that all measures should be uniform in appearance and in process as far as they could be. Now perhaps I may point out some of the evils of the present law of registration that have come under my notice. In the first place we find that gentlemen giving commissions for paintings, and thereby unknowingly acquiring the copyright, never register; and these pictures, after they come into the market, are at the mercy of anyone to use or abuse as they like. This does not apply to photographers or publishers and engravers. When they give a commission for a picture it is for a particular purpose, for the purpose of engraving or publishing, and they invariably protect their rights; they would do so under any circumstances. When I incidentally said before that the innocent purchaser generally suffered, and not the guilty party, I perhaps ought to have mentioned that under a case decided in the Queen's Bench in 1869 (Graves's case), if you register an assignment of a copyright it is of no consequence that the earlier assignments have not been registered. Copyright may therefore pass through several hands and eventually be registered just in time to prevent the innocent purchaser from parting with the copy.

4018. (*Chairman.*) Can you give us the date of that?—4 Law Reports, Queen's Bench, 1869; it is the case of Mr. Graves, the publisher, against Walker.

4019. (*Sir H. T. Holland.*) Do you propose any remedy to meet that state of the law? Do I understand you in the first place to quarrel with the state of the law as laid down in that case?—No, not as laid down in that case. I merely show that the Act is at present injurious in saying that no proceedings shall be taken for anything done before registration; because instead of being able to deal with the guilty party, we are only able to deal with the innocent party; and it may be that many assignments have gone on before the property is in the hands of the innocent party, and yet the last assignee of the copyright when he has registered can prevent the innocent party from parting with that for which he has given value.

4020. (*Dr. Smith.*) But does not that seem to you a reason, if the innocent party suffers, why there should be registration originally?—It seems to me much easier to say, "Thou shalt not steal," than to say, "Thou shalt not steal registered brains,"—I mean this, that there have been a number of imitations or copies of a picture made; that these are sold in the country and pass from one hand to another; that the copyright in the original work, which we will assume to have been painted on commission, from which these are piracies, may never have been registered, may have passed by will, may have passed under bankruptcy, and yet eventually, if the last assignment of it is registered, the registered proprietor of the copyright may suddenly spring up and prevent the innocent holders of guilty copies from parting with them; and they have no remedy against anyone. That is the law as it stands now. Now, I say from my experience I should often have gladly proceeded against the guilty party. I knew who he was, but I could not do so, because the guilty act had been done before registration. I say that great injuries arise to the public from the words in the Act, saying that no one shall have the benefit of this Act, and no action shall be brought for anything done before registration. Those are not the exact words, but that is the effect.

4021. (*Sir D. Wolff.*) Does the Act say that nothing shall be done with reference to copies made before registration?—Clause 4 says, "No proprietor
" of any such copyright shall be entitled to the benefit
" of this Act until such registration, and no action
" shall be sustainable, nor any penalty be recoverable,
" in respect of anything done before registration."

4022. Then how do you say that registration enables you to sue for previous copies; you say that a man who has registered can proceed against the innocent holder of a picture purchased before registration?—Of a picture pirated before registration, if he attempts to sell it.

4023. I thought the Act said they could not sue for anything done before registration?—I will suppose you innocently are the owner of a pirated picture; I am the owner of the copyright; I go and register it; I give you notice that you have got a pirated copy, and that you are not to part with it; if you offer it for sale, exhibition, or hire, it is an offence.

4024. I understand the Act to say that you could not go against people for what was done before regis-

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tration?—Yes, and therefore I cannot go against the man who copied that picture and pirated it, but I can give you notice that I have registered now, and you can do nothing in future.

4025. But you cannot prevent my selling the picture that I have bought before, can you?—Indeed I can.

4026. (*Dr. Smith.*) According to your own statement injury is done to the public; is it not in consequence of the original owner having neglected registration?—The injury that is done to the public arises from the obligation to prove registration anterior to the piratical act, before you can take proceedings for what has been done. If there was no registration required we should proceed at once against the pirates who quietly take the spurious copies and distribute them through the country towns and in country places, and not against the innocent public.

4027. I do not think you have answered my question, which is this. You stated a case in which the innocent public suffer. Now is it not the fact that the innocent public have suffered in the case you mentioned in consequence of the original owner of the copyright having neglected to register it?—They would suffer just as much if he had registered it. The public who buy the picture do not go and examine the register.

4028. I understood your argument to be this, or rather the case you stated to be this. Here is a work which has not been registered; a person pirates it and sells it to another person; if that had been registered originally the original owner might have proceeded against the pirate at once, but he cannot proceed against the pirate until he registers?—That is quite true, but he does not do it until it gets into these innocent hands; but the weak point of the present Act is this: Whereas we can prevent the innocent person from parting with it we cannot go further back and punish the really guilty one.

4029. But surely if it had been originally registered the innocent person who purchased the pirated edition would have had a remedy at common law against the person who sold it?—Yes.

4030. And that comes to the point to which I wished to bring you; in consequence of the original owner not having registered the painting the innocent owner is deprived of his action at common law against the pirate?—Speaking as a lawyer, that is quite true; and it is in consequence of that in combination with the law that says you shall not bring an action for anything done before registration, that the owner of the copyright is obliged to attack the innocent and not the guilty party; but speaking as a legislator, it is because registration is made necessary.

4031. (*Sir H. T. Holland.*) You wish to see the law put with respect to fine arts on the same footing as with respect to books, that is to say that when you register you may sue for an infringement committed before registration?—Certainly, if registration is required at all.

4032. We are assuming that it is required, otherwise the point does not arise; but in the case of books when a person registers, he can sue for an infringement of the copyright though committed before registration; and I understand that you wish to see the fine arts put on the same footing as books?—Yes.

4033. (*Mr. Trollope.*) You mean that you wish to put the law as to works of art on the same footing as books stand on at the present moment?—Yes, or a not less favourable footing as far as registration goes.

4034. (*Sir H. T. Holland.*) As far as the power to sue for acts committed before registration goes?—Yes.

4035. (*Mr. Daldy.*) May I ask you whether you think it would meet the views of the artists not to compel registration till an artist parts with his copyright, but to insist upon the first transfer being made by registration, as is adopted in the case of books?—I think that would do admirably; it was what I was about to propose as being the only practical way of reconciling compulsory registration with justice.

The witness withdrew.

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

Wednesday, 7th February 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 H. DRUMMOND WOLFF, K.C.M.G., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS WOOLNER, Esq., R.A., examined.

T. Woolner, Esq., R.A.

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4036. (*Chairman.*) Will you kindly give the Commission your view as to the state of the law of copyright affecting sculpture, with any suggestions that you may have to make for its amendment?—I think that the law of copyright in sculpture, as in painting, ought to be on the same basis as the copyright referring to books and music. It ought to be absolutely the property of the sculptor, and should be protected accordingly.

4037. I suppose that you are not content with the existing term of copyright in sculpture?—No. I think the term in authorship is that it should be during the author's life and seven years after.

4038. Or 42 years, whichever is the longest?—I think that that is a simple basis, and that it is fair.

4039. The term of copyright in sculpture being for 14 years, and then at the expiration of the term of 14 years if the artist is living for another 14 years; is that your view of the present term?—Yes; but I think the other would be simpler.

4040. (*Mr. Trollope.*) You do not think that a certain fixed term would be better than the term as at present fixed for literary works, which can hardly be said to be a fixed term as regards the author himself?—I think a fixed term would be better.

4041. Do you know what the term for literary copyright is in France?—No.

4042. 50 years after death, and in Germany it is 30 years?—I was not aware of that.

4043. Do you not think that a fixed term would be simpler than a term which from its nature must be uncertain?—Yes, I think that a certain term would be better than an indefinite one. If you propose a definite term for copyright in authorship and music, I think the same ought to be extended to sculpture and painting.

4044. You think that to sculpture the same term should be given, whatever that may be, that is given to literary matter and to painting?—Yes.

4045. It is not that you are particularly wedded to the present 42 years?—No; my object is to acquire uniformity in copyright.

4046. (*Sir H. Holland.*) And if there is a differ-

ence maintained between literary works and painting, I presume that you would conceive that sculpture ought to be assimilated to painting and to have the same term?—Yes.

4047. (*Dr. Smith.*) But are you aware that the reason for not giving a fixed term with reference to painting and sculpture was the difficulty of determining publication?—In what way?

4048. Allow me to explain what I mean. If the term is assimilated to that for literary property, there no difficulty as to the time of the publication of a book; you can date the 42 years from the publication of a book, but you cannot determine with equal certainty when a work of sculpture or a work of painting appears first?—I suppose there is some difficulty in making that quite clear, but it would be, as I should understand, either when it was exhibited or when it was sold; that would make it perfectly clear.

4049. But would there not be a difficulty in after years in determining when it was first exhibited or when it was sold unless there was some system of registration?—I think it would be perhaps desirable that it should be a *sine quâ non* that the artist should put his name and date upon the work.

4050. (*Mr. Trollope.*) Would not that lead to confusion in regard to the date that the sculptor might put upon it. A sculptor is sometimes, I suppose, five years over a work?—He would not date it until it was finished; it would not be the date of beginning, but the date of completion; it is not a work till then.

4051. Would not some term to be fixed after the sculptors' death be the best mode of avoiding such confusion?—You mean determining a time after death?

4052. Yes; you will understand that if the copyright were given for some term after death, then there would be no question of publication or date?—That would be simpler still, and I think better.

4053. (*Sir H. Holland.*) We have had a considerable amount of evidence as regards painting, and by reason of the difficulty of fixing the date of publication it has been thought very desirable that the term of copyright should be for life, and a certain number of years after death. I understand you to agree that that is the best mode of fixing the term?—Yes.

4054. But might there not be some difficulty with respect to what you say about putting the date on the work, because you may put the date when the work is finished, and yet you may keep it some long time in your studio, and you would not wish that time to count in the time that the copyright should run?—I thought originally it should be from the date of exhibition or purchase: but if you name a definite period after death, that supersedes the need of any detail of that kind.

4055. (*Chairman.*) The present law, I see, has been in existence for many years; are you able to tell the Commission whether that requirement of the name and the date as conditions precedent to copyright has acted badly or not?—I think that it has not had any effect upon sculpture. The way that sculpture suffers is this; somtimes Italians procure a cast by some means or other, and then make bad copies of it and sell them. If the law were made very distinct they would not dare to do it.

4056. (*Sir H. Holland.*) Do you wish that the law should give protection to the sculptor against drawings or engravings of any description of his sculpture?—Yes, and every kind of copy without the artists' consent; because I claim it as absolute copyright.

4057. I mean against drawings and engravings as well as casts?—Certainly.

4058. At present, as I understand, there is no protection by law against engravings or drawings of any piece of sculpture?—I think not.

4059. (*Mr. Trollope.*) Do you register your sculpture?—No, and I never heard of any one doing so. I remember my old master, Behnes, used to put "Published as the Act directs" upon his works, and he thought that secured him. It was only his fancy.

4060. Can you say whether other English sculptors of note register their works?—I have never known them do it.

4061. You do not know of any office where it is done?—I have been told that at Stationer's Hall you can register a work, but that there is no means of identifying it. That was what I heard when I was a pupil.

4062. (*Sir H. Holland.*) You are aware, perhaps, that by the 13th and 14th Vict. chap. 104, sect. 6, sculpture and models may now be registered by the Registrar of Designs; and that by a later Act, the Commissioners of Patents are substituted for the Registrar of Designs?—No, I was not aware of that.

4063. Then you are not aware whether in point of fact sculptors do register their sculptures, or models, or casts under that Act?—I never heard of any sculptor registering his work.

4064. It is provided that the registrar is to be "furnished with such copy, drawing, print, or description in writing or in print as in the judgment "of the said registrar shall be sufficient to identify "the particular sculpture, model, copy, or cast in "respect of which registration is desired," and the name of the sculptor is also to be registered; something similar, therefore, to a registration of fine arts and paintings?—I think it is unnecessary. I think there can be no possible dispute. Two accredited witnesses would prove the authenticity of a work better than any mode of registering.

4065. But the registering is not only for the protection of the artist, but for the protection of the proprietor. You may have sold your piece of sculpture to A B, and A B may wish to register it?—Then, I suppose, he would do it by photograph. Description would hardly answer in a work of art, because you could give me one description of a statue, and I could make answering that description half a dozen statues which would answer it perfectly, and yet be quite unlike each other.

4066. (*Mr. Trollope.*) Could not a piece of sculpture be registered by a trade mark?—In France the Government provides little labels which are sold to sculptors at a registering office. These labels are sunk in the casts.

4067. Do you see any objection to the adoption of such a system here?—I can see no objection.

4068. Would not such a system facilitate, not only you and other sculptors, but also *bonâ fide* purchasers of your works, protecting the copyright?—I believe it would tend to increase the sale of casts if persons knew they could purchase works which were authenticated by the artist himself.

4069. You think it might be done by a system of registration?—I think that it might be done by a system of registration, and be of very great service.

4070. And do you not think it would be expedient to have a system of registration which would show what the product of a country had been?—You mean statistics of it?

4071. So that in some future time the list of your works might be obtained, or the list of those of any other sculptor of celebrity?—I think in that way it would be of interest, and if this little label system were adopted, that it might be of great value.

4072. And you think that it could be done without any material inconvenience to the artist?—Yes. I should think that if sculptors adopted the plan of sending a specimen to be registered, and these little plates were given with the Government stamp on them, and there was a very heavy penalty for imitating them, just as with any other Government mark, that would answer the purpose, and give but little trouble. I do not know what kind of office it is in France, but it is very easily ascertainable, because it is the universal practice there.

4073. (*Sir H. Holland.*) Then, as far as you know, purchasers of pieces of sculpture in England do not take the trouble to register?—I never heard of any one registering sculpture.

4074. You would be likely to have heard if it had been done, would you not?—I think so.

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4075. (*Chairman.*) Do you suppose that sculptors are aware that under the law they cannot proceed penally against pirates, unless their works are registered?—I was not aware of that.

4076. (*Mr. Trollope.*) Did you ever hear of any sculptor who had taken action against an offender for piracy?—I remember hearing a story once of Bailey having broken a copy of his "Eve" in marble which had been copied surreptitiously; but I never heard of his having taken any other action than that.

4077. (*Sir H. Holland.*) May I ask have you reason to believe that sculptors have suffered from engravings, or pictures, or photographs being taken of their designs?—I do not know that they have suffered, but I know that photographs have been taken without their permission. This has often happened to me. I cannot say that I have suffered, because I may say that it has been so much advertisement. But that is not the point; the point is that the work being the property of the sculptor no one has a right to copy it.

4078. I can understand that you would not suffer so much from a photograph, because that would be pretty nearly an accurate copy of your work, but you might suffer from an indifferent engraving or drawing?—Yes.

4079. And have you reason to believe that sculptors have suffered in that way?—I have seen many engravings which certainly do not give a good representation of the sculptor's work; but I do not remember hearing complaints on the subject.

4080. But you are not aware whether those engravings have been made with or without the consent of the sculptor?—No.

4081. (*Mr. Trollope.*) Are not surreptitious plaster of Paris casts sometimes sold?—Yes, and sometimes very bad ones.

4082. Are not those injurious to the sculptor?—Very injurious indeed, because they give a wrong impression of the work.

4083. (*Dr. Smith.*) They are injurious to a sculptor's reputation?—Yes.

4084. And so far they must injure him?—Yes.

4085. (*Chairman.*) Assuming registration to be desirable, have you anything to say as to the present office at which registration is to be carried on, namely, the Patent Office?—I do not know the method of registration, whether it is by leaving a copy, which would not be desirable in the case of a very large work.

4086. (*Sir H. Holland.*) Will you let me read you the section: "The Registrar of Designs upon "application by or on behalf of the proprietors or the "proprietor of any sculpture, model, copy, or cast "within the protection of the Sculpture Copyright "Acts, and upon being furnished with such copy, "drawing, print, or description in writing or in print, "as in the judgment of the said registrar shall be "sufficient to identify the particular sculpture, model, "copy, or cast in respect of which registration is "desired, and the name of the person claiming to be "proprietor, together with his place of abode," and so on, "Shall register such sculpture, model, copy, or cast "in such manner and form as shall from time to time "be prescribed or approved by the Board of Trade "for the whole or any part of the terms during which "copyright in such sculpture, model, copy, or cast "may or shall exist under the Sculpture Copyright "Acts"?— I cannot help thinking that it would be difficult if not impossible to effectually provide against plagiarism by these means. The accumulation of registrations, "copy, drawing, print, or description in writing or in print," would in a few years be so great ass to become unmanageable, and the same design might be registered by several persons.

4087. And in truth, to sum up your evidence, it is that you would desire to see the term of copyright in sculpture put on the same footing as the term of copyright in painting?—Yes, I think both ought to be protected from engravings and photographs. And I think likewise that copyists ought to be protected; I mean copyers of antique works, such as the "Venus" of Milo, or "The Warrior" of Agasias, called the "Fighting Gladiator." A man will spend months in carefully copying one of those, and it becomes then his own property just as much as if it were an original work. In France these are all protected, copies copied either by machinery or by the hand are registered and protected in the same way as original works.

4088. The protection is against taking copies of the copy?—Yes.

4089. But no protection is set up against people taking another copy?—No; it is that particular man's copy; it is a work of art, and a work of time and money.

4090. (*Mr. Trollope.*) You have a copyright in your works at present?—Yes.

4091. Is there any difference at present in the copyright attached to a general work of art in sculpture and to a portrait bust?—None whatever; we have always claimed that the copyright belongs to the sculptor.

4092. But does the law support your claim?—I do not know; we claim it in accordance with custom.

4093. Would you recommend with regard to the copyright of works in your art that the same right should be given to general works and to portrait busts?—I think it ought to be the same.

4094. In ordering the bust might he not order it with the stipulation that the copyright should be sold to him with the bust?—Yes; copyright ought in all cases to be the property of the artist unless an express stipulation be made to the contrary. I think it is advisable that the portion of the Act referring to direct dealings between artist and purchaser be as short as convenient, and that all artists should have a printed extract hung up in their studio so as to avoid all misunderstanding.

4095. You mean that the gentleman giving the commission should contract for the copyright exactly as he contracts to buy the bust?—Yes; I was once asked to sell the copyright of a portrait, and did so.

4096. (*Chairman.*) To go back for a moment to the question which Sir Henry Holland asked you just now. I understood you to say in answer to that question that you wished sculptors to be protected against prints and photographs; but with reference to a previous answer of yours I understood you to say that as far as photographs were concerned you looked upon them rather in the light of an advertisement of the works of a sculptor than an objection?—I think engravings are more dangerous; but no copy whatever ought to be made without the artist's consent; although my private opinion is that photographs do no harm to the artist, rather good than otherwise; but it is important that he should have the control.

4097. (*Dr. Smith.*) But there is a great difference, is there not, in photographs; they may be bad photographs?—That is why I think the artist should have the right to say yes or no.

The witness withdrew.

Mr. JOHN CUNNINGTON examined.

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4098. (*Chairman.*) You have paid considerable attention, I believe, to the law of copyright as affecting fine art; is that so?—That is so. I wish now to speak more particularly with regard to the registration of works of art. That I take it is within the scope of the Commission.

4099. Will you favour the Commission with your views on the subject of registration of works of fine art?—I suppose that you have seen the original Bill of 1862 as passed by the House of Commons before it went to the House of Lords. I have the one as introduced to the House of Commons first; that was

without any registration clause whatever; that was afterwards amended in the Commons. I will read the first section: "The author of every painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere." (You see under that Bill a copyright was given to a work of art though it might be painted abroad) "and which shall not have been sold or disposed of before the commencement of this Act, and his assigns shall have the sole and exclusive right of copying, reproducing, and multiplying such painting, or drawing, and the design thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death." Now it professes to give copyright to photographs, and the preamble says: "Whereas by law as now established, the author of paintings, drawings, and photographs have no copyright." As a matter of fact photographers had copyright; copyright has existed since 1852. (15th Victoria, cap. 12, section 14.)

4100. As I understand it, you are now criticising the phraseology of a Bill as it was introduced into the House of Commons?—Yes; I meant to draw attention to the section of the Bill which provides for the registration.

4101. (*Sir H. D. Wolff.*) Do you wish to have the words of the Bill introduced into a new Bill?—I think so.

4102. (*Chairman.*) But those words which you were quoting just now you objected to?—I merely mentioned that the Act itself professed to give copyright to photographs, but they were copyright before. Now the fourth section says (this is the Bill as passed by the Commons and sent to the Lords): "There shall be kept at the Hall of the Stationers' Company by the officer appointed by the said company for the purposes of the Act passed in the sixth year of Her present Majesty, intituled, 'An Act to amend the Law of Copyright,' a book or books entitled, 'The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs,' wherein shall be entered a memorandum of every agreement for the acquisition or reservation of copyright made upon or before the sale of any work of art under this Act, and also of every subsequent assignment of any such copyright, and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work; *and unless such memorandum shall be so registered within the period of twelve months from the date of such agreement or assignment, every such agreement or assignment which shall not be so registered shall be void and of no effect.*" Now I call your attention to this point, that by this section registration was to take place within 12 months of the date of the agreement. When the Bill went to the House of Lords it was attacked by Lord Overstone. His Lordship contended that the registration should be forthwith, before the copyright was acquired, or upon the acquisition of the copyright. That you will find in the present Act.

4103. (*Sir H. T. Holland.*) By the present Act it is provided: "And no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration"?—Yes, but I would just ask you what in your opinion is the meaning of the word "benefit"? It hinges upon that. My opinion with regard to the benefit is this: That by the operation of this Act the artist acquired a valuable property which he had not before the Act passed. He had no copyright before the Act passed; when the Act passed he became the possessor of a valuable property which he could sell; and before he could do that he must register. What do we find? We find registration made five or six years after the date of the agreement. We have pictures which were sold before the passing of the Act made copyright by being registered after the passing of the Act. A well-known artist was commissioned, under a written agreement dated September 10th, 1860, to paint a certain subject for a picture-dealer. The picture was painted and delivered to the dealer, who at his gallery on the 19th April 1862, exhibited it to the public. Now the Copyright Act came into operation on the 29th day of July 1862. There was at that time no registration made by the artist and none by the dealer. The first registration of this picture was five years afterwards, and many persons have been prosecuted for selling copies of that picture and have suffered long terms of imprisonment as though there had been copyright in it.

4104. (*Sir H. D. Wolff.*) The agreement having been made in 1860, if the picture only appeared after the Copyright Act surely it would have had copyright?—The Copyright Act came into operation on the 29th July 1862. The picture was in possession of the dealer and exhibited to the public in April 1862. The picture was delivered to the dealer and publicly exhibited about four months before this Act passed. Then, again, as I read the Act, no benefit could be derived from that before registration; but this picture was not registered till five years after.

4105. What is the conviction of which you are speaking?—There are many of them; one I think for 20 months, there was one for nine months, I know.

4106. The person being imprisoned?—Yes. Unfortunately magistrates have looked upon piracy of artistic copyrights as a criminal offence, which it is not. When Sir Roundell Palmer introduced the Bill into the House of Commons he distinctly disclaimed any intention on the part of the Government of creating a new criminal offence. Now I daresay some here may remember that two years previously to that there was a Bill brought in which did not pass, I think in 1859 or 1860. Now Lord Overstone got this registration clause to be amended. As I read the Act, the registration shall take place at once, and it shall be by the author or by the person for whom he executed the work. Then this Act incorporated the clauses in the Literary Copyright Act with reference to the registration. I will just call your attention to that. Registration with regard to literary works is permissive to a certain extent. With regard to artistic works it is imperative. It says in section 13 of chap. 45, 5th and 6th Vict., commonly called "Talfourd's Act:" "And be it enacted that after the passing of this Act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationer's Company of the title of such book the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of 5*s.* to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest," (I call your attention to those words; you observe that no one can assign unless he has registered) "or any portion of his interest therein by making entry in the said book of registry of such assignment."

4107. (*Mr. Daldy.*) Can he not make an assignment without any registration at all?—I am speaking with regard to artistic copyright. He may with regard to literary copyright, I think, but not with regard to artistic copyright.

4108. Not in any way whatever?—Not if he claims the benefit of this Act. I take it that he does not acquire the copyright; it simply has not been created unless he conforms with this Act.

4109. (*Sir H. Holland.*) Is it not the case that, by section 4 of the Act of 1862, to entitle a person to

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copyright under the Act he must enter a memorandum, and he cannot assign that copyright until he has entered that memorandum; because the Act says there shall be kept at the Hall of the Stationers Company this book, "wherein shall be entered a memorandum "of every copyright to which any person shall be "entitled under this Act, and also of every subsequent "assignment of any such assignment;" and therefore if a man wishes to entitle himself to a copyright under the Act and also wishes to assign it he must register, and then he can register any subsequent assignment?—No doubt of it; only the Court of Queen's Bench says the contrary.

4110. What case do you refer to?—That of Graves *v.* Walker. I think that case should be looked to.

4111. I do not know that decision; but is it not the case that the law is understood to be, that you need not register at once; if you do not register at once, if you do not choose to take the benefit of the Act at once, you can by subsequent registration secure yourself for the future, but you cannot do, what you can do in the case of books, secure yourself against an infringement previous to registration. The difference between the two cases is this: that in the fine arts you cannot, until you register, get the benefit of the Act, and therefore you cannot sue for any infringement previous to registration?—Take it in this light; supposing an artist sells his copyright and receives a hundred guineas for it, and A sells it to B, and so on through the alphabet, and there is no registration for the whole of those years, can it be said that the artist has derived no benefit? He has derived a benefit, but not registered.

4112. He has received a benefit in money but he has not got the power to sue for any infringement until he registers?—No, not until he registers; that is the author.

4113. That is the author or the proprietor of the copyright?—Do you hold the opinion that it may pass to three or four persons, and that then the proprietor for the time being may register without any registration on the part of the author? That is the point.

4114. (*Sir H. D. Wolff.*) What is the date of that case of Graves *v.* Walker?—About June 1869; there is a very good report of it in the "Law Times."

4115. (*Sir H. Holland.*) Can you tell us the effect of it shortly?—Yes, I will come to that; but I will still call your attention back again to this section 13 of 5 & 6 Victoria, cap. 45, "that it shall be lawful for every "such registered proprietor to assign his interest by "making entry." Clearly it is that he who sells has to make the entry, not the assignee.

4116. Was not the effect of Graves *v.* Walker that though an assignee could not sue for penalties before the assignment to him had been registered, that is to say he could not take the benefit of the Act, it did not render it necessary that any previous assignment should be registered, or that the copyright of the original work should be registered, the result being, as I have stated, that you cannot get the benefit of the Act till you have registered?—That is so.

4117. The registration may be at any time; but supposing that the painter has sold his work to A B, and A B does not register, and then A B assigns to C D, A B not having registered under the Act could not be entitled to any benefit under it?—Just so, that is the effect of it; that is contrary to the Act.

4118. The words of the Act of 1862 are: "And no "proprietor of any such copyright shall be entitled "to the benefit of this Act until such registration, "and no action shall be sustainable, nor any penalty "be recoverable in respect of anything done before "registration;" you contend that Graves *v.* Walker puts a particular construction upon that?—Will you read section 4 as it appeared in the Bill as it reached the Lords. You will get a clearer idea of it. It was to be imperative within 12 months.

4119. By the Bill, as drawn, and you say, as it passed by the House of Commons, unless registration was made within 12 months, the agreement or assignment was void?—Yes, and there was no copyright. By another section of the Act it is requisite that there should be a short description of the work on the register. Now the registration of "The Railway Station" is simply "The Railway Station," without any description all. "Names of parties to the "agreement of sale, *L.* V. Flatow, W. P. Frith, and "Henry Graves." That agreement could not be produced, because according to Mr. Graves's showing it was burnt in the fire that consumed the Opera House. The date of that agreement is the 7th July 1863; the date of the registration of the agreement, May 30th, 1868; that is five years afterwards. Now I will read to you what Lord Overstone said about that registration clause as to the 12 months.

4120. Are you complaining of the way in which that form of registration has been filled up in the case you have just cited?—It is defective; it is not in accordance with the Act. The Act says there shall be a short description of the work.

4121. But you must be aware that we are not here to deal with some particular case unless similar cases are of frequent occurrence?—You have probably had artists before you here. I should think that at any rate nearly three-fourths of the entries are irregular, and I should say that in the case of nine out of ten of them, the entries are made by the assignee of the copyright. Now the assignee has no power to do it; it is the assignor. You will find Lord Chief Justice Cockburn's opinion expressed to that effect in the case of Wood *v.* Boosey.

4122. There are no words in section 4 of the 25th and 26th Victoria that provide that the entry should be made by the assignor and not by the assignee?—It is in Talfourd's Act that you must look for that; that is incorporated with 25th and 26th Victoria. If you refer to the 13th section of the 5th and 6th Victoria, cap. 45, you will find it there, the words are, "It shall be "lawful for every such registered proprietor to assign "his interest, or any portion of his interest, therein, "by making entry." It is the assignor who is to make the entry.

4123. I am not disputing your proposition if that has been established by a court of law; but section 5 of the 25th and 26th Victoria, cap. 68, which embodies Talfourd's Act with this later Act only provides that "the several enactments in the said Act of "the 6th year of Her present Majesty, with relation "to keeping the register book thereby required and "the inspection thereof, the searches therein, and the "delivery of certified and stamped copies thereof the "reception of such copies" and so on, and does not include what I understand you to think it does include, the fact that the assignor must be the person who makes the entry and not the assignee?—I think there is no doubt about it if you refer to the 4th section of the 25th and 26th Victoria, cap. 68. The words are: "Wherein shall be entered a memorandum of *every* "copyright to which any person shall be entitled "under this Act;" what is the plain English of that? Does it not mean that the author shall register? He is entitled to the copyright and he is bound to register. The words of the Act are plain.

4124. I see nothing (subject to any legal decision) that binds the assignor and not the assignee to make that memorandum?—"Wherein *shall* be entered a "memorandum of *every* copyright to which any "person shall be entitled under this Act, and also of "*every* subsequent assignment." Subsequent to what. It must be subsequent to something. Subsequent to an entry. Here we have an assignment of "The Railway Station" subsequent to no entry.

4125. The entry of the first assignment is the first entry, and then the Act also provides, supposing that there should be another assignment (that would be subsequent) that that should be entered; but I understand you to be contending that the entry can only be made by the assignor and not by the assignee?—Yes; I say that on the authority of Lord Chief Justice Cockburn in the case of Wood v. Boosey.

4126. (*Sir H. D. Wolff.*) Will you tell us how you think the law is deficient and how you would amend

it?—I would say that if we have a new law there should be registration at once by the author or by the person on whose behalf the work has been produced. I hope you will allow me to read Lord Overstone's remarks about that particular section now under notice. They are very short. "His third sug- "gestion had reference to the question of registration. "Not a single word had yet been said in explanation "of that extraordinary clause in the Bill which pro- "vided that copyright was to be obtained without the "necessity of registration except after the lapse of a "twelvemonth. An arrangement more inexpedient, "more impolitic, and more inconsistent with justice "could not well have been devised. He trusted the "objections which had been raised against the Bill "would lead his noble friend, the president of the "council, more carefully to consider its provisions "and introduce into it those modifications of which it "stood in need." Now the provisions were introduced and that clause was amended.

4127. (*Chairman.*) Now do we understand that you object to the present provision of the law which enables a person to register a work of fine art at any time after its publication?—Yes. As the law is construed at present, any person may register a work of art sold 40 or 50 years ago.

4128. Objecting to that, will you kindly tell the Commission what alteration in the law you would suggest?—That the artist or his employer should register before he parts with the work, on or before the sale thereof, as provided in the first section of the Artistic Act.

4129. (*Sir H. D. Wolff.*) But supposing that the picture is on commission?—The original Bill gave the copyright to the artist, and Lord Overstone objected to that strenuously. He said that when a gentleman employs an artist to paint him a picture, the copyright ought to belong to the employer and not to the artist. It was not so in the Bill as passed by the Commons; it is so in the Act. But that clause which provided for registration to take place within 12 months he very much objected to, and it was therefore altered. On the 23rd May 1862, "Lord Overstone trusted that "the postponement of the Bill might be taken as an "indication that the Government were alive to the full "force of the objections which had recently been urged "against it. It was not his intention to propose any "amendment in committee, because the vices of the Bill "were so numerous and so interwoven in its texture "that it would be impossible to bring the measure "into a state in which it could be passed with "satisfaction to the country. But, nevertheless, he "might throw out one or two suggestions for the "consideration of the Government. In the first "place, he thought it was reasonable and proper that "the words 'new and original' should be introduced "before the word 'picture' in the first clause."

4130. Will you give us your own view of the present Act?—My view of the present Act is, that it does provide that registration shall take place by the author, but the judges construe it differently, and therefore I suggest that it should be altered.

4131. That the words of the Act should be amended to carry out your construction; that there should be an immediate registration of the picture, either by the artist or by the person who has given him the commission?—Yes, on or before the time of sale.

4132. Have you any suggestions to make as to any other form of registration, a fuller form, or anything of that sort?—Yes. I would suggest that the present registration at Stationers' Hall should be abolished, and that it should be placed, either at the British Museum under a Government officer, or else have an officer on purpose, the same as the Registrar of designs. In designs we have a registrar who is a Government officer, and he has the option of entering upon the register or not as he thinks proper. If a person goes to him and says, "I want such and such a thing entered," he will consider whether he will enter it or not. If he sees ground not to do so he will refuse to do so, and leave the applicant to his remedy. At Stationers' Hall their duties are merely ministerial, and a boy may walk in with a piece of paper and say, "I want so-and-so registered," and he pays the shilling and it is done, and the consequence is that the register is crowded. There can be but one copyright in one design, but you will find a design registered over and over again. Take Millais' "Black Brunswicker;" you will find, I think, five registrations of that design.

4133. You say that there have been some criminal convictions under some Act of Parliament for piracy of copyright, under what Act is that?—Under the Artistic Act, the Act passed in 1862; and the penalties provided are any sum of money not exceeding 10*l.* for each copy. Those penalties are to be recovered by action; that is, an action in a superior court, by a plaint in the County Court, or by summary proceedings before any two justices. Now there are two kinds of summary proceedings before justices. In criminal cases the proceedings are by an information followed by a conviction. In civil cases the proceedings are by a complaint followed by an order. Infringement of copyright being a civil case, the proceedings should be by complaint and an order. In default of payment of the penalties there should be a distress, and in default of the distress there might be three months imprisonment inflicted and no more. That is by the Act called Jervis's Act. Hitherto with very few exceptions the proceedings have been by laying an information as for a criminal offence, convicting the defendant of the criminal offence, and, in default of paying the penalty, adjudging a term of imprisonment. Now here the summary proceedings are simply the alternative of the civil proceedings, that is by action; and because proceedings are taken before a magistrate it does not follow that the offence becomes criminal. The Act itself says nothing about imprisonment; it merely says that the defendant may be adjudged to pay a penalty. The penalty may be 1*s.*, or any sum not exceeding 10*l.* Between 1862 and 1865, magistrates, when they inflicted the penalty of 10*l.*, had no power to order any imprisonment. In 1865 the Act was passed commonly called the Small Penalties Act, and magistrates then, in case of misdemeanor, were empowered to give terms of imprisonment when the penalty did not exceed 5*l.* After the passing of the Small Penalties Act, in cases of prosecution for copyright magistrates said, "We "will not inflict on you a penalty of 10*l.*, because then "we cannot imprison you; but we will fine you 5*l.*, and "then we will send you to prison if you do not pay the "penalty." In one case in Southwark I think there were 10 summonses, and the defendant was adjudged to pay 80*l.*, and in default of payment two months imprisonment on each case, making altogether 20 months. He settled the matter I think by paying 10*l.*, and so he got off.

4134. (*Mr. Trollope.*) Was he put into prison?—Yes, he went there; he was there for several weeks. I will now mention another case, and that is a case which fortunately was quashed by the Court of Queen's Bench afterwards. A woman was selling photographs in the city in Gresham House; she was arrested upon a warrant granted from the Mansion House on the Saturday afternoon; on the Monday she was brought before the magistrate sitting at the Mansion House, charged with selling 11 photographs being copies of a photograph of the Oxford crew. The magistrate inflicted a penalty of five pounds for the first copy sold, and in default of payment two months' imprisonment, and for ten other copies a penalty of 3*l.* for each copy, and in default of payment three weeks' imprisonment for each copy, making altogether upwards of nine months' imprisonment. The magistrate can inflict two months under the Small Penalties Act, but, by making the imprisonments consecutive, he can lengthen the term of imprisonment. There were several points in this case. There is a curious circumstance with regard to the Artistic Copyright Act with reference to the jurisdiction. I will call your attention now to the clause in the Act with reference

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to the recovery of penalties, and you will observe that the person aggrieved is "herein-after called the complainant or the complainer." Now if this had been a criminal offence that word would not have been there, it would have been prosecutor. Then it says, "In "England and Ireland, either by action against the "party offending, or by summary proceeding before "any two justices having jurisdiction where the party "offending resides." Now if you look at the next sentence as to Scotland the recovery is to be "by "summary action before the sheriff of the county "where the offence may be committed, or the offender "resides." You observe that in Scotland there are two places in which the sheriffs have jurisdiction; that is, where the offence is committed and where the offender resides. It is not so in England or in Ireland; in Ireland the jurisdiction is where the person offending resides.

4135. (*Sir H. T. Holland.*) Do you desire to see a different jurisdiction adopted in England?—A barrister once told me that these Acts of Parliament were very carefully considered by the draughtsmen who drew them, and that there certainly was some reason for the difference that does not appear. It certainly is curious that in Scotland there should be two jurisdictions and only one in England and Ireland.

4136. Do you wish to see the jurisdiction in England put upon the same footing as the jurisdiction in Scotland?—I think so. This was the very point on which the conviction of the woman I have been speaking of was quashed. She was arrested on a warrant in the city, but her residence was in Surrey. The objection was raised at the Mansion House, but it was over-ruled. Another objection was this, that by Jervis's Act, which governs all summary proceedings, under one warrant you can only have one offence: but here we had 11 offences under one warrant and 11 adjudications. There were not 11 warrants, only one warrant and 11 terms of imprisonment.

4137. (*Sir H. D. Wolff.*) I gather that you entirely object to this power of imprisonment under the Act beyond a certain limit. You think it ought to be limited to a certain definite time?—I think that infringement of copyright should not be treated as a criminal offence at all; because what is copyright? It is simply a personal privilege, and no one can tell if the thing actually exists. It is not like a chattel. If a man steals my watch he steals something which is material and tangible, but if he steals my copyright it is something immaterial and intangible, and it may or may not, have any existence.

4138. (*Sir H. T. Holland.*) But before a person is convicted of a penalty he must "repeat, copy, colour-"ably imitate, or otherwise multiply for sale, hire, "exhibition, or distribution, or cause or procure to be "repeated, copied, colourably imitated, or otherwise "multiplied for sale, hire, exhibition, or distribution, "any such work or the design thereof," in which case he must know that he has not got the consent of the proprietor; or, taking the case of the woman, before she was convicted it must have been proved that she knew that "such repetition, copy, or other imitation" which she was selling had been "unlawfully made." Therefore before a person can be convicted he must either without the consent of the proprietor have repeated or copied or imitated the works, or, if selling copies, he must know that those copies had been unlawfully made?—Yes.

4139. If the person does not know, he will not be convicted?—That has been done repeatedly. These penalties are in the way of damages and compensation.

4140. As the Act goes, the person cannot be criminally convicted without knowledge that the copies have been unlawfully made?—I contend that they should not be criminally convicted at all, but simply adjudged to pay the money.

4141. (*Sir H. D. Wolff.*) Supposing this woman in the city goes about hawking these things, you cannot get damages from her. She knows she is infringing somebody's copyrights: the painter of the picture or the author of it cannot go and sue her for damages because she probably has nothing?—That is provided for in another Act of Parliament. All the proceedings under this Act are governed by Jervis's Act. If we have a new copyright Act, and that plainly sets forth that infringement of copyright is not a criminal offence, I think we shall all be satisfied with it. Then the remedy would be a civil remedy, and that is plain enough. A summons is taken out before a magistrate, and the magistrate says, "You must pay so much money; are you ready to pay it?" "No, I am not." "Have you any goods upon which to distrain?" "No, I have not." "Then you must go to prison for a term not exceeding three months." That is the law in Jervis's Act; but you see the cruelty here now is, that they make these sentences of imprisonment consecutive.

4142. (*Chairman.*) But I thought your point was that that decision had been quashed?—Yes, on the ground of want of jurisdiction.

4143. (*Sir H. T. Holland.*) And that they could not impose these cumulative penalties?—Yes, on the ground of one warrant.

4144. (*Earl of Devon.*) Have you the words of the judgment before you?—Yes; here are the whole of the proceedings in the Queen's Bench in the manuscript which I hold in my hand.

4145. (*Sir H. T. Holland.*) You contend, first, that registration should be compulsory; and, secondly, that for infringement the penalties should be civil and not criminal penalties, as it were, and that imprisonment should be only in default of distress?—Yes.

4146. (*Mr. Daldy.*) Would you allow seizure of things exposed for sale by the owner of the copyright whose property is infringed. Take this case: if the owner of the copyright of that work saw that woman selling these photographs of his painting, would you give him the right to seize those photographs, because it is difficult for him to get a remedy against these persons who have no local habitation?—I see no objection to that.

4147. (*Sir H. T. Holland.*) You are aware that provisions to the effect which Mr. Daldy has mentioned were suggested in the Bill of 1869?—In the new Bill of 1869, I think, search warrants were proposed.

4148. By the 14th section of the Bill of 1869 justice of the peace might grant warrants to search for piratical copies for sale, but by the 15th section provision was made for seizing piratical copies in the possession of hawkers?—Yes. As a matter of fact search warrants have been granted under this Act. It is quite illegal, but still it has been done.

4149. (*Chairman.*) Have you any further point which you would like to bring before the Commission?—The first point I would urge would be with reference to the registration being made imperative by the artist, or the employer of the artist where it is a work on commission, and the registration of every subsequent assignment; that is not the case at present; many entries are made which are altogether apart from that.

4150. (*Sir H. T. Holland.*) You mentioned another point with respect to registration; you suggested that the registration should be made in some more legal form; that it should not be able to be made by anybody entering the office; and you gave as an instance that you believed that if the register were searched it would be found that there were five registrations of the "Black Brunswicker?" Yes, at any rate several. There can be but one copyright in one design. Mr. Millais painted the "Black Brunswicker;" the copyright was his property at one time. I say he ought to have registered his copyright, and when he sells the copyright he or his agent should go to Stationers' Hall and make the entry of sale. At present they are entries of purchases and not of sales.

4151. Would you call upon the registrar to test the title of the person to the picture, whether as author or assignee, and his right to register it?—Yes, to ask him how he comes by it or his agent.

4152. (*Mr. Daldy.*) Does not the form of entry indicate that the property has passed from the assignor to the assignee and the form is signed by the assignor?—But unfortunately there are many cases in which all the entries are false.

4153. (*Sir H. T. Holland.*) What object has the third person, for instance, who makes an entry of "The Black Brunswicker" in doing that; he does not get a copyright of the picture by registering it in that way?—You will find that there is a registration by Mr. Millais, another by Mr. A., and another by Mr. B.

4154. Take the case of Mr. B.; what does Mr. B. gain by registering; not the copyright in that picture?—He gains such a copyright as enables him to send people to prison. What Mr. B. would do would be to employ a photographer to make a photograph from the engraving; then he would take an assignment of the copyright of the photograph from the photographer and register that. Then when someone copies "The Black Brunswicker" he summons them and proves his case by showing that he has got a copyright in the design of his photograph. It is ridiculous, but still magistrates send people to prison on it.

4155. But Mr. B. will not be able to sue anyone unless he can show that the infringement was of a copy of a photograph which had been assigned to him; he cannot sue anybody on an infringement of the original "Black Brunswicker"?—That is what he does do.

4156. We are now assuming that "the Black Brunswicker" is not his property; he has not got the copyright in the original picture; he then, as I understand you, gets a photograph made of the picture and he registers that photograph. Do you mean that by registering that photograph he gets power to sue any third person who makes a photograph from the original picture?—No, he does not under the Act, but he assumes that he has the power and sues people and gets them sent to prison.

4157. Can you give us any case in which that has happened?—Yes, I will give you a case very clearly. No doubt you have heard of the late Mr. Solomon, a very clever artist; he painted two pictures called "Waiting for the Verdict," and "The Acquittal." Those pictures were painted in 1860, and one of them was sold to Mr. Lucas, the contractor, and he commissioned him to paint the companion. I think that was two years before the Act passed. At the time when the Act passed those pictures were the property of Mr. Lucas. Mr. Graves had those two pictures engraved. I do not know whether he paid anything for the loan of them to Mr. Lucas; perhaps he might have done, and he published the engraving. After the engraving was published some persons sold photographs taken from the engraving. Mr. Graves had no remedy excepting under the Engraving Copyright Act, whereby he could bring an action and recover damages in a superior court or in the county court. He had no power to take out summonses by summary proceedings before magistrates. In order to get the benefit of the Artistic Copyright Act he employed Mr. Spencer of Goldhawk Terrace, Bayswater, to make two photographs from the engravings, that is one from each. He then took an assignment from Mr. Spencer of the copyright of the photographs, and registered himself as assignee of the copyright at Stationers' Hall. He then took out summonses against persons selling piratical copies made after he had taken the assignment, for infringing the copyright of the photographs. The alderman at Guildhall held that in selling photographs made from the engraving defendant infringed the copyright of the photograph, and convicted him. It seems absurd, but still it is so. The absurdity is in claiming copyright in the design of a photograph which is in itself a copy.

4158. (*Mr. Daldy.*) Did not Mr. Graves take those steps simply for the sake of obtaining an easier remedy against those who photographed his engravings; he had a cumbrous remedy before?—Yes. In 1862 the Government refused to provide any other remedy.

4159. But, as a matter of fact, Mr. Graves took these steps with a view to obtain an easier remedy for what he considered an infringement of his copyright?—Yes, but he had another remedy provided by the Artistic Act whereby he could have recovered 5*s.* per copy.

4160. (*Sir H. D. Wolff.*) He really had a remedy against the sale of photographs taken from his engravings; he had no remedy against the sale of photographs that might have been taken from the original picture?—Yes.

4161. Therefore, practically, he could only have reserved to himself the right of photographing his own engraving?—There is no objection to his doing that, but Mr. Graves wants a remedy whereby he may take proceedings for infringing the copyright of the photograph taken from his engraving. By taking proceedings under this Act very great hardship is inflicted on certain persons.

4162. (*Sir H. T. Holland.*) Do you object to the decision on the ground that the photograph which was registered was not original?—And therefore that it was entirely devoid of copyright. There was nothing original about it; simply a copy. The magistrate's decision amounts to this: that the reproduction of a reproduction is an original production. That is clearly an absurdity.

4163. You admit that Mr. Graves has a right to prevent photographs being taken of his engraving?—Yes.

4164. But you imagine that he has no right to get protection for photographs which are not original?—Certainly not.

4165. (*Sir H. D. Wolff.*) As far as I understand your contention it is this; that Mr. Graves has the right to prevent persons taking photographs of his engraving, but not on the ground that he got somebody else to photograph it?—Yes; if he happens to be the proprietor of the copyright of the painting he has his remedy under this Act; but if he is not the proprietor of the copyright of the painting his remedy is under Hogarth's Act. He gets protection by a side wind which he is not entitled to, and which the Legislature never intended.

4166. You think the Act ought to be altered to meet that?—Yes, the Act is not sufficiently precise in its words. With regard to that registration section which provides that it shall be within 12 months. If it had not been altered there would have been no prosecutions.

4167. (*Sir H. T. Holland.*) Then in truth you complain that magistrates have misinterpreted the law?—Yes, because the law is not clear to their minds.

4168. (*Sir H. D. Wolff.*) You think the law ought to be altered so as to prevent the possibility of decisions of magistrates in the way you have pointed out?—Yes, and the wording should be more clear and precise. It is quite clear enough to me, but unfortunately it is not to others. Take the typical case of "The Railway Station." In that case there can be no doubt whatever that the picture was the property of Mr. Flatow, and was exhibited, in the month of April 1862, in the Haymarket. This Act passed in July 1862, and yet we have a number of persons sent to prison for the infringement of the copyright of that painting.

4169. (*Sir H. Holland.*) Is there any decision upon the point?—Only before the magistrates. Generally speaking, the persons convicted have been poor people unable to take their cases further. My attention was drawn to the matter seven years ago, but it was not till several tradesmen had been fined very heavily; one 250*l.*, another 120*l.*, and so on; 5*l.* penalty for selling one copy. There is a picture called "The Last Kiss," painted by Miss Edwards, now Mrs. Freer. It was registered on the 7th of August 1865, an oil painting; no description as required by the Act; date of agreement, April the 28th, 1865; partners to the agreement, Miss Ellen Mary Edwards and Mr. Henry Graves. Now we

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have it on oath from Miss Edwards (now Mrs. Freer) that on the 28th day of April 1865, when the agreement purports to have been made, she did not know Mr. Graves. When Mr. Graves was asked to produce the agreement, he said that it was burnt in the fire in the Opera House. The history of that painting is this: While the painting was upon the easel, Mr. Trowbridge, of Liverpool, saw the picture, and purchased it for 60*l.* He paid to Miss Edwards 5*l.* deposit. That was the sale of the picture, the first sale. She sent the picture to the Exhibition, where it was seen by Mr. Graves. Mr. Graves called on Miss Edwards, and wished to buy the picture. She told him that the picture was already sold to Mr. Trowbridge, of Liverpool, and referred him to Mr. Trowbridge. Mr. Graves communicated with Mr. Trowbridge, who was unwilling to sell the picture, but at last did for an improved price (I do not know how much the improvement was), and the understanding between them was, that Mr. Graves should pay to Miss Edwards 55*l.*, being the balance due to her from Mr. Trowbridge.

4170. (*Mr. Daldy.*) Was that understanding between Mr. Graves and Mr. Trowbridge in writing?—No. She states that on oath, verbally. Mr. Graves paid the 55*l.* to Miss Edwards and, handed her a receipt to sign, the receipt being for "An oil painting and "the copyright." Miss Edwards said "What is this, "Mr. Graves? I do not understand this word 'copy-"right.'" "Oh," he said, "I have bought the picture "and, of course, I am to have the copyright, it is usual; "it is the custom." She thereupon signed the receipt. Now in the register there is a prior registration by Miss Edwards herself, which is a perfectly legal one, dated May the 8th, 1865: "Oil painting, 'The "'Last Kiss.' Girl Kissing a Dead Bird." There you have the short description required by the Act. "Name of the artist, Miss Ellen Mary Edwards, No. "16, Oakley Street, Chelsea, London." Now upon looking at the register you find no connexion between these two entries. Miss Edwards makes her entry, which is right, on the 8th of May 1865, and on the 7th of the following August Mr. Graves makes an entry, and in the column which refers to the agreement puts the date April the 28th, 1865.

4171. (*Sir H. D. Wolff.*) You bring forward this to show the defect of the present registration, as I understand you?—Yes, it is an illustration of my statement that the duties of the clerk at Stationers' Hall are simply ministerial.

4172. (*Sir H. Holland.*) Would you throw upon the registrar the onus of cross-examining Mr. Graves, and asking him: "Are you really the owner of this "copyright, and when did you become so," and so on?—To a certain extent, so as to show a *primâ facie* copyright.

4173. (*Chairman.*) Did I rightly understand you in a previous answer to state that in your opinion the Registrar of Designs did exercise some sort of control of that nature?—He is a responsible Government officer, and probably receives a salary of 200*l.* or 300*l.* a year, and he has to do certain duties, and does them; but at Stationers' Hall there is no one of the sort; there is simply a clerk and he makes an entry according to what he is told.

4174. (*Sir H. Holland.*) And those entries can under the Act be set right by the person who is aggrieved by the entry?—The words of the Act are "Any person who may deem himself aggrieved by these entries;" but the judges have decided that no person is aggrieved unless he has some title conflicting with the title of the person entered upon the register. Now when an entry is made, in a case where there is no existing copyright, all of Her Majesty's subjects are aggrieved, because they are debarred from the public use of that which they are entitled to. If there is no copyright, there can be no conflict of title. You cannot have a conflict about anything non-existent.

4175. (*Mr. Daldy.*) Are you aware that under the Literary Copyright Act of 1842, forms are provided showing the way in which the registration is to be taken, and that in consequence of that, it is quite impossible for any cases, such as you have suggested, to occur, with reference to a book?—No doubt you have been accustomed to make entries, but you simply fill up the form.

4176. If a form be prescribed which is to be filled up, the registrar at Stationers' Hall only copies from that form; and in the case of books, forms having been prescribed, there is no difficulty whatever in keeping the register?—In that case all the entries upon the form may be untrue.

4177. The reason why that cannot be the case is, first of all, that the person registering has to enter his title, and then in the first transfer he is assignor; afterwards the assignee becomes assignor, when it is next sold, and in that way the title is traced. If that form were adopted in the cases to which you are referring, would not these difficulties of which you complain be avoided?—We have a form provided by the Act; that is the form (*handing it to Mr. Daldy*).

4178. First of all the person certifies that he is entitled to the copyright of the work; he gives the description of the work, date of agreement or assignment, names of parties to the agreement, name and place of abode of the proprietor of the copyright, name and place of abode of the author of the work?—If the entries were true there would be no reason to complain, but unfortunately the entries are often untrue, and there is no registrar to ascertain this untruth. There is a column there for the date of the agreement. If, when the assignor went to get the entry made, he said to the registrar: "Here is the assignment of this copyright, I wish it entered," it would be different; but that is not done. He merely presents that form; there is the defect.

4179. This form which you have handed to me, is drawn up by the Stationers' Company themselves; it is not the form prescribed under the Literary Copyright Act. There are only two forms required under that Act. One is the "original entry of proprietorship of copyright of a book." Then you have in the register the time of making the entry, the title of the book, the name of the publisher and place of publication, the name and place of abode of the proprietor of the copyright, and the date of first publication. Then the other form is, "Form of concurrence of the party "assigning, in any book previously registered." "I, *A.B.*, being the assignor of the copyright of the "book hereunder described, do hereby require you "to make entry of the assignment of the copyright "therein," and then you have in the register the title of the book, the assignor of the copyright, and the assignee of the copyright?—If we had those forms in use with regard to the Artistic Copyright Act, we should not get these false entries. Take for instance the registration of "The Last Kiss." We have there the date of the agreement, April the 28th, there is nothing to show the registrar that the agreement was ever made.

4180. (*Sir. H. Holland.*) With regard to amending the register it is true that it can only be amended by a person who is aggrieved, and a limited construction has been put on those words; but you are aware that by the first section of the Act a person who makes a false entry is indictable for a misdemeanour? Then with reference to the conflict of title. I may add this: Suppose I were to go to Stationers' Hall and register myself as the proprietor of the copyright of a painting by Raffaelle. No person could take steps to cause that to be expunged, because he is not aggrieved, and his title could not conflict with my title, because neither of us in fact have a title.

418.. (*Chairman.*) Your object, as I understand, is, that there should be a more definite power given to the registrar than he has now?—Yes, that the registrar should be a Government officer. That is my opinion of what is desirable.

4182. (*Earl of Devon.*) Then, I suppose, you would make it obligatory upon him to search the register as

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to whether there is any previous entry?—Yes. There is one more point to which I should like to refer with regard to the grant of copyright. The draughtsman who drew this Bill to which I have referred evidently drew it with the general idea that paintings are painted for purposes of sale. Now that is not always so. Take the case of an artist painting a picture and vishing to retain the picture and sell the copyright, there is no provision in this Act for him to do so; the Act does not provide for that contingency.

418 . (*Sir H. Holland.*) In what case would that arise?—It might be his own portrait, for instance; he might have an affection for it. There is an instance in which an artist painted a certain picture and presented it to a friend. He afterwards sold the copyright to a publisher, who published an engraving made from the picture. Two years after the sale of the copyright, an entry thereof was made on the register, and several persons were imprisoned for selling copies made from the engraving, under proceedings for infringing the copyright, not of the engraving, but of the picture. There could be no copyright in the picture because there was no sale of the picture, and no written agreement in accordance with the first section of 25 & 26 Vict. cap. 68. The words of the Act are "sold or disposed of;" but the words "disposed of" are construed by the judges to mean disposed of for value.

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The witness withdrew.

Adjourned till Tuesday next at half-past two.

Tuesday, 13th February 1877.

PRESENT:

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
DR. WILLIAM SMITH.

ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

BASIL FIELD, Esq., further examined.

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4184. (*Chairman.*) Referring to your answer to Q. 3998, I see that you there state that artists constantly lose most valuable copyrights because they do not register?—I do.

4185. Are you of opinion that the loss by artists of their copyright carries with it a loss to the purchasers and to the public as well?—I am; for when, through the inability of the artist to register, the copyright in many of his works is lost, so many copies and imitations of his work will be thrust into the market that the innocent collector who has bought one of his undoubtedly genuine works from his studio or from the walls of an exhibition, will independently of the copyright find the picture for which he has paid a full price of little value in the market. This statement is not founded on speculative reasoning, but is based upon actual facts within my personal knowledge. There is a certain Royal Academician who has painted a fresco in the House of Lords, and who has been honoured by being made a corresponding member of the Institute of France. He like a true artist has been more careful worthily to depict on his canvass the poetical imaginations of his brain than to protect his copyright and his pocket by the study and observance of troublesome technicalities. The result is that the market has been flooded with copies and imitations of his work. To such an extent has this gone that dealers and purchasers have of late looked with suspicion on any picture bearing his name that has been put up for public sale, and quite recently a friend of mine bought at Christie's an important work of his, since acknowledged by the artist himself to be genuine for less than 50*l.*, whereas the price of such a picture, from the walls of the Royal Academy or from the studio of the artist himself would have been at least 300 guineas. Not only the artist then but the owner of his pictures will suffer if the law of copyright is clogged with conditions which the artist finds too onerous to fulfil. Registration is injurious to the owner of a picture who wishes to sell it, as I have shown. I will now show that it is also injurious to the would-be purchaser. Many important sales of pictures take place as you are no doubt aware, elsewhere than in London. Supposing registration to be strictly compulsory, and supposing (which I more than doubt) the possibility of a description on the register sufficiently accurate unfailingly to identify the picture. The sale we will say is to take place at Manchester or Liverpool, and a collector who is struck with the beauty of the picture, and who also wants to acquire the copyright in that picture, is desirous of knowing in whom such copyright is vested; he must of course consult the register. I may here say by parenthesis that not one private collector in a hundred does want the copyright in a picture which he buys at a sale (they as a rule buy direct from the artist if they want the copyright), as he cannot profitably engrave it (I will state why hereafter), and unless he is a pirate he does not want to make copies for sale. I will state also, and I have it from the lips of the best known publishers in London, that they, who do want the copyright for the purpose of engraving, never consult, and would never think of consulting, the register, but would and always do write direct to the artist, whom they would wish to superintend the plate if living, or to his family if he were dead. But I am bound to assume that the purchaser would wish to consult the register, otherwise I leave no use whatever for compulsory registration. Well, what is he to do? Is he to go up to London and consult the register? That involves a great deal of expense, particularly as he may find that the copyright has not been protected, so that he cannot acquire it, and still worse, that for all he can know the picture may have been already copied a dozen times. Is he to employ one of those middlemen who it was suggested on my last examination would arise to wrest a fee for registering his picture from the needy artist, who counts, and too often counts in vain, on the exhibition and sale of his picture to pay for his dinner and studio rent. Is he to employ one of these middlemen to make the search for him? In that case not only must the artist or the middleman whom he employed have described the picture with such minute accuracy that there can be no mistake as to its identity to anyone who has seen it, but the intending purchaser must describe the work which he wishes to purchase with such accuracy that the middleman employed by him, who has never seen the picture, must be able to identify the description with the description on the register, if there be one, or be able to say with certainty that there is no entry amongst (it may be) more than a thousand by the same artist, which would be held by a court of justice to be sufficient for purposes of registration. And what a vague description has been judicially pronounced sufficient I will hereafter point out to the Commission. Of course the intending purchaser would do nothing so foolish, he would simply write to the artist, whose name he must know in order to consult the register, and to whom a very loose description of

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the picture in connexion with the circumstances and place where the sale was to take place would suffice to identify the particular work; or if the artist was dead and he could not get the necessary information from the family or representatives of the deceased, he would inquire into the title of the vendor, he would ask whether he had a written assignment of the copyright or not, and upon the answers given to these inquiries he would determine to bid or not to bid, or to bid to a certain price only for the picture. Compulsory registration is worse than useless to him, he is practically prevented from learning anything that is useful to him from it, and it may yet be held to be constructive notice to him of a defect in title of which he knows nothing. Again take this case, which is a good example of the injury that might arise to a purchaser trusting to a careful search of the register to warn him against reproducing for sale a work of art which he had bought for that special purpose. Some artists, as the Commission are doubtless aware, though best known as painters, work in plastic as well as in graphic art. I am assuming the case of a purchaser buying a work of art for the purpose of reproduction in another form. Suppose Sir Edwin Landseer to have modelled and reproduced in terra-cotta or any such material the polar bears from his picture of 1864; suppose some worker in bronze to buy this work after it has passed through several hands, with the view of reproducing it in bronze as an ornament we will say for the top of a clock. To clear up preliminary difficulties we will suppose Landseer's name to be marked upon the clay. The bronze worker goes to the register but can find no such work of art registered. Of course he would consider that he was safe if he found no entry of any work of plastic art by Landseer answering in description to the work which he had bought. He would not think it necessary to examine the entries relating to the 640 paintings and 200 sketches which are mentioned in Mr. Graves's catalogue of Landseer's works; if he did he would hardly know that an oil painting which he had never seen, entered as "Man proposes, God disposes," was the first expression of the design of which Landseer's polar bears were only a reproduction in clay. However he would content himself with searching the entries of works of plastic art under the name of "Landseer." He would naturally suppose that the legislature would not have insisted on registration if, to put it at its lowest value, it did not afford the public consulting the register a certain means of ascertaining whether any work of art could, or could not without further inquiry, be safely copied for sale. And yet it is clear that Sir Edwin's representatives could, although the terra-cotta was unregistered, and after this man had spent money and labour in making (it may be) a good and artistic bronze of the bears, prevent his selling it.

4186. (*Sir H. Holland.*) Is that so? Supposing that registration were made compulsory, it would also be provided, so as to ensure this registration, that the person who did not choose to register should not be able to recover for anything done before registration, and should not be able to prevent the sale of anything made before registration; he would be able to stop any infringement subsequent to registration, but the penalty for non-registration would be, in addition perhaps to any pecuniary penalty, that he could not recover for anything done prior to registration; and then the case which you are putting falls to the ground. These bronze ornaments made for clocks would then not be infringements if made previous to registration?—I quite see that that is the logical and necessary conclusion, therefore if registration is to be compulsory at all, not only the original work in which the design is first expressed must be registered, but each and every reproduction, whether plastic or graphic, and whether executed by the artist himself or by anyone licensed by him, must be registered.

4187. (*Chairman.*) Is it your contention that under the existing law, if Sir Edwin Landseer's original oil painting had been registered, an imitation of the terra-cotta in bronze would be illegal?—Certainly; and I will come to a case in the Queen's Bench, and will call your attention to the words in the first clause of the Act, which in my opinion show that plainly. And more than that, if registration were held to be notice to all the world, Sir Edwin's representatives could without previous warning seize the bronzes as soon as they were offered for sale and mulct the vendor in penalties. Had the law said you shall not copy any work of art for sale without permission from the artist, he would have known how to act, but unfortunately registration which had been provided for his protection would prove his ruin. Of course that falls to the ground if registration of reproductions were required.

4188. (*Sir H. Holland.*) That is subject to the point that registration might be made to protect only subsequent infringement?—Yes. As to the right of Landseer's representatives, the Act gives the artist the sole right of reproducing not only the picture, but the design or conception of the artist expressed in the picture, by any means. He can repeat it in water colours, in monochrome, in dry point, in sculpture, by engraving, or how he pleases. And the fact of its being the design or conception of the artist that you have to protect and not only his picture, which is but one of many possible concrete expressions of that design, is the very reason why registration is inapplicable to works of imaginative art, or is so considered by those who have considered the point before. In other words, it is impossible to register the thought of the artist.

4189. (*Mr. Trollope.*) Are you now speaking of artists generally or only of painters?—I am speaking only of painters, both in oil and in water colours. It no doubt applies more or less to statuary; but I wish my evidence to be considered as confined to painters in oil and in water colours, and monochromes and drawings by the pen.

4190. What we call graphic art?—Yes. All that you can do is to register the first particular expression of that thought, and to say, as the law now says, you shall reproduce or colourably imitate this in no material and by no process without licence from the inventor. It was this fundamental difficulty, arising as it does from the very nature of imaginative art, that led those who most earnestly studied the subject to repudiate registration as inapplicable to the arts of design. I thought it right to say that, because these are not only my opinions, but, however badly I may express them, the opinions of others before me.

4191. (*Chairman.*) I find that by the Acts of the 54th of George the 3rd and the 13th and 14th of Victoria, copyright in sculpture must be registered first of all by the Registrar of Designs, and now that office having been abolished, by the Commissioners of Patents. If therefore Sir Edwin Landseer had not registered the copy of his picture in terra-cotta at the office of the Registrar of Designs or of the Commissioners of Patents, would it be an infringement of the copyright of his work in terra-cotta to repeat it in bronze? The answer to that question is that it would not be an infringement of his copyright in the terra-cotta under the Act of 13 & 14 Vict. c. 104, unless he registered that, but it would be an infringement of the registered copyright in the *design* of the picture under the Act of 1862; and the case of Ex parte Beal in the 3rd volume of the Law Reports, Queen's Bench, page 387, fully bears this out. In that case Justice Blackburn, with the concurrence of Justices Mellor and Lush, laid it down that a copy of a copy is a copy of the original; so that it simply comes to this, that the copyright in the original picture is strong enough to prevent piracy of an engraving (or in our case a terra-cotta reproduction) from that picture. There is, however, a copyright in sculpture under the earlier Acts without registration, so that there would be a limited copyright in the terra-cotta independently of the "Designs Act, 1850." What I have been stating was with the intention of showing that compulsory registration would be injurious to the artist, to the owner of his works, and to the would-be purchaser. Then the only people to

whom it could possibly be of use, as it seems to me, and the only ones who would be left, would be the registrar who takes the fees, the middleman who would do this registration for the artist, and the pirates, and these, and these only, are the "public" for whose protection the champions of compulsory registration insist on its necessity. I will now proceed to give you a little evidence on the number of works of art produced in the year; it is very speculative, but I will show you on what it is based, and consequently the confusing number of entries which would appear upon the register if compulsory registration could be carried out in its entirety. I find that in the last catalogue of the Royal Academy there were 1,073 paintings, exclusive not only of sculpture and engravings but exclusive of miniatures. In the Society of Painters in Water Colours there were 283 in the summer and 413 in the winter exhibitions. In the Oil Dudley there were 479. In the Water Colour Dudley there were 638. In the Black and White there were 605. In the Institute I have the winter catalogue 337, and not having the summer catalogue I have put the number lower than that, namely 300, which is estimated. In the Incorporated Society of British Artists there were (in the last catalogue I have) 707 in the winter exhibition, and not having the number of the summer exhibition I have estimated it at 600; they are generally larger and therefore fewer pictures in the summer exhibition. In the Fine Arts Society there were 195. That makes a total of 5,630 new pictures (by the rules of the societies they must all be new pictures) exhibited in London last year. Now I have left out the New British, the Ladies' Exhibition, Wallis's, Mc Lean's, and five or six other dealers' exhibitions, because the pictures are not always new and it is impossible to estimate them. If we estimate those outside exhibitions at 1,800 those added to the 5,630 would make 7,430 and I should not be the least surprised if the number was nearer 10,000 new paintings exhibited in London in one year. Of course if this registration is to be exhaustive, and if all the studies which actually include the same expression of design are to be registered, the number will be something enormous. Now independently of this you must remember that there are an immense number of designers who never exhibit at all. I wrote to Sir John Gilbert and asked him how many designs he made in a year formerly when he was engaged upon those things; he writes me back—"In my own "case, which in fact is also the case of many artists "who make designs for books and illustrated "periodicals, when I was so engaged I must have "made on an average certainly two original designs "each day, twelve per week; thus amounting to a "very considerable number per annum." Now Mr. Birkett Foster probably made quite as many. Mr. Du Maurier, the illustrator of "Punch," does more than two a week for "Punch" all the year round, and there are the "Almanack" and "Pocket Book," besides the "Cornhill" and other magazines to which he contributes; he must make 200 or 300 illustrations in a year; and there are an immense number of artists that we scarcely know of who are producing many designs in every one of which the copyright is of value. In the case of Sir John Gilbert's designs the copyright was infinitely more valuable than the work itself, and therefore every one of them must have been registered because they were done to be copied for steel engraving, or on copper plate, or on wood, and although in his time very many of these were drawn on the blocks, so that there was no original and no copy and the copyright in the periodical in which the designs appeared would cover them, yet nowadays all better work is drawn on paper and reproduced by photography on the blocks, so that the block-cutter may have something to copy, if as is often the case he makes a slip and loses the drawing. Of course it is for the Commission to consider the matter, but all these things certainly would have to be registered if registration is to be exhaustive, and unless it is exhaustive it seems to me to be rather a pitfall. These are all facts bearing on what I have said.

4192. (*Mr. Daldy.*) I will draw your attention to Q. 4035, which I put to you on the last occasion. I there asked you, "May I ask you whether you think it "would meet the views of the artists not to compel "registration, till an artist parts with his copyright, "but to insist upon the first transfer being made by "registration, as is adopted in the case of books:" your answer was, "I think that would do admirably; "it was what I was about, as far as I might venture "to do so, to propose"?—Yes; I think that that is really the only way in which compulsory registration can be made consistent with justice. The purchaser of a copyright usually purchases it because he wants it for some business purpose, to engrave the picture, or for some particular purpose, and then he is in a position to register it; it is no difficulty to him.

4193. You have spoken as to the great difficulty arising from making registration compulsory, and you suggested, I think, that if a person was in the country it would be necessary for him to come to London and to search the register in order to ascertain whether a certain picture had or had not been duly registered?—Yes.

4194. Are you aware that under the book copyright law, certificates of these registrations are given out on payment of a fee to any applicant?—Yes.

4195. Would not that meet the difficulty in this case also, namely, by giving a certificate to any artist who wished to have one, which certificate could follow the course of the picture, into whosesoever's hands it went?—Certainly, if it was only the picture and not the design which was protected.

4196. The certificate would be added to that picture?—Yes, to that individual picture.

4197. The Act says that the design is protected as well as the picture itself, does it not?—Yes.

4198. Then where is the difficulty?—The difficulty is just this, that if the design is protected in the picture, the very thing which I have said about the terra-cotta may arise.

4199. The design is protected under the Act, of course *quoad* copying the picture in any shape?—No, I beg your pardon; the copyright is the power of reproducing either the picture itself or the design of it in any known form or material.

4200. Then is it not protected in terra-cotta by that definition?—The person who copied the terra-cotta, which is another form of that design, would infringe the copyright in the original picture.

4201. Then does not it follow that by the original registration of the picture the copying of it in that case is prevented?—Certainly; and the mischief arises to the public who buy it without knowing anything about it.

4202. If it is protected, surely the owner of the copyright at the time has the power of preventing a terra-cotta design being issued. If the artist himself makes a new issue, surely he has the power to register it under the Designs Act?—The artist certainly has the power, but he is not by law required and does not choose to do so. If you make him he will do so; but then I say that every possible copy must be registered.

4203. Every possible copy, not every possible design?—Every possible reproduction of the design in the original work.

4204. At any rate you say that registration in the form which has been suggested protects everything excepting reproductions in terra-cotta or sculpture?—I do not think that I have made myself understood, or if so, I do not quite understand your question.

4205. I have asked you whether, if a painting is registered, and if that registration covers the design of the painting, it protects it from every form of reproduction except in the form of a terra-cotta production, or some production in sculpture?—It clearly protects that also.

4206. If that be the case, surely registration is rather too perfect than otherwise, it is not imperfect?—If you will forgive me, it is not the registration that protects the artist; it is the Act giving the copyright

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to the artist in the design as well as in the picture. There is, further, in the Act another clause saying before you do anything you must register; but that has nothing whatever to do with the terra-cotta, and a man who copied the terra-cotta would be infringing the copyright in the picture, of which he knew nothing. The artist is not bound to register the terra-cotta; and my argument is this, that any registration which is not thorough, and which does not put an innocent purchaser on inquiry, is mischievous.

4207. Then your test for registration would to be put an innocent purchaser on inquiry?—Certainly.

4208. Will not that be met by allowing a certificate to accompany every picture if required? Surely a picture is of that value that if an artist is to register it he can take a certificate, which passes on with the picture wherever it is sold?—But the certificate would not pass with the terra-cotta reproduction. Besides there would be 600 certificates for Sir John Gilbert in one year in designs, in every one of which the copyright is more valuable than the design.

4209. Are not those designs already protected under the Book Act, as forming an integral part of a book?—The designs are not protected, the engraving is protected. May I give you an instance? In the case of the drawings which Mr. Du Maurier makes for "Punch," as soon as they have been reproduced, and reduced by photography on to the block, and have been printed off in "Punch," nobody may copy the print in "Punch;" but if Mr. Du Maurier, without reserving and registering his copyright, sold his original design, the possessor of that original design could re-engrave it.

4210. Mr. Du Maurier's case and Sir John Gilbert's stand on a different footing, do they not? In the one case the original is on the wood before you apply the engraving, and in the other the engraving is simply a copy from the original. The original exists independently of it; but there is no original of Sir John Gilbert's designs?—In many of them there is no original; many of them were drawn on the block, but in many of them there was an original; and, nowadays, almost all such designs have originals; all the best wood-cuts are drawn on paper first, and reproduced on the block by photography.

4211. Some few of the best are possibly so treated. That case, surely, might be met by registering those which are considered good enough to have an independent existence?—Certainly, physically and morally it might be, but not practically.

4212. They are not so numerous as that that could not be done. I mean registering at the time of sale, not that a person need necessarily register whenever he executes a work, but before he parts with it?—Or, rather you mean that the purchaser should do it when he buys it, do you not?

4213. Registration is a joint act, because the vendor fills up the certificate to say that he is the proprietor, and that he parts with it to the purchaser; that form is the basis of the registration in the register kept by the registrar?—I think that we mean the same thing. The purchaser of the copyright no doubt would be the person who would forward it or would go to the registrar as being the person most interested in its protection.

4214. That may be, but the vendor has to sign this transfer, and therefore takes a part in it?—Just so.

4215. (*Mr. Trollope.*) In giving your evidence today, and on the last day when you were before us, you have been speaking as to compulsory registration?—Yes.

4216. I wish to get at your idea of compulsory registration. Do you mean registration which shall be made compulsory by penalty, or do you simply mean, when you speak of compulsory registration, a registration which shall be necessary to copyright?—I mean a registration which shall be a condition precedent to copyright.

4217. And therefore not a registration which shall be in any degree compulsory?—Merely compulsory if you want to protect copyright you lose your copyright unless you register.

4218. Is the registration of which you are speaking one which is to be enforced by penalties, or is it only one which is to be necessary as being antecedent to copyright?—Only one which is a condition precedent to copyright.

4219. (*Sir H. Holland.*) Do you consider the registration which is now required under the Fine Arts Act to be compulsory or otherwise?—It is not compulsory now. You lose not the copyright but the right to enforce it, and the benefit of the Act.

4220. (*Mr. Trollope.*) Therefore the registration at present is only antecedent to copyright?—No, it is not antecedent to copyright.

4221. (*Sir H. Holland.*) Should you call it compulsory? The registration, as you are aware, under the Fine Arts Act, is not a condition precedent to copyright, but it is a condition precedent to your right to sue and to enforce your copyright?—I am aware of that.

4222. Should you call that compulsory registration or not?—That is not what I have meant by compulsory registration in my evidence.

4223. (*Chairman.*) To what, therefore, does all the evidence to which we have been listening to-day tend?—To show that a more exhaustive system of registration, which would be a condition precedent to copyright, would be objectionable.

4224. But are we to take the evidence which you have given to-day as hostile to the present state of the law as to registration?—Partly; it partly attaches to the present registration.

4225. (*Sir H. Holland.*) Does it partly apply to the present system, because you conceive that even under the present system no registration can be effectually carried out, and yet if registration is not made the person cannot sue?—Yes, that is my reason.

4226. Some of the objections which you have made apply to registration under any form, compulsory or otherwise, do they not?—Not to voluntary registration.

4227. But to compulsory registration as a condition precedent to copyright, or rather as an antecedent to suing?—Yes.

4228. Do you see any use in voluntary registration?—Most distinctly I do, it is all the use of registration, it is that engravers and publishers and in fact all dealers may when they have invested money be able to get a cheap and easy *primâ facie* proof that they are owners of the copyright, and stop these hawkers of photographs and other pirates.

4229. Then if I understand you rightly, what you would advocate is that copyright shall remain in the artist (we will put aside for the present the particular question of portraits), that if, however, the artist sells, and therefore the copyright is parted with, and vests in some one else, that person shall have a right to register, though he shall not be compelled to register?—That is exactly what I think.

4230. But you would give him a right to register in order to enable him to get an easy proof of his title?—Certainly, and he would always do it.

4231. Have you heard anywhere that it was supposed that what you call a compulsory registration would be suggested, that is to say, that unless there is a registration copyright is to be altogether lost, or is it merely your own fear lest that should be thought of?—It arose from the questions which were asked me when I read and commented on Mr. Blaine's reasons for compulsory copyright, as he calls it, for registration being a condition precedent.

4232. Probably at that time compulsory registration in our minds meant registration antecedent to a right to sue. Copyright without such registration would be practically valueless, if you are not to have a right to sue unless you register, and therefore it would be compulsory in that sense?—I could not tell what was passing in your minds; that is always one of the greatest difficulties which a witness has.

4233. (*Mr. Trollope.*) You endeavoured just now to give the Commission an idea of the number of pictures which the artists and the sculptors supply every year?—Only in London.

4234. Taking London, do you think that by alluding

to what are exhibited, you have arrived at even one tenth of the pictures which are created and sold every year?—I should think not one fiftieth.

4235. Therefore the numbers which are suggested by you, although useful as showing the great amount of works which we know are produced, cannot be taken as an accurate guide to the amount of works of art which are produced?—Nothing like a guide; I thought that I could show you without going further that there were so very many works produced that it would be impossible to enforce such a registration as I have mentioned.

4236. (*Sir H. Holland.*) Dealing with registration such as is now enforced, that is to say, registration necessary to entitle you to sue, do you think that it is impossible really to comply with the requirements of that registration, as to the description of the picture, for instance?—The difficulty is to answer that question until I have referred to the case which has been decided as to what is sufficient.

4237. You have said, I think, that compulsory registration would necessitate the employment of middlemen. If registration were a condition precedent to the right to sue, but not a condition precedent to copyright, should you consider that the employment of middlemen would be necessary to comply with the requirements of this registration?—No, I should not. The solicitor would register before issuing process.

4238. Therefore the difficulty which you suggested as to giving a description of the picture to a middleman, applies to the other class of compulsory registration?—It does. I consider that the description there would have to be definite enough actually to identify the work.

4239. Again, you have said that you consider that compulsory registration would be inconsistent with the proper protection of the design, does that observation apply to registration which is a condition precedent to suing?—I do not think that I said that compulsory registration would not protect the design. I said that a great difficulty with compulsory registration is that you want to protect the design, and that you can only register each expression of the design as it crops out.

4240. Is not that the same thing as saying that registration is inconsistent with the proper protection of the design?—Yes, in so far as protection should not be limited to that only which is capable of being registered.

4241. Your point was that you cannot register the idea of the artist, but only the expression in the form?—Yes.

4242. Does not that apply to any registration, whether it is voluntary, or whether it is a registration without which you cannot sue?—That applies to all registration.

4243. And yet I understand that you are not opposed to a voluntary registration?—Certainly not, because when the artist has parted with his copyright he cannot part with his thought to the man who buys the copyright, and all that the man who buys the copyright can possibly have, is the artist's expression of the thought in that picture, and the right to prevent anyone from copying it but himself.

4244. If you do away with registration altogether, that is to say, registration as a condition precedent to suing, how are the public to know when a copyright in a picture ends at all?—It will end at the expiration of a certain term of years after the death of the artist, and they will find the date of the death of the artist by paying a shilling at Somerset House.

4245. Therefore that is an additional reason for keeping that principle as regards copyright, namely, that it should be for the life of the artist and a certain number of years afterwards?—Certainly. I may observe that the case of Ex parte Beal, in the 3rd volume of the Law Reports, Queen's Bench, is a case which shows that at present such a description as this is sufficient on the register: painting in oil, "Ordered on Foreign Service," or painting in oil, "My First Sermon," or photograph, "My Second Sermon," and nothing more; Mr. Justice Blackburn remarking that "In almost all cases a man who copies without "authority of the owner must know he is pirating "the work of somebody," and stating that in his opinion the Legislature did not mean the description to be precise, as in the case of the specification for a patent, so as to be notice to all the world. I imagined that a very much more severe description would be requisite if it was intended to make the register complete, and to give everybody notice who had a copyright in a particular picture. I was very likely under a false impression as to the feeling of the Commission on the question of registration, and I am glad to find that such was the case.

4246. (*Chairman.*) Will you proceed to your evidence on the subject of photographs?—I have very little to say on the subject of photographs. The attempt to force works of imaginative art into provisions suitable for photographs, has perhaps led to much of the mischief which is complained of by artists. Of course photographs differ totally from pictures, the main distinction being that a photograph has no design, there is no imagination or feeling in it. If you put two photographers with their boxes before the same subject, they will produce exactly the same result; but if you put three or four different artists before the same subject, they will all produce results totally differing one from another, although all may be equally true to nature.

4247. (*Sir H. Holland.*) Does not an arrangement of a photograph come under the head of "design"?—No.

4248. (*Mr. Trollope.*) Does not a photographer group?—Certainly.

4249. In doing so does he not design?—I think not. I do not for one moment say that where a photographer arranges a particular group, anybody should be allowed to copy the photograph of his group; but another photographer may arrange the same group. Were it otherwise you would give a copyright to the grouping in a ballet.

4250. You know Mrs. Cameron's photographs, do you not?—Yes; they are very charming and very tasty.

4251. Would you not say that there is design in all of them?—I do not say that there is design, but there is taste in arrangement.

4252. Is there not design in them?—Not in my meaning of the word "design." I believe "design" to be the conception of thought in the artist.

4253. Has she not in grouping her personages together imparted to them certain dramatic and poetical associations?—I should certainly not say poetical.

4254. Have you seen her "Seven Foolish Virgins," and her "Seven Wise Virgins"?—Yes.

4255. Is there not poetical association in them?—I think that the poetry must be in the minds of those who look on them. There is immense taste and great refinement of arrangement; but there can be no thought in a photograph, it is not a translation into black and white as an engraving is, but a mere transcript, a mechanical process.

4256. Has not the photographer before him the task of so grouping his persons as a sculptor groups and moulds his clay?—The sculptor moulds his clay from the thought within him, the photographer can only place his actual given figures or models tastily in groups.

4257. Cannot the photographer arrange the limbs and the drapery?—He can arrange the position of them, but he can create nothing.

4258. (*Sir H. Holland.*) You are possibly aware that in the Bill of 1869 it was attempted to define the word "design"?—I am aware of it.

4259. And the way in which it was defined was, "a "new and original composition represented by the "author thereof in any work of fine art"?—Yes.

4260. Do you accept that definition?—No, I do not; and I know that Lord Westbury and my father and many others tried for a long while and could get no proper definition of "design."

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4261. But this definition was what they agreed upon in the end?—That definition was in that Bill; but I believe that Bill was handed to Lord Westbury cut and dried.

4262. (*Chairman.*) Will you continue your evidence?—Photographs are capable of exact reproduction, and the photographer, in my view, is a tradesman with a box of chemicals. He may have extreme taste, both in the choice and in the arrangement of his models, but there is no creative quality about his work; and therefore I think that photographs may very well be treated by registration, the reproduction being exactly the same as the original. I am solicitor to one of the best known firms of photographers in London; and with the view of assisting the Commission I inquired whether they had any complaint to make of the present Act. They objected to the clause restricting proceedings to acts done after registration, because (as I mentioned was the case with artists) they were obliged to proceed against the innocent vendors of pirated photographs, and could not punish the guilty pirates who had copied their photographs and supplied the retail vendors with copies. On this point I would suggest for the consideration of the Commission, whether an amendment of this kind would not be very beneficial in all cases where registration is required, namely, to omit the words at the end of section 4 of the Act 25th and 26th Victoria, chapter 68: "No proprietor of any such "copyright shall be entitled to the benefit of this "Act until such registration, and no action shall be "sustainable, nor any penalty be recoverable in respect "of anything done before registration," and to substitute words to this effect: "Provided always, that no "one shall lose the benefit of this Act by reason alone "of non-registration; but in case of any proceedings "being taken for any act done before registration, it "shall be competent for the tribunal before which "such proceedings shall be taken to consider whether "the neglect to register before the happening of the "act complained of shall have caused or contributed "to the commission of that act, or shall have increased "the costs of the proceedings, and to make such order "in mitigation of the penalties hereby imposed, and "such order as to costs, as to the said tribunal shall "seem just." Now that really would protect all innocent people, and yet would not let a little slip in non-registration interfere with stopping the proceedings of wholesale pirates. It is a fact, to my knowledge, that it is not until pirated works have got into innocent hands that they are found out, and that attention is called to them. In most cases the pirate knows perfectly well that he is doing wrong, and if he could prove his innocence this clause would protect him, while it would allow the injured owner of the copyright to proceed against the actual wrongdoer, instead of his only remedy being (as it now is) to prevent the sale of the copies in the hands of innocent purchasers for value.

4263. (*Sir H. Holland.*) Have you any legal decision that you can proceed against an innocent person for buying a picture which has been copied, though wrongfully copied, before registration?—No; I do not say for buying it, but for offering it for sale; a man carries them in his hands.

4264. Have you any decision to that effect?—No; I have had many cases in which I have threatened proceedings, and the parties have invariably given way after consulting lawyers. I think that there has never been any doubt upon that point.

4265. Although it was done before registration?—Perhaps I have not made myself understood. The works are pirated before registration, and the pirated copies get into the hands of an innocent holder; when the owner of the copyright finds that out, he registers, and then says to the innocent holder, "I give you "notice not to part with them;" then if after that notice the innocent holder attempts to sell, he is doing an act which is contrary to these provisions, and after registration. That is the only way in which we really can punish the pirates. We stop the retail vendors whom they have supplied, and they turn round on those who have supplied them, but we know nothing about that. But it would be much more satisfactory to go straight to the head of the evil. Photographers would also, of course, like to have some power of making the retail man give up the name of the person from whom he had purchased the pirated copies. On all other points I believe the present Act to be satisfactory, as far as photographs are concerned.

4266. Do not photographers want a power to seize piratical copies in the possession of hawkers, as was provided by the Bill of 1869?—They perhaps want it slightly, but publishers want it more. If you ask me about the Bill of 1869 I can tell you.

4267. I refer to clause 15: "Piratical copies in "possession of hawkers may be seized," and we have had evidence that the power of seizure is very desirable?—No doubt it is, but I should think more so to publishers. My clients, who are very large photographers, have but little trouble in that way. They keep their copyrights in non-commissioned works themselves, and in commissioned works they always consider that the negative and the glass on which it is are theirs, but that the copyright belongs to the person who gives them the commission. If they go up the Thames or up the Nile and take a series of views they register them, and then of course they protect those photographs, although anyone can go up the same rivers and take those views afterwards. But it is the publishers, such as Mr. Graves, who suffer most. Pirated photographs are made from his engravings, and the vendors of those photographs undersell him in the market. I have known those men come into my office and sell pirated copies to my clerks, and when I have seen them they would give up no name and would pack up and hurry away. I have known them have, I should think, over a hundred facsimiles of a pirated work.

4268. (*Mr. Trollope.*) Are you giving us evidence on behalf of the photographers, or are you complaining of the photographers?—This evidence is on behalf of photographers, but not of pirates who hawk the copies about.

4269. Of course we recognise you as expressing here with perfect accuracy the wishes of painters?—Yes.

4270. I do not know whether we are to understand that you have also many photographers among your clients?—No, only one large firm of photographers and not many publishers.

4271. (*Dr. Smith.*) By publishers you mean the publishers of engravings?—Quite so.

4272. (*Chairman*). Are there any further observations which you would like to make?—I should like to make a few observations upon the point of piracies, and upon the clauses in Lord Westbury's Bill of 1869. Clause 14 is as to right of search. The clauses which seem to me to be useful would be clause 13, upon which I need hardly say anything, and this clause 14, which would be exceedingly useful.

4273. (*Sir H. Holland.*) Do you not consider that clause 13 of that Bill is rather strong?—On first reading it through I thought that it was quite inquisitorial, but on looking at it carefully I do not think that it could hurt any innocent person. Towards the end of the clause it states that the justice of the peace must be satisfied that the demand ought to have been complied with before any fine or proceedings are imposed or taken.

4274. But do you not think it rather a hard thing that if I exhibit or distribute, or carry about, or keep for sale, hire, exhibition, or distribution, any unlawful copy, repetition, or imitation of any work, a demand in writing may be served upon me or left at my house, requiring me within 48 hours to give full information in writing of the name and address of the person from whom, and of the times when I shall have purchased such copy, I not knowing that it was unlawful. It does not say that it is necessary that the person should know that the copy is unlawful, but that the demand may be made upon him?—I take it that the words

"sale, hire, exhibition, or distribution" govern the whole, and therefore you must be in the profession, you must be selling. If you are in the profession it is your business to inquire whether that is a pirated copy; or if not, if you have innocently bought it, you can easily give up the name of the person who sold it to you. Then if you refuse to do so, the person who seeks to make you give up the name must apply to a justice, and on oath must give evidence which will satisfy the justice that the demand ought to have been complied with, before any penalty can attach.

4275. I object to the first demand. Do you not think that it would be better that the man who desires to get information should go first to the justice, and satisfy the justice that the demand is a proper one, and then be permitted to make it?—The only difficulty is that these men have neither name nor address, and they are not to be seen again.

4276. Then how can you carry out the justice's order?—You find them, and then you can watch them.

4277. There is no greater difficulty in making the demand under the justice's order than in making the first demand; if you cannot find the man you cannot make the first demand?—You can give it him then and there.

4278. But you get no answer, and therefore no object is attained except enabling you to go to a justice. Why do you object to going to a justice in the first instance and getting his authority to make the demand?—It is more easy to find the man on a summons which would be carried out by the police, than to find his address in the first instance without the aid of the police.

4279. But the first demand is not on a summons; the first demand is made by the person himself who is injured?—That is when you first meet the man in the street hawking the copies about, or when I meet him in my office where he brings these copies.

4280. The clause says that the demand is to be "in "writing, and delivered to him, or left for him at his "last known dwelling house or place of business"?—Delivered at once to him.

4281. I suppose that you never expect to get an answer to such a demand. Would it not be better to go to the justice at first?—What I have already stated is my answer; but I confess that I do not think it worth much, because I have not much experience of the proceeding in these cases. With respect to clause 14 it is very important. In the case of the Royal Academician whom I have already mentioned, it is known through information received from models, frame makers, and laundresses, and in other ways, that an artist, who is himself a clever artist, spends a great part of his time in the manufacture of pirated works and imitations of the works of this Royal Academician. We have seized three of them already, and we know morally where they are being made, and yet we have no remedy; they are packed up and sent away into the country.

4282. (*Mr. Trollope.*) Is the artist who has been pirated a painter?—Yes. These copies after being sold in the country turn up eventually at a sale in London, described in the catalogue as "the property "of a gentleman;" they come in in a lot at the end of the sale, and with every desire to help us the auctioneers cannot find out the history of them. We never know of them until some unfortunate man has bought one, and comes to the Royal Academician and asks him whether the picture is his. The reply usually is, "The "only portion of the painting that is at all like my "work is the handwriting." Possibly I may be allowed to say in connexion with the name on the corner (and this applies to some questions which were asked me by Sir Drummond Wolff, about putting little marks in the corner) that a very common plan with these pirates is to write the name in watercolour mixed with a little gum, so that if there is any danger of the picture being seized a wet finger will wipe it off. Others know what has been going on, and we think that on sufficient evidence they should be allowed to make an affidavit that to the best of their belief such was the case. We have no possibility of finding it out, or arriving at any conclusion upon it. Therefore clause 14 in the Bill of 1869 is I think very desirable. As to clause 15, I think, that the words "carry about" are rather too strong, namely, "If any person elsewhere "than at his own house, shop, or place of business, shall "hawk, carry about, offer, utter, distribute, or sell."

4283. (*Sir H. Holland.*) Mr. Graves said in his evidence that that was the very thing of all others which he wanted; that the very thing from which he suffered was these photographs being carried about by hawkers?—Yes; but in my opinion the words "hawk, "offer, utter, distribute, or sell," without the words "carry about," would be quite sufficient. I think that that applies also to section 13. I would leave out the words "carry about" in that section, because "hawk" is quite enough. Then I think that in clause 15, the words "all such unlawful articles may be seized, "without warrant, by any peace officer, or the pro-"prietor of the copyright," are objectionable. I think that it is monstrous that the proprietor should be able to seize the articles himself, it would lead to a breach of the peace. I think it much better to say "on the responsibility of the proprietor of the "copyright."

4284. The section, as it runs, not only gives the proprietor of the copyright power to seize them, but any person authorised by the proprietor of the copyright, so that probably he would hire a strong man to seize them?—Yes; but if you read it, "with-"out warrant, by any peace officer on the responsi-"bility of the proprietor of the copyright, or any "person authorised by him," so that either the proprietor of the copyright or a person authorised by him could call in a peace officer, but could do nothing further, that I think would be much better.

4286. Probably it would be better to leave the seizure entirely to the peace officer?—That is how I propose it, namely, "all such unlawful articles may be "seized without warrant by any peace officer, on the "responsibility of the proprietor of the copyright."

4287. This Bill would require considerable amendment, because section 17 applies to all parts of the British dominions, and Parliament would not now pass an Act of that kind without great consideration; that observation also applies to section 20?—Yes.

4988. And of course with reference to that Bill you entirely disagree with section 3?—Entirely.

4289. Because you desire that the copyright should remain in the author?—Certainly.

The witness withdrew.

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

Tuesday, 20th February 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 LOUIS MALLET, C.B.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

C. Barry, Esq., F.S.A.

20 Feb. 1877.

CHARLES BARRY, Esq., F.S.A. (President of the Royal Institute of British Architects), examined.

4290. (*Chairman.*) As President of the Royal Institute of British Architects, I believe you wish to state to the Commission your views as to the law of copyright affecting architecture?—It was the wish of the Council of the Institute that they should not be quite unrepresented in your present inquiry, and I believe they have not been in former inquiries on the same subject, but as yet, as far as they are concerned, without any result. I think the best kind of evidence that I can give before you would be to point out to you what we feel to be the grievance, which the want of some kind of protection places us under; and then very respectfully to suggest to you one or more modes of dealing with it. The first thing that I would do would be, if you would permit me, to read to you a petition which was sent in by the Institute at the time that the Copyright Bill was under consideration some years ago, I forget the exact year. However, there was a Bill in Parliament for that purpose, and I think it was introduced into the House of Lords.

4291. (*Sir H. Holland.*) That was in 1869, was it not?—I was not aware of the exact year; no doubt that was the year. This was the substance of the petition then presented:—"To the Right Honourable "the Lords Spiritual and Temporal of the United "Kingdom in Parliament assembled. The humble "petition of the President and Council of the Royal "Institute of British Architects sheweth: That architects are liable to considerable injury in the piracy "of their designs and inventions, and that other "parties can and do copy and appropriate to themselves such original ideas without any benefit or "remuneration to the authors. That it is therefore "desirable to afford protection to architects for the "copyright of their works by including works of "architectural art, under the definition of works of "fine art, in the Fine Arts Copyright Consolidation "and Amendment Bill. That such copyright should "extend to their executed works or designs. That "the copyright of an architect in any work executed, "or in a work proposed to be executed, should not "pass to the employer except under special agreement, "but remain with the architect; and that the design "in the drawings and specifications prepared for the "purpose should still remain so far the property of "the architect. That copyright of architect's productions should extend to the same period as to authors "of other works of fine art. Your petitioners therefore "most humbly pray your Lordships that in the Bill "introduced in your Lordships' House for consolidating and amending the law of copyright in works of "fine art, provision to the above effect be made for "the protection of architects in a manner similar to "that for authors and inventors." That was the petition that was sent in by the Institute in the year 1869. Then there was a paper drawn up, after very careful consideration given to the subject, by the Council of the Society of Arts. I do not know whether that paper has come before you. It is not my own, and therefore I am unable to leave it, but it is possible probably for the Commission to obtain another copy. It contains a great deal of information on the subject, which, if the Commission have not seen it, I would venture to suggest it would be worth their while to look through. I will not trouble you with the whole of that paper now, but will only say that it consists first of all of a paper of two pages of "Reasons in "favour of a Bill to establish Artistic Copyright" (that was general artistic copyright including architectural works), "prepared by the Council of the Society of Arts;" and then follows some evidence given at that time bearing on the subject from architects, from artists in water colours, from several members of the Royal Academy, and from some distinguished engravers. I will just refer to the evidence given by the late Professor Cockerell, Royal Academician, at that time. It is to this effect: "The "copyright of design and invention in the fine art of "architecture is especially claimed by its professors on "the present occasion, their works being more exposed "to piracy, in the case of public competition, than "any other of the fine arts. The fact that the "piracy of ideas and inventions from rejected designs "is often permitted to the successful competitor is "notorious, and the work executed is constantly the "composition of the ideas and inventions of the "several competitors, without scruple, reward, or "acknowledgment of any kind. To guard myself "against this crying injustice on the occasion of a "great public competition, I applied to the late Mr. "Long, chief of the office of the Registry of Designs, "under the Board of Trade; but the opinion of Mr. "Long was, that the law was not sufficient to protect "architectural design. The direct consequence of this "failure of protection was, in that instance, that the "most important feature of my design, and of other "designs, in this public competition were pirated, and "put into execution in a great or public work. It is "obvious that for the removal of this scandalous injustice, for the honour and credit of this fine art, "and for the due advantage of the professors, some "legal protection for copyright is just and expedient, "and I trust that the copyright of architectural design and invention may be fully represented on the "present occasion." That was Mr. Cockerell's evidence given at that time.

4292. (*Chairman.*) Would you state where it was given?—I find it in "Extracts from the Evidence supplied to the Committee;" that was a committee appointed by the Society of Arts. I think the sum of the paper before me, as far as architecture is concerned, is rather given in these two sentences, which I find in the "Reasons." "Upon consideration "of this report the Council have freely concurred in "the conclusion that the only practical way of supplying the defect in the present law will be to give "to all artists copyright in such only of their designs "as are authenticated or warranted by their signature, "and to make the forgery of such signature an indictable offence, which after all is putting the signature no higher than a trade mark. It was suggested that the copyright, to be so conferred, ought "to be made conditional on the registration in some "way or other of the works to be protected, but, after "carefully considering the suggestion, the Council "unanimously decided that registration was practically impossible, would be of no public utility, and "would make any enactment including such a scheme "virtually a dead letter; an opinion in which they "believe all artists, without a single exception, entirely concur." I think those are the only points in that paper to which I propose to draw the attention

of the Committee. That brings us to the present time, and the sentiments which I rather wish to place before the Commission for their consideration. The same feelings that are set forth in that petition of architects now prevail. It is clearly understood that a painter in selling his picture (unless he stipulates to that effect) does not sell the copyright. In many cases the painter of a successful picture makes many copies of it, and after all sells the copyright to an engraver, often for a larger sum than he got for the picture itself. Now an architect will not often desire himself to repeat a design for a building of importance, for it is of course in most cases special for its circumstances, position, or materials, but he should be protected against this being done by others, as is often the case, wholly or in part. Such copies made by others than the author are probably done so ignorantly as to spoil the originality the first design contained, and this is a grievance. When this imperfect copy has been made it is often represented by the copier (a speculative builder for instance) as the work of the original architect, to the damage of his credit, and this is a further grievance. I will mention an instance (and I think it is a pregnant one) in my own practice. Some few years ago a client of mine bought a large estate of some 300 or 400 acres in the suburbs of London, and consulted me as to laying out roads to the best advantage, and employed me to design houses of four or five different classes and values, adapted to various positions on the estate. For these the usual 5 per cent. commission was paid, and I superintended the execution. He then dispensed with further aid from me, but employed a clever builder's foreman to build some scores of houses all over the ground, all copied from my designs, though features of one design were frequently inserted into another; and then, as I happened to be well known in the locality, these mutilated reproductions were represented as mine, as I afterwards found more than once had been the case, from purchasers becoming known to me telling me that they were induced to purchase partly on the faith of my having, as they supposed, been the architect. Further, the same gentleman employed the same foreman to do the same thing on another estate which he bought further from London, and made the same sort of representations to purchasers.

4293. (*Mr. Trollope.*) Did that refer to the outward appearance of the house or to the entire building?—The entire building. The plans of the houses were combined in a somewhat singular manner, combining the hall and staircase of one with the dining-room of another, to which I should consider it had no proper relation; and in the same way putting rooms together, like a Chinese puzzle as it were, and then saying that the combinations were mine.

4294. Does your complaint go to the extent of the entire design being copied, or only to the imitation of façade?—It applies to the external and the internal treatment. As far as the public are concerned the exterior would be the grievance; but in these cases not only that but the interior was the subject of grievance, because they were led to suppose by this foreman that they were all executed from Mr. Barry's designs.

4295. Would not that be rather a fraud at common law than a breach of copyright?—Possibly it would, but I am not lawyer enough to be able to say; but even if it were so, that would be no real protection in consequence of its cost and delay. I rather hope that you will see your way to meet such a case.

4296. (*Sir H. Holland.*) As far as you go at present, you say that you hope there will be some means of preventing the person for whom you build the original house copying that again on his estate with some alterations?—Without some acknowledgment to the architect, I say yes.

4297. I wish to know first, how do you propose to secure a copyright in such a building, inasmuch as you do not propose to register?—I read to you the result of the consideration of the subject by the Society of Arts, that they did not see their way to registration, but I may say that the solicitor to the Institute, is of rather a different opinion, and he does suggest, I believe (he did to me in conversation) that drawings, if they could be registered, would be protected; and it would be optional of course to the architect to register or not.

4298. You are aware that, under the Designs Act, 5th and 6th Victoria, chapter 100, registration is required at the Board of Trade of all designs?—I did not know that.

4299. And those designs include the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament, or for any two or more of such purposes, or by whatever means such design may be so applicable, whether by printing or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, and so forth; and registration is there required at the Board of Trade?—That does not seem to apply to architectural designs, but if it should be the opinion of the Commission that registration would protect us, I hope they will say so, and then it would be optional on the part of the architect whether he would register or whether he would not. He would have no grievance if you afford him protection in some special way and he does not choose to take advantage of that.

4300. Does it not strike you that there may be some difficulty about this copyright. The person for whom you have built a house knows that you have built it, and there may be some injustice in his imitating it again; but suppose that a visitor goes into the house, and is struck with the arrangement of the staircase and rooms, and himself is going to build a house, there is no very great injustice in his copying that house, copying the general arrangement of the house, is there?—If (as I shall show you, I think, presently) there is a little grievance there too, I shall press it upon you to consider whether you can see your way to help it.

4301. What I mean is, that there is no injustice at present in such a case unless you have a copyright in the house. If copyright is given in the design and plan of the house, and that fact is thoroughly well known to the public, then of course it is like all other copyright, and there is an injustice in copying the house?—Yes; that is the position in which, if you can see your way to it, we do wish to be put, with such restrictions as are proper for public utility.

4302. (*Mr. Trollope.*) In the case to which you allude—of this tradesman who was employed to copy your work—had he the advantage of your drawings?—Certainly; he was really my clerk of the works, so that he was intimately acquainted with all I had done, and had all my drawings in his possession.

4303. And you think that the buildings were so alike as to have enabled you, if the law admitted, to prove that those buildings were copied from your designs?—Yes, no doubt of it.

4304. (*Earl of Devon.*) Had the gentleman who first employed you purchased your drawings?—No.

4305. You had only been remunerated in the usual way?—Yes, I had only been remunerated for erecting so many houses by the usual payment of 5 per cent. on their cost, each being a separate design.

4306. Is it not occasionally the practice that a person who avails himself of the services of a distinguished architect purchases those drawings, and they become his property?—It is not common yet. It would have been a courteous and proper thing to have done in the case I have spoken of. I think it was a piece of very bad taste. If this gentleman had come to me and said, "I wish to repeat this," it would have been optional with me to say, "Yes, you may, on such con-
" ditions as may be mutually satisfactory."

4307. With regard to public works, for instance, works required for the country, has it come to your knowledge that an arrangement is not unfrequently

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made by the parties who contemplate the work to purchase the drawings in the event of their not employing the architect who is selected?—That is certainly done sometimes.

4308. You would not consider it a hardship that in such a case as that the architects should sell the drawings?—Not if they thought right.

4309. (*Chairman.*) In the case of Government competition, I rather fancy that is generally the case, is it not?—Yes.

4310. (*Mr. Trollope.*) But, as a rule, are not architects very unwilling to sell their drawings?—Yes.

4311. They do not often contract to sell them?—Hardly ever.

4312. I have been informed that architects have often expressed an unwillingness to part with their designs. I am right in presuming that it is so?—Yes, presuming that a work of architecture has always some originality in it, and some value in that originality, I think the Commission will see the reason why it is unadvisable that it should be put in different hands from those of the author to carry it out; because the chances are that it will be carried out more or less ignorantly.

4313. And for that reason architects have been unwilling to sell their designs even to the gentlemen whose houses they have built, and even though they have had reason to suppose that those designs have merely been required for purposes of decoration?—Yes, and even when they believe that they will go no further.

4314. (*Dr. Smith.*) Is it not the fact that in erecting a building from plans it is very difficult for the architect to determine beforehand what alterations may be necessary in the course of the building?—No doubt.

4315. And consequently it is very undesirable that another person should carry out those designs than the architect who originally drew them?—No doubt of it. It is quite clear that in an original work the only person who could alter it or adapt it intelligently would be the author. I will mention as connected with the question another case of a grievance. I remember hearing of a case where the tracery of a large and very beautiful window, carefully designed (by Mr. Hardwick, I believe), was slavishly copied by a builder; but he made it one fourth of the originally intended size, and, I need hardly tell you, with a perfectly hideous effect, because the detail and arrangement suitable for a large window was not at all suitable for a window one fourth the size; and Mr. Hardwick, who designed the original, would not have designed a window one fourth the size in the same way that he designed the large one; and the window so spoilt was represented as Mr. Hardwick's design. Another case which I have put down in my notes is where an architect designs some labourers' cottages for a client, and he gets his rather miserable five per cent. upon the cost of the cottages, sometimes on one block of two or three cottages, and then if they are cheap and effective they are repeated without acknowledgment all over the neighbourhood; again, there are instances where only one house for town is designed and paid for, and is then repeated for a whole street. Again, a set of characteristic furniture is designed for a client by an architect, and the manufacturer, coolly, and without leave asked, makes a dozen similar sets. These and similar cases seem to architects to demand a remedy if the Commission can see their way to give it.

4316. (*Chairman.*) With respect to the labourers' cottages, I did not quite gather whether your contention would be that the landed proprietor who gave the commission in the first instance should be debarred from building 20, 30, or any number of cottages from the same design, or simply that other people, who were not concerned in the original contract between the landed proprietor and the architect, should not be at liberty to copy the design?—I meant both. I can give you an instance *per contra* which occurred in my own practice. The late Sir John Guest asked me a good many years ago to design some cottages for his estate at Canford, and he wished to have them ornamented, and to have moulded bricks made on his own estate, which there were facilities for doing. He told me frankly what he wanted to do, and he asked me not only to design these cottages, either as single or double, or in groups of three, but also he asked me so to arrange the designs that the models of bricks, for which I furnished him some hundred drawings, should be capable, without any violation of good taste, of being introduced in various combination, and for that there was no question of five per cent. He recognised at once that the five per cent. upon a single production of one of these plans was no fit acknowledgment; and a definite arrangement was made which was satisfactory to him and satisfactory to me, but still I could not have demanded it except by special agreement.

4317. In that case there would appear to have been very exceptional conditions?—Quite exceptional.

4318. I wish to confine your attention now to the ordinary common-place case of a landed proprietor wishing to put up some cottages of a good design, but without incurring any great expense, and engaging the services of a distinguished architect; is it your own opinion that in such a case he should not be at liberty to reproduce those cottages without paying the architect in each individual case?—I do think that he should not be at liberty to reproduce them without some acknowledgment to the architect. Of course I do not mean for a moment that a case of absolute repetition should be treated as regards payment entirely as an original work.

4319. Would you kindly tell us what sort of acknowledgment you would suggest?—That is rather difficult to say.

4320. If we are to recommend an alteration of the law, which is to have the sanction of law, of course we must be very guarded and must know precisely what we are about; therefore I will ask you if you can tell us what kind of an acknowledgment you would suggest in such a case?—I should think a reasonable acknowledgment would meet the case, and obviate the grievance. For instance, a pair of cottages costs, we will say, 400*l.*, and five per cent. is paid upon them, and now they can be repeated without acknowledgment twenty times in different parts of a large property, or even copied and taken off to another property. I think that the building of a building should not be considered its unconditional publication.

4321. (*Mr. Trollope.*) But the architect in that case would have the power, would he not, of absolutely forbidding the repetition?—He has no such power at present.

4322. In the event of the copyright being extended in the way which you suggest, would he not have the power of absolutely forbidding the repetition?—I presume it might be so; but if thought necessary on public grounds you might see your way to introduce suitable conditions against abuse. I daresay there would be some conditions required on behalf of the public.

4323. (*Earl of Devon.*) You would suggest, then, as I understand, something in the nature of a royalty?—Yes.

4324. (*Mr. Trollope.*) Such a copyright as this that you suggest would take away from the person building the cottages the power of repeating them at all without the permission of the architect; and, of course, if it so fettered the original employer of the architect it would bar all others; and in that way, as architecture goes on improving in the world, would it not take away from a whole neighbourhood the power of building cottages in any recognised improved style without the employment of some special architect?—No doubt; but then no one considers it a grievance to pay the architect's fee of five per cent. on a house if he wishes to have it. That is the recognised fee at present, sometimes adequate and very often inadequate. That being the recognised fee, the transaction should be deemed complete.

4325. Do you think it would be well to recommend the Legislature to pass a law which would practically forbid the building of a certain class of house without the employment of architects?—I think it would be