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5004. Might I ask if you think he is correct in that statement?—I can only say that I was astonished at it, but he states it positively.

5005. Seeing that you have quoted it, perhaps you have formed an opinion as to its correctness; do you think it is correct?—It sounds a very large amount, but I have no doubt that labour is dearer in the United States than it is here.

5006. If I were to tell you that latterly an English publisher had a book printed in America, in Philadelphia, at the price of 1s. 2d. and finding that he could have it manufactured cheaper had it manu-

factured in England at the price of 9½d. (which would, I believe, give something nearer to 50 per cent. than 175), do not you think that that difference would more nearly show the difference of the rate of American and English labour than that quoted by Mr. Morgan?—I really am quite unable to answer that question.

5007. I suppose you intended that we should have our minds influenced by Mr. Morgan's statement that the difference was 175 per cent.?—I only wished you to know what an American well acquainted with the trade said about it.

The witness withdrew.

Adjourned to Tuesday next at half-past 2.

Tuesday, 13th March 1877.

PRESENT :

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.  
SIR JOHN ROSE, Bart., K.C.M.G.  
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.  
SIR LOUIS MALLET, C.B.

DR. WILLIAM SMITH.  
J. A. FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS HENRY FARRER, Esq., further examined.

5008. (*Sir L. Mallet.*) What do you consider to have been the original intention of the Legislature in granting copyright?—I believe that copyright originated in the privileges of the Stationers' Company. The members of this Company were themselves, as far as I know, publishers and printers, and it was in their hands and not in those of authors that the right of copy, as it was called, was first protected. They acted also as a sort of literary policemen for the Government; and so there was a sort of alliance between the State and the Stationers' Company, the condition being that the State should have absolute control over the press: that nothing should be published which was heretical or seditious on the one hand, and that the members of the Company should be protected in their copyrights on the other.

5009. The idea, in your opinion, was rather to restrain the license of the press than to encourage literature?—That was certainly so in the first instance.

5010. Is not the idea that copyright laws were intended to provide a remuneration to authors of comparatively modern growth?—I think so. In the earlier times of our own laws, authors were, I believe, little thought of,—much was thought of repressing heresy and sedition,—and something of the privileges of the Stationers' Company. From the time of the statutes of Anne downwards I should think that more and more attention has been given to the interest of the author.

5011. And is it not rather the result of the influence of the vested interests which have been created under those laws?—To some extent; but I should be sorry to say that the intention to remunerate authors has not, especially in later times, been a leading motive on the part of the public and the Legislature. Recent legislation has taken different directions in different countries in Europe. In some the author's copyright has been created or extended; in others it has been cut down. In France copyright used to be perpetual; it has been first made short: and then again made longer.

5012. Do you not consider that the expediency of copyright laws like all other laws should be considered with reference to the general interests of the community, rather than with reference to supposed abstract rights of property on the part of the authors?—Certainly.

5013. And even from the latter point of view is there not a broad difference between the kind of

property created by copyright laws and property which is ordinarily called corporeal property?—Yes; I think it differs essentially. Copyright is a right to prevent other people from reproducing.

5014. Discarding all abstract and historical considerations, is not the practical justification of copyright laws rather the importance to the public that literature should be adequately encouraged and rewarded?—That, I think, is at present the ultimate object of the copyright law.

5015. Ought not a distinction to be made between the interests of literature and the interests of authors as a class, and are not many authors the greatest enemies to literature?—That is quite possible.

5016. Is it not therefore possible that copyright laws may benefit authors as a class and not benefit literature?—Supposing that literature were bad and that the demand for bad literature were great that would be the case.

5017. Is it not the interest of the public that the interest of literature as contradistinguished from the interests of authors as a class should be encouraged?—Yes, I think it is.

5018. Has it not often been the case that the best authors have been those who have been the least animated by the prospect of pecuniary gain?—Certainly.

5019. And who have in point of fact been the least rewarded?—Certainly.

5020. Is it not the fact that some of the greatest works of literature have been written without the encouragement and protection of copyright laws?—I think so.

5021. Should not therefore the defence of copyright laws rest rather on the impolicy and even injustice of a violent and sudden disturbance of interests which have been created by an artificial law, than on their necessity in the interests of literature?—I have a difficulty in answering that question in the affirmative broadly, because though I think it is quite true that copyright laws do not necessarily, and often do not practically, encourage the best literature, yet I am unable to say that we can for the purpose of remunerating authors, establish any test of what is good literature except the demand; and therefore I am afraid, imperfect and inadequate as the mode of remuneration is, that we must fall back upon that as the test of what the public should reward. The only other mode of doing it would be by some sort of state machinery, and that probably would be more objec-

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tionable than the very rough method which is effected by public demand.

5022. Assuming that the interests of literature and therefore of the public require some specific encouragement and protection from the State, I gather from your previous evidence that you consider, under present circumstances, copyright laws offer the only means of giving the requisite remuneration to authors; but do you think it impossible that the requisite remuneration might not be obtained by authors if copyright were abolished altogether?—I am scarcely prepared to answer that question.

5023. Do you not think that it is possible that without any copyright laws authors might nevertheless obtain adequate remuneration?—They might and they probably would, as we see in America, obtain some remuneration; whether it would be adequate or not I am scarcely able to say.

5024. Does not the remuneration obtained by English authors in the United States without copyright protection afford some ground for thinking that similar arrangements might afford them similar protection in the United Kingdom without copyright?—So far as that remuneration goes it does.

5025. Have you any facts that you can give us as to the amount of remuneration received by English authors in the United States of American publishers?—I have been told, but it is only in the most general way, that the practice of some of the great houses is to pay 10 per cent. upon the price of the copies sold in America. I think that is stated in some pamphlets by Mr. Carey, the American writer on political economy, and elsewhere.

5026. On the whole, may I not gather from your evidence that you consider the defence of the copyright laws under present circumstances is rather the result, in your opinion, of the impolicy of making any violent change, and of suddenly disturbing vested interests, than from any abstract disbelief in the possibility of devising some method of rewarding authors adequately which would not be open to some of the objections which apply to copyright?—I think, as far as I have been able to form an opinion, that all the different plans that have been proposed for remunerating authors by the State, or otherwise, are open to objections still greater than those to which the system of monopoly is exposed; but I think it is a very fair question whether the monopoly system, as it exists at present, that is to say, the system of unrestricted monopoly, is the best system that could be devised, and whether a further means could not be devised for restricting the system of monopoly.

5027. Is it not a radical objection to copyright law, that while affording to the author a limited monopoly in the form of presenting his ideas to the public, which may be called a legitimate object of those laws, they at the same time practically create a commercial monopoly on the part of publishers which is inseparable from the system; in other words, that it is absolutely impossible under copyright laws to disengage the protected interests of the author from the protected interests of the publisher; that the author in point of fact is obliged to go into a kind of partnership with the publisher, the result of which is that a commercial monopoly is inevitably created, which is a distinct violation of those principles of free trade which have been adopted formally by the Legislature of this country?—Yes, I think that is so. I do not see how you can have a monopoly on the part of the author without a monopoly on the part of the publisher.

5028. So far as the author is concerned, if he were able to deal directly with the public, with the consumer, with the reader, the confusion or the complication which arises from his connexion with the publisher might not exist; but it is the necessary connexion between the author and the publisher, is it not, which makes it very difficult to prevent the effects of monopoly from acting injuriously on the public?—I should say that any injurious effects there may be are the effects of the monopoly taken as a

whole. I know so little of the dealings between authors and publishers, that I cannot say which of the two it is that determines price. The two are inseparably connected, and it is the joint right of the two together which constitute the monopoly.

5029. Whatever the cause, do you not think that the result of these laws is an evident injury, both to authors and to the public; to authors by limiting their market, and to the public by raising the price of books?—I am inclined to think that it is certainly an evil to the public by raising the price of books, and that probably operates badly for the author in limiting the sale and the influence and reputation which he would get by the sale of his book. Whether it injures him pecuniarily or not I am not so certain; but that in many cases it injures the public much more than it benefits the author I am quite disposed to think.

5030. Can there be any real and permanent opposition of interest as between author and reader, any more than between any other producer and consumer?—I think they are just exactly in the position of ordinary producer and consumer, and the ultimate interest of both is the same.

5031. It must be the same, must it not?—Yes, in the end; though, of course, as in the case of other producers and consumers, there is on each purchase an immediate antagonism as to price.

5032. Have not both science and experience placed it beyond a doubt that the interest both of producer and consumer are best consulted by the freest possible exchange between them?—Yes.

5033. Is not this combined interest expressed by the trite commercial maxim of small profits and quick returns, quick returns being nothing more nor less than large returns?—I think so. I believe in the end that will be found to be as true of books as other things; that is to say, of books for which there is a demand, which are the only books we are concerned with.

5034. Is it not therefore incontestable that the highest interests, both of author and reader, would be found in a system which would lead to the largest possible circulation of a work at the cheapest possible price?—At the cheapest possible price consistent with a fair profit to those concerned.

5035. Can such a system be possible without the liberation of the publishing trade from a practical monopoly?—A monopoly is undoubtedly a great obstacle to such a system. We find that in other cases of monopolies it is a very long while before the monopolists reach the conclusion to which your question points. In the case of railway companies, for instance, they are only now beginning to find out that their cheap third-class traffic is that which is most profitable to them. Possibly the book trade are also beginning to find out the same truth; but it is often a long while, even where competition exists, before that truth is found out; and where traders are not quickened by competition it is a very long while indeed.

5036. Is it not equally impossible to attain such a result without the adoption of international copyright?—I think the adoption of international copyright would by enlarging the market have the most beneficial tendency in that direction, provided it were allowed to operate freely and properly.

5037. Might not both these objects be secured under a system of royalty; and is there any other system by which the commercial monopoly of the publishers can be removed, without at the same time leaving authors without any protection from the law?—I have already said that whilst not at all prepared to propose any system of royalty here, I thought that if you come to making international arrangements with the United States, and further arrangements with Canada, you would be compelled to consider a system of royalty; and it is the only plan that I have heard suggested by which, as it seems to me, the monopoly might be continued for the benefit of authors, and at the same time restricted, so as to do justice to the

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public. I cannot say that I have gone fully into the subject, but I am glad to see from the evidence that has been given here, that no insuperable objection in point of principle to the plan of a royalty has yet been suggested.

5038. I gather from your answer to my question that you think that under a system of royalty the two objects which I have mentioned might be secured, that is to say, the elimination of the protective element, which is at present inevitable under the copyright system, and at the same time the extension of international copyright on a sound foundation?—Yes, and with it increased profit to the author.

5039. Is not the chief objection that has been urged against the adoption of a system of royalty been that the first publisher of any work would not have sufficient inducement to undertake it, if he were to be immediately exposed to the competition of a second publisher?—Yes, I think that is so.

5040. And has not that objection been to your mind very much removed by the evidence which has been given to this Commission, I think by Mr. Herbert Spencer?—Mr. Herbert Spencer's evidence struck me very much indeed. If there is an author whom one would be anxious to protect it would be Mr. Herbert Spencer, a man who has spent his whole life in the pursuit of philosophy; who has spent money in getting persons to compile for him; who has spent money in stereotyping his books; who has been at a great loss for a long time, and is now at last reaping some little profit from them. He is a person above all others one would wish not to injure. He told us a royalty would injure him very much, and he most frankly gave us a quantity of facts, which facts to my mind proved that the royalty system would not and could not injure him. He said that the circulation of his book was necessarily a limited one. He told us that he could now, after all this expenditure, when he published a new edition, get 40 per cent. profit. He said that he paid his publisher a commission of 10 per cent.; he said that he found that no other publisher would undertake the work without an additional profit of 10 per cent.; and then, in addition to that, there was the 10 per cent. (as he put it) of royalty. The result would be that no second publisher could undertake his work without being burdened with 30 per cent. And then he went on to say that, being so burdened, the public would get no benefit from the second publication, because the second publisher would be unable to reduce the price of his book, which is an expensive one, 2s. or 3s. That seemed to me to prove that no second publisher would ever undertake the publication of his book unless Mr. Herbert Spencer was thoroughly mistaken about the demand for it, and unless it should prove that a much lower price would produce a much larger circulation, in which case he would be compensated by the royalty. Of course, Mr. Herbert Spencer having these stereotype plates, and being able to publish at 40 per cent. profit, would immediately that he had notice that royalty edition was going to be published at 1s. or 2s. cheaper, say, "I can afford to publish it 3s. cheaper," and no second publisher would dream of undertaking the book. Mr. Herbert Spencer's is a peculiar case: but I think it is an illustration of the way in which a royalty would work, viz., that it would not interfere with an author at all, unless he has miscalculated the demand, or had failed to supply it; and then the royalty would compensate him.

5041. Assuming the expediency of maintaining copyright laws, is it your opinion that the term of protection should be extended or diminished?—With the increase of the English speaking population of the world, especially if we have international arrangements, the market for books ought to increase indefinitely. If so, the author ought to get a larger remuneration by the increase of width in his market, and that would be an argument for diminishing rather than for extending its length.

5042. If, in short, any arbitrary term is to be fixed as presumably sufficient to encourage literature, does it not logically follow that as the area of protection

increases the term of protection should be diminished?—That would seem to follow. I must at the same time say that there is an argument in favour of not making the time too short, which is, that the longer time gives remuneration to authors like Mr. Herbert Spencer, who do not get the remuneration at once, while the shorter time gives remuneration to the more ephemeral books. That I think is an argument to be considered, without at all invalidating your position. I do not myself propose any alteration in the length of copyright, except for the purpose of assimilating our law to that of Canada and the United States.

5043. You have referred to the fourth section of the Canadian Act of 1875, which forbids the importation of an author's Canadian edition of which there is copyright in the United Kingdom, unless with the consent of the owner of the copyright. Is not the operation of this provision something as follows: a certain term of copyright is given by the State to the author on the assumption that it is necessary to provide him adequate remuneration; by the direct action of the State a new market is secured for the author, which of itself will be inadequate to provide such remuneration, but which he is enabled to supply because he has been already adequately remunerated by his English copyright, any additional profit being therefore a pure gain. So that in point of fact the British reading public is made to pay part of the price of English books in Canada?—That I think is so.

5044. Ought not the title of the Act, if it is maintained, to be something of this sort: "An Act to provide Canada with cheap editions of British authors at the cost of the British public"?—Something of that kind, or rather "An Act to enable Canada to publish cheap editions of English authors at the expense of the English public;" because the Canadian reader got the cheap American edition before.

5045. Is not the law in force with respect to British works published with the consent of the authors in Germany and the United States open to the same objection?—Certainly in Germany, because in Germany our copyright treaties exist. In America the case is somewhat different, and the English author is not there entitled to anything by virtue of English law or English treaties.

5046. Is not the effect of this legislation to make the works of British authors dearer in the United Kingdom than in foreign countries?—Certainly.

5047. How can it be contended that such legislation is in the interest of the British public; does it not, on the contrary, place them at a direct disadvantage as compared with the people of foreign countries, or the British residents in foreign countries; and can it be a legitimate object of public policy to enable a British author to supply foreign markets with his works more cheaply than his own?—I should have thought not, but Parliament seems to have judged otherwise.

5048. Is not the following an analogous case. The English iron trade persuades Parliament to prohibit foreign iron. Having raised the price through to monopoly rates, they export their iron to foreign countries and sell it at half the price. Would not the British consumer have an irresistible claim to be allowed to re-import it and bring down the price at home?—Yes; that seems to me a very analogous case. By our artificial laws we have in this way created a number of centres of production independent of the original centre, and we draw a hedge round each of these centres, and say that what is produced in it shall not go into the original one; and that operates against the country which makes the law; because it so happens that what is produced and sold in all the out-lying centres of production is cheaper than that which is sold at home.

5049. Is it not your opinion that an English author should be able to get English copyright for his book wherever published, whether at home or abroad?—I think so. I can see no ground of public policy for restricting English copyright privilege to publications made in this country. I can see no sort of reason why we should not give copyright to a book by an

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English author wherever it is published. I do not see any reason in justice or public policy for the principle which the judges laid down in *Routledge and Low*, viz., that the object of the Copyright Act was to secure publication in the United Kingdom. They may have been right upon the construction of the Acts; but I can see no ground for supporting it as a matter of economical or commercial or political principle.

5050. What is a British author?—That raises a totally different question and an important one. It raises the question whether we ought to give to an American author, or to any foreign author who is not resident in this country, the right of obtaining copyright in this country. The Americans do not, and I confess I think we should do wisely to follow their example; not because I wish to retaliate upon American authors, nor because I think that by so doing we should get American authors to co-operate with us in procuring copyright in America; but because I should like to give our public in this country the benefit at a cheap rate of books written in America, just as Americans have of books written in England. At present the American author can get the monopoly of this market, and by publishing with an English publisher, can, and does, charge us the same high rate for his books which English authors charge us. I think we might adopt the American rule, and say that we would only give British copyright to British authors resident in some part of the British dominions.

5051. Is it not a very remarkable thing that two similarly enlightened countries such as England and the United States should adopt so different a principle in that respect?—It is curious.

5052. What is the reason that you would be disposed to assign for the exclusion of American publications from England, English books being admitted into the American market. In other words, what is the reason that you would be disposed to assign for the fact that in America English editions are admitted which you call pirated editions, that they are pirated in point of fact, and that the English law prohibits them?—I suppose that the reason is that England has been the great country of authors hitherto, and that Americans like to get English books cheap; that is to say, as far as I can see from what they have written on the subject, they are not unwilling to pay something to the English author, but they think that by admitting the English monopoly into their market they would suffer a great deal more than the English author would gain.

5053. Do you think that it arises from a higher morality on the part of this country that there is this exclusion of those American works, or is it the result of some operation of vested interests?—I do not believe that there is anything of higher morality about it at all, as far as I can make out. The highest Court of Appeal in *Routledge and Low* laid it down as the principle of the English Act that in order to give English copyright, publication must take place in this country. As far as I can see, that is only for the interest of English publishers, and for the interest of nobody else, and that is not any very high morality. Then our law goes on to say that if an American author publishes in England with an English publisher, he shall get copyright here. That is for the benefit of English publishers who like monopoly better than a free market, and that is no very high morality. Americans, on the other hand, have been in the habit of being supplied with English books at a cheap rate. They refuse to give the English author a monopoly because they wish to have the books cheap, and because they wish to keep the English publisher and his monopoly out of their market. There is no very high morality in all that. But they have a great deal to say for themselves, because they say, "It is not that we wish to deprive the English author of his profits, but because if we admit the English monopoly, we shall suffer a great deal more than the English author will gain." I do not know whether the Commission have seen some pamphlets of Mr. Carey's on the subject of international copyright, published

by Hurd and Houghton, of New York, 1868, and by Baird, of Philadelphia, 1872. They are very interesting, and contain the greatest mixture of sense and nonsense one ever saw put into the same cover. He puts a great many cases in a very interesting way, showing what the effect of introducing English copyright monopoly into America would be; and I will mention one of them just to illustrate the American view, because I think it is fair that we should have before us the view of the people who oppose our copyright there. He says, with respect to one of Dickens's works, if Dickens had a copyright of that book in America, out of 100 cents paid by the Americans for that book Dickens would very likely receive only 10, the remainder going in the expenses of distribution. And as Mr. Carey has been a publisher, this is an important statement of his. But putting it in another way, he says, "That book is at present circulated through the Union to the extent of something like a million of copies at a few cents, so few that the price is scarcely worth considering. Now, if Dickens had copyright in America, looking at the price at which copyright books are sold in America, he would ask 50 cents for that book, and the effect of that price would be to reduce the circulation from 1,000,000 to 50,000 copies. Therefore we should lose infinitely, while Dickens would gain very little." Whether he is right in his facts I do not know, but I only wish to put the American case. They say, "To give you monopoly would be paying a most extravagant price, from which your author would benefit but a little, and we should suffer indefinitely."

5054. Do you not think that the maintenance of the copyright law as it is, is an enormous loss to the consumer as compared with the very trifling gain to the author?—Yes, because the loss to the consumer lies not in what he actually pays, but in the restriction of the market.

5055. In short, you think that the real aim should be some system which would tend to the largest possible circulation of the works of an author at a price which would enable the mass of the people to purchase them?—Quite so; at the same time paying a fair profit to the author.

5056. I assume that the largest circulation possible of an author's works would be that which would pay him the best; you share that view, do you not?—I am inclined to think it would be so ultimately.

5057. Irrespective of that question, is it not a most important object of public policy to promote a system which has for its undeniable result the education of the people, and has not every cheapening process adopted in literature tended very much to promoting the education of the people?—Certainly. It is impossible to exaggerate the importance of that view of the subject. Looking to what has already been done; looking to the reforms which we associate with the name of Mr. Milner Gibson, viz., the abolition of the paper duty, the stamp duty, and the advertisement duty; and looking to the effect of these reforms in the practical education of the people by the enormous development of an excellent cheap press, it is impossible to exaggerate the benefit which might arise from thoroughly cheap literature in educating our people. We who sit round this table may be satiated with reading; but consider what is the life of a large proportion of our artisans and labourers; and then think what it is by means of a penny paper, or a novel of Walter Scott's, to lift his view above the limited horizon of the farm or the workshop.

5058. You do not share in Sir FitzJames Stephen's view that reading is an evil?—No, I rather incline to the view of Dr. Johnson: "Whatever withdraws us from the power of the senses, whatever makes the past, the distant, or the future predominate over the present, advances us in the dignity of thinking beings." Those words are very pregnant, and really very applicable to the present case.

5059. Assuming for the present that copyright laws are maintained, I should be very anxious to ask

you what are the practical reforms which in your opinion are essential in the interests of the public. I gathered from your evidence that there are three or four points in which you think that such reforms are essential. These are the points which I infer from your evidence (and I should be glad to be informed whether I am right) you think are points in which such reforms are essential: first, the repeal of the fourth clause of what is called the Canada Act of 1875?—Yes, the Imperial Act, 38 and 39 Vict. cap. 53; that is one point.

5060. Secondly, the repeal of the clause in the International or General Copyright Act which keeps out editions of English books published in countries with which we have copyright?—Yes, that is another point.

5061. The effect of which is as substantially the same as that of the clause in the Canada Act?—Yes.

5062. Thirdly, that publication in a foreign country of the works of a British author should give copyright?—Yes, having defined the "British author."

5063. And fourthly, that the clause in the Customs Act which places the machinery of the customs at the disposal of the copyright owner should be abolished, and that he should be left to the ordinary remedies of law?—I think so. I think that the provision in the Customs Act concerning it a nuisance and unnecessary. It is contained in 39 and 40 Vict. cap. 36. s. 42.

5064. It should be a condition, I presume, of a copyright owner being able to obtain his remedy, that he should state that the book had been published in a foreign country without his consent?—Yes, I think there would be no hardship in that, in requiring him, whenever he applied for an injunction to stop a piracy, to state that what he was trying to stop had not been published with his consent.

5065. Would not the effect of the two first of these measures (which are substantially one), be to bring into relief the opposition of interest which often exists between the publisher and the author; and would not the author, being, as he would be, restrained in the foreign market (for his publisher would of course exact this condition), be led to see his interest in a wider circulation and a reduced price?—I think so.

5066. And would not the impossibility of reconciling a strict copyright law with the ultimate interests both of the author and of the public be gradually made apparent?—By "a strict copyright law" I suppose you mean a perfectly unrestricted monopoly.

5067. Such a monopoly as exists at present; I refer to copyright laws which do create practical monopoly?—I should hope and think that the effect would be that the extension of area would lead to increased circulation and reduction of price: that the competition of publishers would be for the benefit of authors as well as of the public: that, seeing what was the price at which foreign countries demanded our books, the price in this country would be reduced: and that all this would happen not only without loss to the author, but with gain to him.

5068. You have given us the prices in England and America of several books, chiefly new books and novels; can you procure us a list such as is attached to Mr. Morrell's report, showing the comparative prices given in England and America for a certain number of typical books, old and new?—Mr. Daldy kindly undertook that task, and left a list with me, and I will try if I can, with the help of his list, to make a list of typical books, and get the comparative prices. It is not an easy thing to do, but I will try to do it fairly and completely, and I daresay some of the members of the Commission will help me.

5069. Do you know how America is supplied with bibles?—That is a curious fact; I believe it is entirely or almost supplied with bibles from this country. I believe there is nothing in which there is so great a competition as in bibles, and that both bibles and prayer books are supplied to an immense extent in America from this country, and though the houses

that supply them are limited in number, yet there is a fierce competition between them.

5070. (*Mr. Trollope.*) Is that so with regard to prayer books?—Yes; both prayer books and bibles.

5071. (*Sir L. Mallot.*) You would infer from that that books can be published cheaper in England than in America?—Certainly; and that with free trade our publishers have no reason to fear the American publishers.

5072. What do you think is the effect of the present system of high prices and circulating libraries on the retail trade?—I should think it has a very bad effect on the retail trade. A retail bookseller made this remark to me: "An author said to me, 'Have I not done a good thing: I have got 1,500 copies of my book taken by Mudie?' And my answer was, 'No, you would have had 10,000 copies sold by us if it were not for that.'"

5073. Are not the circulating libraries the result of this practical monopoly?—I should think so; I should think that the dear books have been the chief cause of the circulating libraries.

5074. Does it not appear probable that if books could be obtained at a very cheap rate people would prefer to have them in their own homes to going through the process of obtaining them from a library?—Good books.

5075. Do you think that the circulating libraries can be in any sense considered to supply the place of cheap editions?—No; they afford a very great convenience to the upper and middle classes, but I very much doubt whether circulating libraries reach the lower classes.

5076. In the case of such books as Wallace's "Russia" and Schuyler's "Turkestan," a long time must elapse before they get into the hands of the people?—Very likely; they probably never get there at all. The interest in and value of them will probably be gone before the time comes for a cheap edition.

5077. You made some remarks in your former evidence about school books, and I think you observed that they were as cheap in England as in America?—Yes.

5078. You also observed that the school books cannot in the nature of things be a monopoly?—No, they cannot.

5079. Do you know whether they are equally profitable to the author?—I believe there are no books that pay the author better than school books; but I speak with hesitation; it is only what I hear.

5080. Mr. Appleton, in an article in the "Fortnightly Review," mentions as one of the chief objections by American publishers to the proposal of the royalty system that it would prevent the first publisher from spending what he now spends on advertisements. Do you consider this an evil?—No, I cannot say I do. I should think a large sum of money spent in forcing a sale by advertisements was money very badly spent. What we want, I believe, is more good books and cheaper good books; but we do not want more books; we have too many books at present. Some persons, whose opinions are deserving of much consideration, wish to do away with copyright in order to diminish the number of books, and to reduce the number of those who make authorship a trade. They think that to do so would be a gain to the public in providing better books; and that it would not discourage those who write for the sake of reputation or for the sake of truth, and less for the sake of money. I do not say that I agree with these persons, but I think they are right in thinking that we have, under the present system, too many books.

5081. (*Mr. Froude.*) One of the practical points which you are most anxious about at present appears to me to be the admission into the English market of the books published in the colonies with the author's consent?—That is one point.

5082. Has it occurred to you how that would affect the contracts which we authors make with our publishers here in England?—Yes. I should imagine

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that that would have to be taken into consideration in making your contract here.

5083. That is to say, that our publishers would object very strongly to the introduction of these colonial editions, and would lower the terms that they are ready to offer us; in fact that it would very materially alter the whole nature of the bargain that we make with our publishers?—I think it is very possible that it would alter the whole nature of the bargain.

5084. Practically in most instances in the case of valuable and expensive books a publisher would make it a condition of his bargain that the colonial edition should not be admitted, that there should be no colonial edition published at all; is not that so?—I think it is possible that he might do so, or I should rather say would, in the first instance, endeavour to do so. Whether he would succeed in enforcing such a condition is another question.

5085. Then I suppose the colonies who are dissatisfied with the clause of the Act of 1875 as it stands would be still more dissatisfied when they found that they got no benefit at all?—I think that is very likely; supposing always that condition to be enforced.

5086. So that they would demand the original proposal in the Act of 1873, that anyone of them might take the books whether we consented or not?—Yes, in the event supposed, I think Canada would very likely insist upon that.

5087. And there would be the same argument for the admission of those editions to the English market after they were published in the colonies; there would be the same general grounds on which you base your argument?—The case is not the same; nor is it a suggestion which I have made, because I have confined myself to the case of editions published with the author's consent. The proposal to admit royalty editions published in the Colonies without the consent of the author, goes a long step further; but I will not deny that I think it probable that there would be a demand for the introduction of those editions here.

5088. Do not you think that there would follow a further step from that, that the outside English publishers would claim the same right for themselves; would they not say, "It is very hard that colonial publishers should have a right to send their books here and that we should be prohibited"?—Yes. I think it probable that if the previous step were taken, this would be a further step. I have already said that whenever we come to a final arrangement with the Colonies and America, that is likely to be the result. But to return to your original point of the bargain between the English author and his original English publisher; the effect of my suggested changes would be that the English author, having before him the two markets, viz., the limited English market and the wide Colonial and American market would come to consider: "Which of these two things would it be most desirable for me to look to? and can I not unite the two objects by publishing in this country at such a price as will suit both the colonies and this country?" Instead of publishing an extremely dear edition, as is the custom here in the first instance, he will think, "Will it not answer better for me to publish a book which will serve the purpose of the Colonial and American market as well as of the English market." And the larger the Colonial and American market grows the more will that be the interest of the author.

5089. But if we authors were to tell you that from our experience it is the expensive edition which is published in England on which our profit almost entirely depends, and that when cheap editions come to be published afterwards, however extensive the sale, it is not on them that we can rely, and that we do not and cannot receive from extended sales of cheap editions anything approaching to what we get from the original expensive editions; what would you say to that?—I should be very much surprised if that proved to be the case with popular books.

5090. But supposing you were shown that it was so, and that in my own case, for instance, there are popular and cheap editions of my own books, and there are expensive editions, and although the cheap editions may have an extensive sale, the remuneration paid me for my own work has been entirely derived from the expensive editions; would it make any difference to your view, supposing it was established that that was the general rule, and the general experience of people who give their time to bringing out of any elaborate books with a great expenditure?—I am at a very great disadvantage from dealing with facts in this case which are much more within the knowledge of others than within my own; but I should require to have a great many facts proved to me, and to have the opportunity of sifting them thoroughly, before I could be led to the conclusion that the book trade is an exception from all other trades, in which all experience shows that an extended market with a small price brings, in the long run, greater profits than a limited market with a high price.

5091. At any rate it is an experiment to change a system so suddenly as passing any such law with respect to the colonies would amount to?—In the first instance there would be no very great experiment because the effect would not be very great. I mean the first step, the step that I spoke of, repealing the 4th section of the Act. The royalty system would no doubt be a great experiment.

5092. You quite admit that writing books is a harmless occupation and perhaps a useful one?—Generally harmless; often useful: sometimes very useful.

5093. And books being a production of labour are entitled to some sort of protection from the State?—Certainly.

5094. And therefore some means ought to be adopted, if the present system does remunerate us, to some extent to secure that protection; some system the State is bound to provide which will protect us?—The author ought to be remunerated for his labour, certainly.

5095. You yourself have said very little about it, but you still indicate that you think the royalty system is the one which would probably be the most practicable in the event of any change?—Probably.

5096. That is to say, that any publisher who took our books and published them, supposing it came to that, would be bound to pay a certain royalty?—Quite so.

5097. Has it ever occurred to you that there would be any difficulty in collecting that?—That is a matter of law and administration which would no doubt present difficulties, but probably not insuperable difficulties. As, however, I have not proposed a system of royalty I have not come prepared to meet these difficulties.

5098. Let me put an extreme case: suppose a pamphlet sold at a shilling, and of which 150,000 copies were sold, returning, therefore, a very large profit to the author; if the Stamp Office were to undertake the duty, they could not undertake it except for a very large and very heavy payment?—I may as well say at once that I am not come prepared with any scheme in detail for collecting royalties. I have not thought it out; and it could scarcely be thought out without the assistance given by the criticism of the trade on an actual Bill.

5099. The general principle of your evidence seems to go on this, that copyright is a monopoly. It is desirable, you say, to have cheap books. But it is desirable to have cheap bread, and cheap meat, and cheap clothes, and many other things, but the Board of Trade would not be prepared to legislate to make things of that kind cheap?—Certainly not, nor to make them dear.

5100. But with respect to books, you consider that they are property in a sense different from those things, being a property created by monopoly?—A property created by the Legislature.

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5101. But all property is created by law, is it not?—That is so; all property is created by law.

5102. What I want to get at is what the difference consists in; why is not a book which a man has written at the expense of money, time, patience, and talent, and all the rest of it, as much his property as the vegetables in a market garden are the property of the market gardener?—I will answer that question by another. What is it that you give him by the law of copyright? It is not the right to his thoughts—those are his own. Nor is it the actual book or books which he or his publisher have produced; those are his own. What you give him is the right to prevent anybody else from imitating and reproducing what he has produced. If there is one thing which belongs to a man it is his ideas, his discoveries, his thoughts. But these go to the world and are used by mankind without any restriction upon their reproduction whatever; they spread as fire spreads. What you give to the author is the right of preventing other persons from reproducing and imitating the particular form in which he has put his ideas.

5103. That is to say, you mean that his own labour in producing the book is inseparably annexed to the printed form of it, and a man cannot take possession of that printed form and reproduce that form without taking possession at the same time of the property of the author?—No; the author has given his thoughts and his form to the public when he has published them. His property under the law of copyright consists in the right of preventing anybody else from imitating or reproducing that form.

5104. You say that he has given it, but that is not the author's view; the author offers it for sale in that form?—But it is perfectly clear that he has parted with it, and it is spread through the world; if it is not spread in that particular form it is spread in other forms. He cannot, and in my judgment he ought not to be allowed to recall it.

5105. His ideas spread but the form remains his own. Mr. Tennyson's ideas may be taken by any other poet and reproduced, but the form is his own. I only want to understand on what principle property in literary productions is distinguished; why it is not property in the same sense as vegetables in a market garden are property?—The difference is in the nature of the thing itself. The exclusive right to the thing produced remains. The right to prevent reproduction of the thing produced is the thing which is given by copyright. If I am to have this box I must have this box, and nobody else can have it. But that is a very different thing from saying that nobody else shall imitate it, or produce something like it.

5106. You mean that from the peculiar nature of the thing an author's property is a property which it is very difficult to protect and very easy to steal?—You are assuming the question at issue in calling the power of preventing reproduction property, and the reproduction stealing.

5107. But I am not able with the utmost attention to discover the principle on which you base the difference, and upon that, it appears to me, the whole right to interfere with authors depends?—As long as an author keeps his compositions in his own mind or in his own desk, or as long as a speaker keeps his speech in his own mind, it is his own property, and nobody can take it from him; but when it is once given to the world it is a thing which anybody can reproduce, and you want a positive and definite law to prevent other people from reproducing it. The real question at issue (and it is a question of expediency) is, to what extent shall you carry the author's right to prevent other people from reproducing it.

5108. A crop is growing in a field, and unless the policeman protects it anybody may go in and take it; it is there before the world, for them to look at, but not to take?—If it is taken by somebody else it cannot belong to the owner. A book is in your publisher's window, and anybody may look at it but may not take it.

5109. But what a pirating publisher takes is something of the author's inseparably connected with the

form, and he cannot appropriate the form and reproduce it without taking away at the same time something which belongs to the author, which by the consent of all civilised nations, by the establishment of a copyright law, seems to amount to a sort of piracy?—I quite agree that nations have agreed to give the author this protection, but then you must take all the limitations which go with the protection. No nation at present gives the author an unlimited right; no nation treats this as if it were absolute property. If it were absolute property it would remain property for ever.

5110. I am still unable to see on what ground you make a distinction between this and other property?—The difference between the physical possession of an object, and the right to prevent somebody else from imitating that object, seems to me sufficiently clear. But I have tried in my evidence to avoid these fundamental questions, and to treat the points at issue on grounds of history and expediency. As I said before, it is quite clear that the Legislature can create and has created this right, and it is quite clear that the Legislature can limit and has limited this right.

5111. But from the author's point of view copyright is no more than the only form in which the producer, the author, can be properly protected by the policeman; it is equivalent to the policeman; that is the sense in which he looks at it, and from that point of view the author resents any interference by the Board of Trade or any other body to prevent him selling his property at any price he likes. That is a view which the Board of Trade declines to entertain?—I should entirely agree with the author about that, speaking not for the Board of Trade but for myself; I would not wish to interfere with an author doing what he likes with his own. The question is whether he should have an unlimited power of preventing somebody else from imitating and reproducing what he has produced.

5112. To which the author would answer by asking whether the State should not prevent somebody else from going into his neighbour's house and stealing property which he finds there. However, I will not press that any further; but there is one question with reference to this colonial matter which is immediately pressing and practical. You seem to doubt whether the Canadian publishers are able to undersell American publishers. Now my own publishers in New York write to me on that point. I may say that my books have had a very large sale in America, and the sum which I have received from the American publishers is totally disproportioned to what I should have received if I had been paid on the terms upon which they now propose to pay me; but they now write to me and say: "If you will protect us against competition from Canada, we have made an agreement amongst ourselves that we will not bid against one another. If you will protect us against the Canadian publisher, we are now ready to give you such and such a royalty on any book of yours that we publish," which would amount to a large sum. When the publishers have got as far as that, is it not a most important step towards an international copyright with America?—Yes.

5113. Because the practical reality of it will then exist?—Yes.

5114. Whereas if the Canadian publishers are allowed to take our books whether we agree or not, that negotiation is distinctly at an end, that is all over, and that chance will be gone?—That would of course depend upon the terms upon which the American publisher offered the books to the public, because the Canadian publisher would not be able to publish a book in competition with him, being burdened with the additional royalty, if the American book were published at a moderate price.

5115. I am speaking of the Canadians not paying a royalty as the matter stands at present. My New York publishers write to me and say, "Do not make an agreement with any Canadian publisher." I might have made an arrangement with a Canadian publisher

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to let him take my book without paying me a royalty? —What you say entirely confirms what I always thought would be the effect of the Canadian Act, namely, that it would not enable the Canadian publisher to oust the New York publisher from the market, but, on the contrary, would very likely enable the English author to get better terms from the American publisher.

5116. The publisher I speak of tells me that in one expensive edition he has been so completely undersold by the Canadian publisher, that the whole thing has been a dead loss to him, and on that he based his offer. That being the case what would you say to it?—That it is a very interesting fact, the bearing of which I should like to consider further.

The witness withdrew.

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

Friday, 16th March 1877.

PRESENT :

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.  
SIR JOHN ROSE, Bart., K.C.M.G.  
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.  
SIR LOUIS MALLET, C.B.

DR. WILLIAM SMITH.  
J. A. FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS HENRY FARRER, Esq., further examined.

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5117. (*Dr. Smith.*) I noticed that throughout your evidence you use the word "monopoly," often the phrase "unrestricted monopoly," in reference to copyright property. Do you consider this a correct use of the word?—Yes, I do.

5118. But is it not the fact that the word "monopoly" has never been used in English law except where there was a royal grant authorising some one or more persons only to deal in or sell a certain commodity or article? Were not all monopolies declared by the Act of 21 James I., cap. 3, contrary to the laws of the realm, and utterly void and of none effect?—To answer that question at length would be to go to the whole history both of copyright and patent. but I am glad of an opportunity to answer the question in that form, because it enables me to say that both patents and copyright were originally and are essentially monopolies in the strict legal sense of the word, and are so treated in judicial decisions; and further, that patents are still, as copyrights were originally, the creation of royal grant. The present right of the patentee depends on the grant made to him by the Crown, and the Acts relating to patents regulate the exercise of the prerogative. The case of copyright is somewhat different, because in that case the privilege was originally granted to members of the Stationers Company, and was accompanied with various restrictions in the nature of police restrictions. That species of right came to an end with the licensing laws, and the present copyright is founded on the statute of Anne and the subsequent statutes. Putting aside law and history, and looking to etymology and to ordinary use of the word, "monopoly" appears to mean in common language an exclusive power of sale; and that is what the copyright owner has.

5119. There would be perhaps no objection to the use of the word in that sense if it were not that "monopoly" now is almost always used in a bad and unfavourable sense. Does not, therefore, your employment of the word tend to create a prejudice against the owner of a particular kind of property, somewhat in the same way as communists and people of that way of thinking say that landlords have a monopoly of the land?—I cannot understand that to state a fact is to raise a prejudice. I should be disposed to answer in the language which Lord Macaulay used in the House of Commons. It was, if I remember right, to this effect: "Copyright is a monopoly, and a monopoly is a nuisance, but we submit to this monopoly because it would be a greater nuisance not to remunerate authors."

5120. But is it not the case that an author has no

protection in the subject upon which he writes? Are not the facts and arguments which he brings forward open to all the world and may be appropriated by any one and is it not simply the words and the form of expression which the law protects?—Undoubtedly human thought and human action is in its nature capable of indefinite propagation, and what the author has his copyright, his monopoly in, is the form in which he puts his thought, or rather in the power of preventing other persons from imitating the form in which he puts it.

5121. If an author published a history of Greece, a treatise on Mental Philosophy, or a play on the subject of Queen Mary, and no one else for a fixed number of years was allowed to write a history of Greece, a treatise on Mental Philosophy, or a play on the subject of Queen Mary, would not this be a privilege to which the word "monopoly," though incorrect in its legal sense, might still with some justice be applied?—Certainly.

5122. But is not an author exposed to unrestricted competition? Directly he publishes a work on a particular subject, may not another author immediately publish another book on the same subject? Is it not the fact that directly one publisher brings out a book which proves successful, another publisher endeavours to bring out another and better book on the same subject and at a lower price? Do not therefore both author and publisher work under the stimulus of open and free competition? Would it not therefore, be more correct to say that there is free trade in the production and sale of books rather than monopoly?—In one sense there is free trade; another book may be written on the same subject, but the same book may not be reproduced.

5123. Copyright has been defined by Lord Mansfield "to signify an incorporeal right to the sole printing and publishing of something intellectual communicated by letters." Has it not been generally admitted that literary compositions in their original state and the incorporeal right of the publication of them are the exclusive property of the author?—It has been generally admitted that in their original state, that is either whilst they remain in the mind of the author, or in his desk, they are his sole property. The whole controversy has been about what they are when they are once brought before the world by publication.

5124. The question then really is, is this property put an end to by publication? Do you agree with the statement that has been made "that without publication this property is useless to the owner, because it is without profit, and property without the powers



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“of use or disposal is not property.”?—My answer to the first part of the question is that property in the actual book which the author produces is not put an end to by publication; and my answer to the second part of the question is that property may exist although it may not be a source of profit; and that it may be a fair question, and has been in this case, whether you shall not attach a further privilege to it for the purpose of making it a matter of profit.

5125. I will take an illustration. A Manchester or Bradford manufacturer produces a particular kind of cotton or woollen goods that suits the wants or taste of the public. It is open, is it not, to any other manufacturer to imitate these goods by a fresh manufacture, but not to appropriate any of the goods of the other manufacturer? If he does, the law calls it stealing and punishes it accordingly. In the same way if an author brings out a successful work, cannot another imitate it, but is not allowed to appropriate the exact words of the first author? If he does the law punishes him. Where is the difference in the two cases, except that one is corporeal and the other incorporeal property?—The difference I think is this. You say “if I make any article, say a house, or a table, or a piece of cotton goods, or a pair of scissors, the law and the policemen protect me and mine in the exclusive possession and enjoyment of it so long as it lasts;” but you say “if I being an author make a book, or being an inventor make a machine, why should not the law and the policeman protect me and mine in the exclusive possession and enjoyment of the book or the machine in the same way?” Now my answer to that (which I believe is not an unfair representation of your question) is, that the law and the policeman do exactly the same thing for you in both cases. The book or the machine which you make are reserved by law to the exclusive use of you and yours precisely in the same way and to the same extent as the house, or the piece of cotton goods, or the pair of scissors. If anyone takes them from you you can recover them at law and shut up the thief in gaol. But what you claim under the name of copyright and patent right is a very different thing. It is a right to prevent other people from imitating your book, or your machine. This is a right which does not exist in the case of the house or the piece of cotton goods, or the pair of scissors. It is a right of a totally different and exceptional character and rests on its own special ground of utility. Whether it should exist at all, and if so why it should exist, are questions which seem more fit for the Metaphysical Club or the Juridical Society than for this Commission, but I shall be very glad if the Commission desire it to put in a paper stating concisely to the best of my ability the pros and cons of this controversy. I have been anxious in my evidence to assume with the majority of civilized mankind that the right exists and is to exist, and that it is and is to be limited; and I have further assumed that my present duty is to suggest what, according to the best of my judgment, these limits should be.

5126. I observe that, in answer to question No. 2923, you draw, as I think, most justly, the great distinction between literary property and patents when you say “The subjects of ordinary patents are things which many men are likely to discover and which if not discovered by one are likely to be discovered by another, and hence the necessity for notice to the world, but no person is likely to write the same book as has been written by another and if one man copies the work of another whether registered or not, he does it with full knowledge that he is appropriating what has been already written by another.” Am I, therefore, right in supposing that the arguments either for or against patents cannot be equally applied to copyright?—I think the things in the main stand upon the same footing, but I think the passage which you have read shows a distinction which makes patent right more objectionable in that single respect than copyright.

In some other respects—in respect of the facility of the reproduction, which it represses, copyright may be open to more objection than patent right.

5127. I observe that, in answer to questions put to you by Sir Louis Mallet you would apply to the composition and sale of books the same economical laws which experience has found to be most advantageous in the manufacture and sale of articles of general consumption, such as cheese, butter, and Manchester printed goods. Am I right in supposing this to be your opinion?—So far as they are articles of commerce I think you may.

5128. Applying these general principles you said that the more you reduced the price of an article, the greater would be its consumption. Admitting the general truth of this proposition, would you make no exceptions?—The whole thing is a matter of degree. The higher you get in the scale of mental productions and requirements, the more limited is the market, and therefore for the very highest class of mental productions the market is, and always must be, a comparatively limited one. On the other hand, so far as books are matters of commerce, I think they are subject to the same laws as other articles; and certainly with regard to a great many books the demand is so great as to lead to a positive conclusion that the ordinary laws of supply and demand would govern them.

5129. But in ordinary commerce are there not articles not suited to the market, articles which the public taste or wants do not require, or articles used by such a very limited class, that a reduction of price would not materially increase their use?—Yes, I have no hesitation in admitting that.

5130. For instance, do you think that a large reduction in the price of Highland kilts would induce the population of London to wear them? Or that a large reduction in the price of hair powder now that the use of it has gone out of fashion, except in the case of men servants in the upper classes, would induce the population of this country to revert to the use of it?—No, I see no reason why I should not agree with you in that.

5131. Therefore you would admit that there are some exceptions to this general rule?—The application of the rule depends entirely upon the fact that there is a demand of some kind or another for the goods. It has no application at all where there is no demand. It applies in proportion as there is a demand.

5132. Then if we apply this principle to books, if we admit that it is true in the case of books adapted for general circulation, is there not, as you have already said, a very large number of books of a most useful kind, and only adapted to a certain class to which this rule would not apply?—There may be a certain quantity of books of such a kind, but not, I think, those books which constitute the largest and most ordinary subjects of the trade; and even with regard to the highest class of literature, it is to be remembered how very much intelligence and cultivation has increased, and how very much larger a demand there is even for that kind of book than there was, and how very much that demand is likely to increase; how much also it is likely to increase if we take into account the population of the English speaking world out of this country.

5133. But if the cost of such books as I have alluded to was greatly reduced, would the sale you imagine be so much enlarged as to pay for the cost of production at the reduced price. Now I will take as an example such works as Mr. Herbert Spencer's, or such a book as Mr. Grote's History of Greece?—It is in all cases a question of what the demand is. I should have thought in the case of Mr. Grote's History of Greece there would have been a greater demand for a cheap book than for a dear book; and even with Mr. Herbert Spencer's books I should have imagined that the price would have some effect upon the sale.

5134. But is it not the fact that publishers find by experience that no reduction in price of many books will make them sell; that though you reduce the price

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from 10s. to 1s. the books will not sell; and is not the reason obvious that people do not want them?—I should think it was quite possible that there were books with regard to which that was the case.

5135. And I am supposing not worthless books, but books of value, but such as do not meet the tastes of the public?—That is quite possible.

5136. And is not the case entirely different from articles of universal consumption like sugar. If a tradesman has an immense quantity of sugar on his hands and another tradesman is selling it at 5½*d.*, and he reduces the price to 5*d.* he can get rid of all his stock in a comparatively short time, can he not?—Yes.

5137. Therefore I want to ask you if I am not right in supposing that there is a great distinction between books and articles of general consumption?—The distinction is one of degree; there may be books for which there is no demand: there are certainly books for which there is a demand. If I am not mistaken, it is a common practice in the trade, when a book does not go off, to reduce the price. I think I have heard of what they call sale remainders. Where a book is found not to go off the publisher says, "I will sell it at half the price." It is entirely a question of degree. So far as the book is an article of commerce, so far as it is a thing in demand, I think the ordinary laws of supply and demand apply to it.

5138. I think you will probably agree with me, as in fact you said in answer to a question put to you by Sir Louis Mallet that, as in the case of ordinary manufactured articles, the interest of the producer and the consumer are identical; so in the case of books, the interest of the author and the reader will be found to be substantially the same?—In the end, and in the long run, if you adopt the ordinary principles; but I beg to be guarded against being supposed to admit that the interests of a monopolist producer, and of a consumer are in any one transaction identical.

5139. I understood you to say in answer to a question put to you by Sir Louis Mallet that the ordinary law of trade, small profits and quick returns, ought to be the principle adopted in the book trade by both authors and readers?—I see no reason why that which is allowed to be true in other matters of trade should not also be true in the case of books.

5140. Now I wish you to look at the subject in the interest of the public. Have you considered what would be its result to the public in the production of books?—I am not quite sure that I understand what you mean by "it."

5141. The principle of small profits and quick returns, as applied to the book trade. I will put it in this way. Have you considered what would be the result of the principle mentioned in the previous question in the production of books?—I should think where the demand was sufficient, that it would be the same as it is in other cases, namely, increased profits to the producer, and a very largely increased supply to the consumer.

5142. Would not the inevitable consequence of the principle of small profits and quick returns be that publishers would refuse to publish all books not likely to pay by a large and immediate circulation?—I do not suppose, and I would not be thought to suppose, for one moment that where a book is an expensive book, and where there is a limited demand for it, any system of free trade that you can devise would induce, or ought to induce, the author or the publisher to publish it at a very low rate; nor has any suggestion for altering the law that I have heard of been such as would produce that effect.

5143. I can easily understand that such a principle would be advantageous to the publisher, because he would adopt his business accordingly, and only publish books likely to pay immediately; but I want to look at it in the interests of sound learning. Would not publishers in that case simply publish books appealing partly to the passing prejudice and fashion of the day, and partly supplying some immediate demand, and neglect books of more solid learning and

of permanent benefit to the community?—I do not think so, because no suggestion that I have made would lead to the production of books of that description at a price that would not pay, or interfere with their production at a price which would pay.

5144. But I am assuming that you agree with the question put to you by Sir Louis Mallet, that the principle on which publishers should conduct their business should be small profits and quick returns; and I want to ask you to consider whether, if that principle were adopted, it would not lead publishers to neglect books in which they did not get small profits and quick returns?—Undoubtedly if they applied that principle to cases to which it was not applicable it would do so. If they applied it to a case where the reduction of price would produce no increase of demand it would be so.

5145. Therefore they could not act upon that principle in reference to all books?—It is all a matter of degree, and I have never for a moment suggested, nor, so far as I am aware, has Sir Louis Mallet suggested that they should act upon the principle of putting an inadequate price upon an expensive book for which there is a very limited demand.

5146. Is it not the fact that there have been many books not simply of learning, but many books which have become exceedingly popular in course of time that were not popular at first, books which I may say in course of time have been gradually appreciated, and eventually become popular?—That may be the case. I am trying to recall an instance, but I do not know enough of the trade.

5147. May I suggest to you the case of both Wordsworth's poems and Carlyle's works. Certainly no one would desire that those books had never appeared, and yet was it not the case that for a great number of years Wordsworth could scarcely obtain a hearing?—Yes.

5148. And Carlyle's works, for a time, had a most limited circulation?—I am unable to say anything with regard to Carlyle. I know with regard to Wordsworth that for a long while he was comparatively little read.

5149. Then assuming that to be the case, in reference to Wordsworth's poems and Carlyle's works, if the publisher had adopted the principle of small profits and quick returns, would he not have refused to publish them?—I do not know what the history of the publication of Wordsworth's poems was, but I should think pecuniary speculation either on the part of Wordsworth or his publisher had very little to do with it. If I remember right, the early forms of Wordsworth's poems were very cheap inexpensive books, and it was not the price that deterred people from buying, but want of appreciation.

5150. Is it not the copyright law which has alone enabled authors and publishers to embark their capital in the production of works of lasting benefit to the present and future generations, and which would never have been published if they had acted on the usual commercial principle of small profits and quick returns?—The first question is, whether books of this description would have been published without a copyright law. As to that, I say, I do not know. Probably some existing books would and others would not have been published without a copyright law. And as to the second question, I think what I have said before is an answer to it. I do not suppose Sir Louis Mallet ever intended, and I am sure I never intended to apply the principle of small profits and quick returns to a case where there was no demand, or a very limited demand.

5151. Do not authors and publishers often embark their capital in works bringing in only a moderate annual sum, and which from the nature of the subject can only pay in the course of many years?—I dare say that is the case.

5152. Instead of turning over their capital rapidly, do they not invest their money much in the same way as another person would invest his money in the purchase of a leasehold property, for forty-two years, or

in the purchase of an annuity?—I daresay that is so. Mr. Herbert Spencer has told you that it has been so in his case.

5153. Are you aware of the vast amount of capital which has been invested in books of this kind by persons trusting simply to the future for recovering their original outlay with a profit upon it?—No: I know so little of the trade that I am unable to answer that question. If I understood you aright at an earlier period of this inquiry, I think you stated that it was now generally the practice of the best authors to retain their own copyrights and to make arrangements with the publishers only for one edition. If that is so, the money invested upon that first edition can scarcely be regarded as an investment for an indefinite period. I am only trying to throw a little light on the question by information which I have received myself in the course of this inquiry.

5154. But you would not be surprised to hear that the capital was very large?—No.

5155. Are you aware that authors and publishers have frequently to wait very many years, even in the case of good books, and with a very considerable circulation, before they get back their capital, to say nothing of interest?—I daresay that may be the case.

5156. Would you be surprised to hear that it is sometimes ten, fifteen, or twenty years before they get back their capital?—In the case of some very solid books I daresay that may be so. Mr. Herbert Spencer has told us of one case.

5157. Do you think that Mr. Herbert Spencer's is a solitary instance?—I hope not, but I should not think it was a very common one.

5158. Now I may perhaps venture to refer to my own books, and I do it simply because I can speak with certainty with respect to them, which I could not do with respect to other works, and I will mention one or two facts in relation to them, upon which I wish to base a question. A very successful work which I edited, a Dictionary of Greek and Roman Biography, and Mythology, had a capital of 10,000*l.* invested in it, by payment for the printing and paper, and payment to the contributors. It was commenced in 1842. At the end of 10 years from first publication there was a deficiency upon it, and in that and the following calculations I include nothing for the payment of interest. In the case of the Dictionary of Greek and Roman Geography, which also had a very large circulation, the publication was commenced in 1852; at the present time there is a deficiency upon it of 302*l.*; it brings in a small annual sum, and probably that deficiency will be paid off in a year or two. I am not able to state the numbers of the sales of those books, but in the next case I will mention my English-Latin Dictionary. That book was published in 1869; there have been already 3,500 copies of it sold; it was 13 years in preparation; about 2,000*l.* were paid to authors for their assistance, and there is now a deficiency upon the book at the end of eight years of 2,000*l.* Now, assuming these facts for the sake of argument, to be as I have stated, the question which I wish to put to you is this, whether you think it possible that these books could have been published under any other system than something like the existing law of copyright, by which protection is given to them without interference for a large number of years?—I believe myself that for the purpose of such books as those, and many other books, some protection is desirable; and I do not think that anything that I have suggested would interfere with the due protection of such books as those; and I should be very glad indeed with regard to those books, as with regard to all other excellent books of the same kind, if we could extend the market for them.

5159. Bearing these facts in mind, would you, upon further consideration, say, that the ordinary laws of trade which have been already mentioned, small profits and quick returns, and similar laws, could be applied to the composition and sale of books?—I think I can only reply to that, as I have replied already, that the law that you mention of small profits and

quick returns, applies in proportion as there is a demand. When there is no demand it does not apply, and where there is a small demand it applies of course in a much smaller degree.

5160. In two or three of the questions I have recently put to you, I have spoken of an author's capital. Will you not allow that an author who makes literature his profession, say like the late Mr. Charles Dickens, must regard his time as his capital, as his stock-in-trade?—I suppose that we all regard our time and our labour as our capital in that sense.

5161. In the same way as the time of a barrister or a physician is really his capital?—He invests his time and his labour with a view to getting certain returns.

5162. I ask you this question because you said on a previous occasion that the publishing price of books, or at least of "dear first editions," is "out of all proportion to the cost of production." Do you mean by cost of production the cost of paper, printing, and binding, or do you include in those cases the capital, that is to say, the time spent by the author upon the production?—I used the words "cost of production" with reference to paper, print, and binding, and I treated the author's profit as a separate item. When I look at the price of different books, I do not think that the cost to the public over and above the actual money out of pocket, which the publisher pays for printing and paper, bears any proportion whatever to the time which the author has spent upon them.

5163. Therefore when you made the statement that the cost is out of all proportion to the cost of production, you simply had in view the cost of the paper, printing, and binding?—That was what I had principally in view; but then I added to that the profit of the author and the publisher.

5164. But you will allow, will you not, that the time spent upon the production of the book is also part of the cost of production?—You may use the words in that sense, if you please.

5165. Then let us see what an author obtains for an octavo volume published at 16*s.*, and I will take the figures which you give us in your evidence, though you give them for another purpose. (I refer to page of your third examination). We will assume that 1,000 copies are printed, which is a very usual number for a first edition. We will also assume that the author publishes at his own expense, which of course give him the largest amount of profit. Now, from the 16*s.* per copy must be deducted, first, the ordinary 25 per cent. allowed to the retail bookseller; secondly, the 10 per cent. always allowed to the wholesale bookseller (many publishers allow a good deal more); thirdly, one copy in 25 given to the trade, 24 copies being all that are sold out of 25, which is another 4 per cent.; in all 39 per cent., say in round numbers 40 per cent. Next must be deducted 10 per cent. given to the publisher for his commission for publishing the book; in all 50 per cent. Consequently the author would receive only 8*s.* a copy out of the 16*s.*, at which it is nominally published. The cost of production of 1,000 copies, would, assuming your statement to be correct, be 210*l.*; to this must be added, say 40*l.*, for advertising; the total cost of the book being thus 250*l.* So that deducting this cost of 250*l.* from 400*l.*, which the sale of the work at 8*s.* a copy would produce, the profit of the author would be only 150*l.* From this sum you must deduct again the value of 30 copies given to reviews, which would be 12*l.*, leaving to the author only 138*l.*, which is the highest sum he could possibly receive, or 150*l.* supposing he gave no copies to reviews. The production of such a work would probably occupy an author a whole year. Now the question I wish to put to you is this, whether, assuming this statement of figures to be correct, you think that this is a sum which would remunerate an author for his labour?—It would be a very small remuneration for the writing of a good book, and I am extremely sorry to hear that it would be so small.

5166. You will observe that in this calculation I have not taken any account of the copies that have to

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be given under the Act of Parliament to public libraries, which would still further, would it not, reduce the profit to be received by the author?—Yes.

5167. But further, as most authors are either not able or not willing to incur the cost of publication, but usually publish on what are called half profits, the publisher taking the whole risk and dividing the profits, if any, with the author, in such a case the author would receive only the half of the above mentioned sum, plus 10 per cent., which would no longer be charged for commission. Would not that be a still smaller remuneration?—Yes; at present I do not see that this statement, which is exceedingly interesting, calls for any observation from me; but if on further consideration I should see anything in it to observe upon, I have no doubt the Commission will allow me to mention it again.

5168. You stated in your evidence on a previous occasion (I refer to page 205 of your third examination) that you “do not think authors receive too large a remuneration; that you do not think we, as individuals, pay more to good authors than they deserve, indeed not nearly so much as they deserve.” May I not, therefore, conclude from this that you would desire, if it were possible, to increase the remuneration of writers?—Yes, I think I should like to increase the remuneration of writers, and certainly of good writers.

5169. At all events, if it were proved to you that any of the changes you have proposed would diminish the profits of authors you would willingly abandon them?—I do not say that. I have to consider the author on the one hand, and the public on the other, and it will be a balance of advantage that I should have to consider.

5170. You state in answer to question 2885 that the object of the law of copyright is “to give the author adequate remuneration and encouragement” and in answer to question 2881 “the chief ground on which I base the opinion that copyright should not be prolonged, is that with the present term of duration the author gets a sufficient remuneration” and that it is for the interest of the public that the copyright should expire at the time at which it now expires. May I ask you what you consider to be a sufficient remuneration?—That is a question to which it is impossible to give a short answer.

5171. Would it be unreasonable that a successful author, who makes literature his profession, should make as much as a successful barrister or physician?—To make as much as a successful barrister would be to give him I should imagine much larger remuneration than he gets at present, and I doubt very much whether you can ever expect that he should get as much as that.

5172. But I do not mean by a successful barrister or physician those who are at the very head of their profession and making very large incomes. I would rather put the question with reference to a fairly successful barrister or physician?—I think you must remember that there is this essential difference, that in the case of a barrister or a physician the demand and consequently the remuneration are, to a very great extent indeed, a test of the excellence of the work. I am afraid that that can never be the case with books; the best books will never be in such demand as books of a more popular kind, but of less value. Therefore we ought not, I think, to be misled by an imperfect analogy.

5173. But should you be surprised to learn that the profits of even successful authors, with few exceptions, such as Lord Macaulay, Sir Walter Scott, or the late Mr. Dickens, are in most cases small, only just sufficient to enable them to live in competency and bring up their children?—I do not suppose they are at all too large, or as large as one would wish them to be.

5174. Does it seem to you an unreasonable thing that an author who has benefited his country by the production of works of acknowledged merit, and who obtains no direct pecuniary assistance from the State, should ask to be protected in the enjoyment of the

profits of his books during his own lifetime and the lives of his children?—You have there to balance two things, to balance the pecuniary; good that you would do to the author by prolonging the copyright, with the intellectual harm that you would do to the public by restricting the circulation of his book.

5175. I ask you this question again because you said on a former occasion, in answer to question 2897, that you saw no great force in it because “if the author has had a long period during his own life, during which he has been obtaining large profits from his copyright, he is perfectly well able during that time to provide for his children.” But supposing the case (which I believe to be undoubtedly the fact) that he is unable to obtain, as a general rule, large profits from his copyright during his life, and has consequently been unable to provide for his children, would your argument then apply?—If he had not been able to provide for his children during his life of course my argument would not apply, because I based it on the supposition that he had been able to do so. With regard to the question of extending copyright in point of time, you have to bear in mind with Sir Louis Mallet that with the extension of intelligence and cultivation you perpetually extend the area of the market; if you can take in America, and the other English-speaking populations of the world, you increase it indefinitely. That, I think, ought to be taken into consideration when you are speaking of extending the term. On the other hand, I admit that there is something to be said in favour of extending the term, viz., that you give something which is valuable in the case of the best books only, those which after a long time get their reputation and their sale. That is, no doubt, an important argument to be said in favour of extension.

5176. You state further in answer to that same question, that it seemed to you that there was great force in Lord Macaulay’s argument, that this form of copyright may be giving the longer copyright to the worst works of the author and the shorter copyright to the better works of the author?—Yes, I referred to that.

5177. Was not Lord Macaulay’s argument in favour of a fixed term of 42 years, which he himself proposed in opposition to Lord Mahon’s (the late Lord Stanhope’s) proposal to extend the term of copyright to 25 years from an author’s death, without making any addition to the existing term of 28 years?—That was the principle of it.

5178. Supposing that it was proposed that copyright should last, as at present, for a fixed period of 42 years, or for the life of the author and 21 years afterwards, whichever should be the longer, would there then be much force in Lord Macaulay’s objection?—In that case the first consideration would be, whether it was fair to the public that you should extend it so long. But the proposal would still, I think, be open to Lord Macaulay’s objection, that you would be giving the longest copyright to the earliest and possibly the worst book.

5179. Exactly so; but supposing that the earlier and worst works of the author obtained in some cases a longer copyright, the public would from the very nature of the case not lose much; as the works were of no value or of little value, the public would not be damnified because these works had a longer term?—If the book were a bad one of course they would not be damnified, nor would the copyright be of any value; but I think I showed the other day what the practical effect of prolongation of the copyright would be in the case of Dickens’ earlier works.

5180. I must now go back to the price of books again. Have you ever considered the real reason why authors and publishers bring out first a small edition at a comparatively high price rather than a large edition at a low price?—I should like very much to hear what their reasons are.

5181. Is it not the uncertainty of the market that makes the price high? Is it not the fact that even experienced publishers find it difficult to calculate be-

forehand upon the taste and wants of the public?—I should imagine it was nothing of that kind that made "Daniel Deronda" cost 42s., or Lord Macaulay's *Life* 36s.

5182. That may not apply to the case of works of well-known authors, because the law of political economy comes in, that you buy in the cheapest market and sell in the dearest; and if a popular author can obtain a very large sum for his works is he to be prevented from doing so by law?—That of course raises again the further question whether it is right that the author should have the absolute and unrestricted right of preventing copies of his works; I do not blame the author so long as the law is what it is for getting the highest price that he can.

5183. But the question which I wish to put to you is not in the case of works of authors who are well known, but in the case of an author who is unknown. I will repeat the question; is it not the uncertainty of the market in such a case, the doubt whether the book will sell or not, which makes the publisher put it at a high price?—That may be so. I really do not know enough about the trade to say that.

5184. Must it not be that the original price of books must be high, because their success is to a great extent a lottery, and publishers cannot venture on a large edition, which may be left as waste paper on their hands?—That may be so; it may be that they make one book and one author pay for another; but it does not seem to me to account satisfactorily for the original publication of books in the most expensive form, or for the prices ordinarily charged for them.

5185. You will excuse my saying so, but in all your reasoning and calculations have you not in your mind books of which the success is already secured? I merely mention this, because, throughout your evidence you draw your illustrations from such works as "Macaulay's *Life*," "Middlemarch," "Daniel Deronda," "The Prime Minister," "The Parisians," "The Princess of Thule," and others of a similar kind?—The reason and the only reason why I happened to take those books, was because they were the books which have been in demand in America, and because they were in lists sent to me as lists of books which have been republished in America.

5186. Supposing an author publishes an edition of 5,000 copies at 5s., instead of an edition of 1,000 at 15s., and only doubles his sale in consequence, selling 1,000 copies of the 5s., instead of 500 of the 15s. edition, is he not much worse off?—Yes, I suppose he is.

5187. Will not a sale of 500 copies at 15s. a copy insure him, or nearly so, against loss; whereas a sale of 1,000 copies at 5s. would leave him with a great loss, and 4,000 copies on his hands?—That might be so.

5188. Do you not think that if you could ensure the certainty of a sale, both authors and publishers would be willing to bring out books by unknown authors at a cheaper rate?—Possibly; but the price charged does not seem to follow the probability of sale.

5189. Is it not, as I said before, the uncertainty of the market that raises the price of books?—I am not able to say "yes" to that question without further consideration. I much doubt whether it is the prospect of sale which governs price. I imagine also that with many books the circulating library system insures a certain number of copies being taken.

5190. Are you aware of the number of books published in any given year which do not even pay the expense of printing and paper, to say nothing of profit to the author?—I daresay there are a great many.

5191. Should you be surprised to learn that only one book in four is a very moderate calculation of the books which are successful, of the books which pay their expenses?—I should be surprised to hear that, because then it is difficult to see how the trade can go on.

5192. Is it not the fact that the trade must make a

very considerable profit out of the fourth successful book, assuming it to be the case, in order to pay for the losses of the unsuccessful books?—Certainly; and the public and the successful author must have to pay handsomely for the publisher's unsuccessful speculations. Does not all this support Sir Louis Mallet's view of the commercial character of the business?

5193. (*Mr. Trollope.*) Would you be surprised to hear that I have learned from two publishers within a short period that not one book in nine has paid its expenses, and that still they have been able to carry on the trade?—If so, the case is still more striking. These facts bear out what I have said before, that we have too many books; and that what we want is, not more books, but fewer books, and those good and cheap.

5194. (*Dr. Smith.*) When I stated one in four, I spoke of the complete number of books published in the year; and consequently if some of these were published at the expense of the author, it would diminish the loss of the publisher to a certain extent, would it not?—Of course.

5195. I should now like to call your attention to what you said in reference to school books. You said in your evidence at page 204 of your third examination: "It will be seen when that list is referred to, that school books are as cheap in England as they are in Canada. The reasons (at least what I believe to be the reasons) are interesting, namely, that there is necessarily an immense demand for school books; that the price must be low, or they would not be bought; and, above all, that a school book is a thing in which there cannot, in the nature of things, be a permanent monopoly. If one school book is dear or bad, a cheap or good one will soon be written. It can be produced to demand. Consequently, the equality of price in these books in the two countries goes far to prove my position, that it is monopoly and not fair profit to the author which is the cause of the higher price of other English literature." Now, without dwelling on the fact that the production of a really good school book is not such an easy task as you seem to suppose, and that it cannot be so easily produced to demand, may it not be rather the case that it is the certainty of a large sale that makes school books cheap, and not simply what you call monopoly?—I should think that the one had as much to do with it as the other.

5196. But you would probably admit that the certainty of a large sale had a good deal to do with the reduced price at which they are published?—The certainty of a large market if the book is good and cheap is one consideration; an equally important consideration is the certainty of no market at all if the book is dear, since in that case another cheap and good book is sure to be provided.

5197. I wish to call your attention to another consideration with reference to the price of books not adapted for general circulation, but which from the nature of their subject must have a limited area of purchasers. Let us assume the existing area of purchasers to be 10,000, and that such an author publishes an edition of 10,000 copies at once at a low price, which would yield him the same sum as an edition of 1,000 copies published at a high price. Would it not seem at first sight that while the public is benefited the author is not injured?—As far as the profit of that edition goes it would be so.

5198. But supposing he sells off his edition of 10,000 copies, is he not really much worse off than if he sold only the edition of 1,000 copies? In the one case, that is where he sells the 10,000, has he not exhausted the area of his customers for many years. In the other case has he not an area of 9,000 remaining customers?—That appears at first sight to be so. But in making this admission, I do so upon the assumption that there is this strictly limited area of 10,000 purchasers who will buy at the lower price. That probably is not the actual fact with regard to any book, because the demand is elastic and will generally depend upon price, upon diffuse knowledge of

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the book, and upon appreciation of it: I was extremely struck, if I may say so without offence, with the extremely clear and straightforward answers of Mr. Longman to questions of this description. He entirely refused to endorse the general statements on that subject, which were involved in the questions put to him, and both he and Mr. Routledge told the Commission that very often the sale of a large edition was exactly the thing which would extend the further sale of the book. If I remember right Mr. Routledge's expression was that it laid the basis for a further sale, and the whole of Mr. Longman's evidence went in that direction.

5199. I understood you to say in answer to a question of Sir Louis Mallet's, that the best authors have been those who have been the least animated by the prospect of pecuniary gain?—I believe that to be so.

5200. Granting that some writers, animated by an impulse to give their thoughts to the world, have written their books without any thoughts or hope of remuneration, is it not the fact that some of the greatest works in the English language owe their production partly to the other cause, the hope of remuneration?—That may be so too.

5201. Did not the greatest poet in the English language, Shakespeare, write his plays partly with a view to the profit to be derived from their representation in the theatre with which he was connected?—I am really unable to tell what motive impelled Shakespeare to write. I should imagine, Shakespeare being what he was, those plays would have been written, or something like them, Globe Theatre or no Globe Theatre.

5202. Was it not the fact that Pope made his translation of the Iliad (which is certainly one of the finest poems in the English language) in consequence of the remuneration which he hoped to derive from it, and that he gained between 5,000*l.* and 6,000*l.* from it?—I am not aware of the fact.

5203. You have read probably Boswell's "Life of Johnson"?—Yes.

5204. Do you not find in every page that it was only the hope of gain which overcame Johnson's constitutional indolence and impelled him to write?—Johnson wrote to save himself from starving.

5205. Was not hope of gain a great motive, many persons think too great a motive, in producing the immortal fictions of Sir Walter Scott? Can anyone read Lockhart's Life without seeing that to be fact?—That is so; and with regard to so very great a genius, and so noble a man, as Sir Walter Scott, one would say that that is the one blot on his life.

5206. But why should it be a blot that a person should hope to make money by his books?—I do not think it is a blot: I only meant to say that where the genius is of so high a character as Scott's, one is sorry to see money, or rather the desire to possess land, playing so large a part in the man's life.

5207. Have you not seen from Mr. Forster's Life of Dickens that most of his works were due to the same cause, the desire of making money by their production?—I should be sorry to think that of Dickens. It seems to me unfair to these authors to say that their works were due to the desire of making money, just as it would be unfair to say that all laborious lives that are led by either statesmen or doctors, or others, are due to the desire of making money. Undoubtedly that is part of the motive with which they write, and it is quite right that it should be.

5208. But when you state that the best authors have been those who have been the least animated by the prospect of pecuniary gain, am I not justified in putting such examples to you, in which it is clear that these authors were at any rate animated to a considerable extent by the prospect of pecuniary gain?—I daresay that they were animated to a considerable extent by the prospect of pecuniary gain; but I do not still believe that the best works have been produced with that object.

5209. If we take the greatest historical work in the English language, which probably all persons will agree to be Gibbon's Decline and Fall of the Roman Empire, although written by a person of very considerable property, does not Gibbon in his autobiography tell us that when he lost his place as one of the lords of trade and plantation "his diligence was quickened by the loss of office"; and in another passage, that "the golden mediocrity of his fortune contributed to fortify his application"?—I daresay he says that; but I happen to have just been reading that autobiography, and anything more unfair to Gibbon than to say that the prospect of gain was the principal motive in that tremendous industry which he showed in acquiring his materials for the Roman Empire I cannot conceive. The man was a scholar and an author by nature, and it was his genius which impelled him to his study and his writing.

5210. Did you understand me to say, in reference to Gibbon's Decline and Fall of the Roman Empire, that he was impelled by a hope of gain, when I put the question to you?—I thought that was the tendency of your question.

5211. Was not the tendency of my question rather to show that even in the case of a work written by a man of very considerable property, the hope of some remuneration was one motive, rather than the only motive or the chief motive?—I should be content to agree to that, and say that it was quite right; "the labourer is worthy of his hire."

5212. (*Sir D. Wolff.*) Do you not think that an author embraces the profession of an author from love of the art, and that then having embraced that profession he wishes to get paid for that art?—Certainly.

5213. (*Mr. Trollope.*) Do you not think that an author is in exactly the same category as any other workman, who has it upon his conscience to use his life for doing good work for the world around him, and who cannot do that good work unless he is paid for it?—Certainly; but in proportion as you get into the higher regions of human production, in that proportion I am afraid you get out of the regions in which the demand and the pecuniary value bear a proportion to the value of the work. That is so in all the highest human work.

5214. (*Dr. Smith.*) I understood you to say that you were in favour of what has become the law of the United States and Canada in reference to the term of copyright, namely, 28 years and a prolongation for 14 years, and you based your recommendation for this alteration of the law chiefly upon the fact that publishers would give as much for a copyright of 28 years in length as for one of greater length?—Yes; I said I was struck with that suggestion on two grounds; the one, that it is very desirable that we should make our law uniform with that of the United States and Canada; and the other, the ground that you mention; but I think I said at the same time that it was with this qualification, that if it was the fact authors do not part with their copyrights at all, the latter of the two reasons for the alteration would no longer exist.

5215. You stated that in answer to question 3056 from the Chairman, in which you said: "If, as I rather gathered from Dr. Smith, it should turn out to be the case that authors seldom or never part with their copyright, the reasons for any plan of that sort fail"?—The reasons founded upon the benefit to the author fail.

5216. I wish to ask you in reference to what you then said, whether you understood me to say as a general proposition that authors seldom or never part with their copyright, or that it was authors of standing and writers of really great works that never part with their copyright?—I thought that your statement was a general one with regard to the class of works with which you have been connected.

5217. At any rate I did not mean to state that as a general proposition, but simply in reference to authors of standard works?—It is of comparatively small im-

portance with regard to authors of ephemeral works, because whatever the copyright is at the end of the 28 years it would not be of much value.

5218. Are you aware (to take only a few prominent cases among authors alive or recently deceased) that the following authors did not part with their copyrights, namely, among Historians, Mr. Hallam, Lord Macaulay, Dean Milman, Mr. Grote, Lord Stanhope, Mr. Froude, Dean Merivale, and Dean Stanley; in Philosophy, Mr. Mill, Mr. Buckle, and Mr. Herbert

Spencer; in Natural Science, Sir Charles Lyell, Mr. Darwin, Mr. Huxley, Dr. Tyndall; among Poets, Mr. Tennyson, Mr. Browning, and Mr. Matthew Arnold; among Novelists, Lord Lytton, Mr. Dickens, Mr. Thackeray, and George Eliot; and in other departments of literature men such as Mr. Smiles and Sir Henry Maine. Are you aware that these and many others whose names I might mention have never parted with their copyright?—I am very glad to hear it.

T. H. Farrer,  
Esq.  
16 March 1877.

The witness withdrew.

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

Tuesday, 20th March 1877.

PRESENT :

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.  
SIR LOUIS MALLET, C.B.

DR. WILLIAM SMITH.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

HERBERT SPENCER, Esq., further examined.

H. Spencer,  
Esq.

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5219. (*Chairman.*) I will ask you if you have any explanations you wish to offer on any point connected with the evidence which you gave on the last occasion?—Yes; I have to rectify some misapprehensions. From the re-statement made by Mr. Farrer, it would appear that in discussing the question of profits from re-publication of one of my works, I said I had “found that no other publisher would undertake the work without an additional profit of 10 per cent.,” which implies that I had endeavoured to obtain another publisher. My meaning was that I ascertained that any other publisher who thought of issuing a rival edition, would expect to make a profit of 10 per cent. beyond the 10 per cent. commission for doing the business. Further, I have to remark that the case I took as illustrating the improbability that I should obtain any considerable compensation from increased sales under the royalty system, was the case of one of my works only, the “Principles of Psychology,” and in respect of this, I may admit that there would be little danger of a rival edition. But it is not so with others of my works—with the work on “Education,” now in its fourth thousand; with “First Principles,” now in its fourth thousand, and especially with the just-issued first volume of the “Principles of Sociology.” These are now sufficiently in demand, and, especially the last, sufficiently popular in manner and matter, to make rival editions quite probable.

5220. Now, with respect to the stereotype plates, would they not enable you to exclude the rival editions of which you speak?—I think not. In the first place, the assumption that other publishers would be deterred from issuing rival editions by my stereotype plates, implies that other publishers would know I had them. I do not see how other publishers are to know it, until after I had myself printed new editions—even English publishers, and it is out of the question that colonial publishers should know it. Hence, therefore, the fact of my having stereotype plates would not prevent such rival editions. Consequently these rival editions, making their appearance unawares, would compete with my existing stock, printed in a comparatively expensive style, and would oblige me either to sacrifice that stock, or to lower the price to one far less remunerative. Then, subsequently, there would not be the supposed ability to compete so advantageously with editions published by others. An edition to be sold at a cheap rate must not be in large type, well spaced, and with ample margins, but must be in small type, and much matter put into the page. Hence the existing stereotype plates, adapted for printing only books

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in a superior style, could not be used to print cheap books: the quantity of paper and the cost of printing would be much larger items than to one who arranged the matter fitly for a cheap edition.

5221. Then are we to gather that you do not think that from any such cheap edition you would derive a profit from the royalty compensating you for your loss?—Nothing like compensating. Although the sales of these more readable books I have instanced might be considerably increased, the increase could not be anything like as great as would be required to produce the return I now have. Even supposing the price of the rival edition were the same, which of course it would not be, the 10 per cent. royalty would bring in the same amount, only supposing four times the number were sold that I sell now; and as, by the hypothesis, the price of the volume, to get any such larger sale, must be much lower, the royalty would bring in so much the less. If, say, “First Principles” were issued at half the present price, 8,000 would have to be sold instead of 1,000, to bring in by royalty the present returns. Such an increase of the sale would be out of the question; even one half of it would be improbable; so that certainly one half of my returns would be lost.

5222. Have you any other personal experience that you wish to bring before the Commission to show that such a modification of the copyright law as you have been discussing would be disadvantageous to literature of the graver kind?—I think I have. “First Principles” was published in 1862, and in the course of some years the doctrine it contains underwent, in my mind, a considerable further development, and I found it needful to re-organise the book. I spent five months in doing this; cancelled a large number of the stereotype plates; and was thus at considerable cost of time and money. As I have already pointed out, the work being now in its fourth thousand, has had a degree of success such that there might, under the proposed arrangement, very possibly have been a rival edition at the time I proposed to make these alterations. Had there been such a rival edition, this cost of re-organisation to me would have been more serious even than it was; since the difference between the original and the improved edition, adequately known only to those who bought the improved edition, would not have prevented the sale of the rival edition; and the sale of the improved edition would have greatly diminished. In any case the errors of the first edition would have been more widely spread; and in the absence of ability to bear considerable loss, it would have been needful to let them go and become permanent. A kindred ten-

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dency to the arrest of improvements would occur with all scientific books and all books of the higher kind, treating of subjects in a state of growth.

5223. With the object of rendering useful books as accessible as possible to the public, do you think that those engaged in their production and distribution should be restrained from making what might be called undue profits?—In answer to the first part of the question I hope to say something presently, showing that the advantage of increased accessibility of books is by no means unqualified; since greater accessibility may be a mischief, if it tells in favour of worthless books instead of valuable books. But passing this for the present, I would comment on the proposition, which I perceive has been made before the Commission, that it is desirable to secure for books "the cheapest possible price consistent with a fair profit to those concerned." I here venture to draw a parallel. What is now thought so desirable respecting books, was in old times thought desirable respecting food—"the cheapest possible price consistent with a fair profit to those concerned." And to secure this all-essential advantage, more peremptory, indeed, than that now to be secured, there were regulations of various kinds extending through centuries, alike in England and on the Continent,—forbidding of exports, removing of middlemen, punishing of forestallers. But I need hardly recall the fact that all these attempts to interfere with the ordinary course of trade failed, and after doing much mischief were abolished. The attempt to secure cheap books by legislative arrangements, seems to me nothing less than a return to the long-abandoned system of trade regulations; and is allied to the fixing of rates of interest, of prices, of wages. In the past it was the greediness of money-lenders that had to be checked, or, as in France for many generations, the greediness of hotel-keepers; and now it appears to be the greediness of book-producers that needs checking. I do not see, however, any reason for believing that regulations made by law to secure cheap bread for the body having failed, there is likelihood of success for regulations aiming to secure cheap bread for the mind.

5224. Then do we understand you to mean that no analogy furnished by past experience in commercial affairs can be held to imply that the proposed royalty plan would succeed?—I think that all the facts are against it. I find it stated in the evidence lately given that there has not been raised "an insuperable objection in point of principle" to the plan of a royalty. If no such objection in point of principle has been raised, I think one may be raised: the objection, namely, that it is distinctly opposed to the principles of free trade. One of the aims of the plan, as expressed in the words of the same witness, is the "preservation of a fair profit to the author." Now, on the face of it, it seems to me that any proposal to secure fair profits by legislation, is entirely at variance with free trade principles, which imply that profits are to be determined by the ordinary course of business. But further, I would point out that if it is competent for the legislature to say what is a "fair profit to the author," I do not see why it is not competent for the legislature to say what is a fair profit to the publisher: indeed, I may say that it is not only as competent but much more competent. I take it to be impossible for the legislature to fix with anything like equity the profit of authors, if profit is to bear any relation to either skill or labour, as it should do; inasmuch as one author puts into a page of his book ten times as much skill as another, and, in other cases, ten times as much labour as another. Hence, therefore, if they are to be paid at the same percentage on the price, there is no proportion in that case secured between the value of the labour and what they receive. Similarly, if we consider the numbers sold, the royalty which might afford ample return to an author who sold a popular book in large numbers would afford little return to an author who produced a grave book selling in small numbers. Obviously then it is extremely difficult, and in fact impossible, for the legislature to fix an equit-

able royalty; but it is by no means so difficult for the legislature to fix an equitable rate of profit for the publisher. The function of the publisher is a comparatively mechanical and uniform function: the same practically for all books, the same for all publishers, and hence is a thing very much easier to estimate in respect of the proportion; and in fact we have the evidence that it can be fixed with something like fairness, inasmuch as publishers themselves voluntarily accept a 10 per cent. commission. Hence, I say, not only does the carrying out of the principle imply that if, in pursuit of alleged public advantage, the profit of the author should be fixed, then also should the profit of the publisher be fixed, but that it is much easier to do the last than to do the first. If so, then, it is competent for the legislature to go a step further. If there is to be a Government officer to issue royalty stamps, there may as well be a Government officer to whom a publisher shall take his printers' bills, and who adding to these the trade allowances, authors' 10 per cent. royalty, and publishers' 10 per cent. commission, shall tell him at what price he may advertise the book. This is the logical issue of the plan; and this is not free trade.

5225. (*Sir H. Holland.*) You will hardly contend that the system of royalty is less in accord with free trade than the existing system of monopoly; you will not carry it so far as that, will you?—I do not admit the propriety of the word "monopoly."

5226. Without using the word "monopoly," let me say, than the present system of copyright for a certain term of years?—I regard that as just as much coming within the limits of free trade as I hold the possession, or monopoly, of any other kind of property to be consistent with free trade. There are people who call the capitalist a monopolist: many working men do that. I do not think he is rightly so called; and similarly if it is alleged that the author's claim to the product of his brain-work is a monopoly, I do not admit it to be a monopoly. I regard both the term "free trade" as applied to the unrestrained issue of rival editions, and the term "monopoly" as applied to the author's copyright, as question-begging terms.

5227. Without saying what opinion I hold upon the point, and avoiding the use of the words "monopoly" and "free trade," I wish to know whether you think it most consistent with the doctrines of political economy, that every person should be able, upon payment, to publish a particular book, or that only one person should have it in his power to do so for a certain time?—Every person is allowed and perfectly free to publish a book on any subject. An author has no monopoly of a subject. An author writes a novel; another man may write a novel. An author writes a book on geology; another man may write a book on geology. He no more monopolises the subject than any trader who buys raw material and shapes it into an article of trade is a monopolist. There is more raw material which another man may buy. The only thing that the author claims is, that part of the value of the article which has been given to it by his shaping process; which is what any artizan does. The way in which this position of authors is spoken as "monopoly" reminds me of the doctrine of Proudhon—"Property is robbery." You may give a stigma to a thing by attaching to it a name not in the least appropriate.

5228. (*Mr. Trollope.*) I understand your objection to a system of royalties to be this, that no possible *quota* that could be fixed would be a just payment for all works?—That is one objection. There is no possibility of fixing one that would apply to all works, inasmuch as the thing paid for is an extremely variable thing, more variable than in almost any other occupation.

5229. I put that question to another witness before you, but I am afraid failed to make him understand me. I am therefore glad to have the answer from you in order that we may show (I think you will agree with me) that no special royalty specified by Act of Parliament could be just to poetry, and to the drama, and



to fiction, and to science, and to history at the same time?—Quite so. I think it is obvious, when it is put clearly, that it cannot be; and that is an all-essential objection.

5230. (*Sir H. Holland.*) Nor would it in your opinion be desirable that the question of determining what amount of royalty is proper in each case should be vested in some registrar or some single person?—It would make the matter still worse. It would be bad to vest it anywhere, but especially bad to vest it in any single official.

5231. (*Chairman.*) Are we to assume that you think the plan of a royalty to be at variance with the established principles of the science of political economy?—I think quite at variance with the principles of political economy. The proposal is to benefit the consumer of books by cheapening books. A measure effecting this will either change, or will not change, the returns of those engaged in producing books. That it will change them may be taken as certain. The chances are infinity to one against such a system leaving the returns as they are. What will the change be? Either to increase or decrease those returns. Is it said that by this regulation the returns to producers of books will be increased, and that they only require forcing to issue cheaper editions, to reap greater profit themselves, at the same time that they benefit the public? Then the proposition is that book-producers and distributors do not understand their business, but require to be instructed by the State how to carry it on more advantageously. Few will, I think, deliberately assert this. There is, then, the other alternative: the returns will be decreased. At whose expense decreased,—printers', authors', or publisher's? Not at the expense of the printers: competition keeps down their profits at the normal level. Scarcely at the cost of the authors; for abundant evidence has shown that, on the average, author's profits are extremely small. Were there no other motive for authorship than money-getting; there would be very few authors. Clearly, then, the reduction of returns is to be at the cost of the publisher. The assumption is that for some reason or other, the publishing business, unlike any other business, needs its returns regulating by law. Thinking, apparently, of prosperous publishers only, and forgetting that there are many who make but moderate incomes and very many who fail, and thinking only of books which sell largely, while forgetting that very many books bring no profits and still more entail loss, it is assumed that the publishing business, notwithstanding the competition among publishers, is abnormally profitable. This seems to me a remarkable assumption. Embarking in the business of publishing, like embarking in any other business, is determined partly by the relative attractiveness of the occupation and partly by the promised returns of capital. There is no reason to think that the occupation of publishing differs widely from other occupations in attractiveness; and hence we must say that, competing for recruits with many other businesses, it must on the average, offer a like return on capital. Were it found that the average return on capital in publishing was larger than in other businesses, there would immediately be more publishers; and competition would lower the returns. If, then, we must infer that, taking the returns of all publishers on the average of books, their profits are not higher than those of other businesses; what would be the effect of such a measure as that proposed, if, as anticipated, it lowered publishers' returns? Simply that it would drive away a certain amount of capital out of the publishing business into more remunerative businesses. Competition among publishers would decrease; and as competition decreased, their profits would begin to rise again, until, by and bye, after a sufficient amount of perturbation and bankruptcy, there would be a return to the ordinary rates of profit on capital, and the proposed benefit to the public at the cost of publishers would disappear.

5232. Then, with a view to the permanent cheapening of books, we may gather that your opinion is that it would not be effected in the way suggested?—I think

not. The natural cheapening of books is beneficial; the artificial cheapening mischievous.

5233. May I ask you to explain what you mean by contrasting the natural and the artificial cheapening of books?—By natural cheapening I mean that lowering of prices which follows increase of demand. I see no reason, *à priori*, for supposing that publishers differ from other traders in their readiness to cater for a larger public, if they see their way to making a profit by so doing; and, *à posteriori*, there is abundant proof that they do this. The various series of cheap books, bringing down even the whole of Shakespeare to a shilling, and all Byron to a shilling, and each of Scott's novels to sixpence, sufficiently prove that prices will be lowered in the publishing trade if the market is adequately extensive, just as in any other trade. If it be said that in this case authors have not to be paid, I would simply refer to such a series as that of Mr. Bohn, who, notwithstanding the payments to translators and others, published numerous valuable books at low rates. Moreover, we have conclusive evidence that with the works of still-living authors the same thing happens, when the market becomes sufficiently large to make a low price profitable. Witness not only the cheap editions of many modern novels, but the cheap editions even of Mr. Carlyle's works, and Mr. Mill's works. Deductively and inductively, then, we may say that there is a natural cheapening of books, going as far as trade profits allow; as there is a natural cheapening of other things. Conversely, I mean by artificial cheapening, that kind which is anticipated from the measure proposed; for it is expected by means of this measure to make publishers issue books at lower rates than they otherwise do. And this is essentially a proposal to make them publish at a relative loss. If, as already argued, the average rates of publishers' profits are not above those of ordinary business-profits, these measures for lowering their prices, must either drive them out of the business or be inoperative. To put the point briefly—if there is an obvious profit to be obtained, publishers will lower their prices of their own accord; and the proposed competitive system will not make profits obvious where they were not so before.

5234. But if there was free competition on the payment of the author's royalty, might it not be that another publisher would be led to issue a cheap edition when the original publisher would not?—I see no reason to think this. The assumption appears to be that everybody but author and original publisher can see the advantage of a cheap edition, but that author and original publisher are blind. Contrariwise, it seems to me that the original producers of the book are those best enabled to say when a cheap edition will answer. The original producers of the book know all the data—number sold, cost, return, and so forth; and can judge of the probable demand. Another publisher is in the dark, and it does not seem a reasonable proposition that the publisher who is in the dark, can best estimate the remunerativeness of a cheap edition. If it is hoped that, being in the dark, he may rashly venture, and the public may so profit, then the hope is that he may be tempted into a losing business. But the public cannot profit in the long run by losing businesses.

5235. (*Sir H. Holland.*) Take the "Life of Lord Macaulay;" you know that Tauchnitz has published a cheap edition in four volumes,—a very neat edition, good paper and good print. Is it not possible that if this system of royalty is introduced, without considering whether the author would lose by it, a cheap edition like that would be put upon the market at once, and would pay the publisher?—It is possible that it would be done earlier than it is now done. I take it that the normal course of things is that, first of all, the dear edition should be published and have its sale, and supply its market, and that then, when that sale has flagged, there should come the aim to supply a wider market by publishing a cheap edition.

5236. You are aware that one of the advantages

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which the advocates of this royalty system most strongly dwell upon, is that under the present system the great mass of the reading public are not able to purchase the books; those who have the advantage of circulating libraries can get them and read them, but poorer persons can neither purchase nor read them, whereas under the other system an edition like Tauchnitz would be at once put out, and it is contended that this, though it might be a loss to the author, would be a benefit to the public?—Then I take it that the proposal really amounts to this, that whereas, at present, the poorer class of readers are inconvenienced by having to wait for a cheap edition a certain number of years, they shall, by this arrangement, be advantaged by having a cheap edition forthwith; which is to say that people with smaller amounts of money shall have no disadvantages from their smaller amounts of money. It is communistic practically: it is simply equalising the advantages of wealth and poverty.

5237. (*Chairman.*) Then we may assume that in your opinion the royalty system would not operate in cheapening books in the long run?—I think that in the first place, supposing it should act in the manner intended, by producing rival editions, it would act in cheapening just that class of books which it would be a mischief to cheapen. I have already intimated in a previous reply, that the alleged advantage of cheapening books is to be taken with a qualification; inasmuch as there is a cheapening which is beneficial and a cheapening which is injurious. And I have got, I think, pretty clear evidence that the class of books cheapened would be a class which it is undesirable to cheapen. Being one of the committee of the London Library, I have some facilities for obtaining evidence with regard to the circulation of various classes of books; and I have got the librarian to draw me up what he entitles—“Recorded circulation of the following books during the three years following their introduction into the London Library.” Here, in the first place, is a book of science—Lyell’s “Principles of Geology”; that went out 28 times. Here, on the other hand, is a sensational book,—Dixon’s “Spiritual Wives”; that went out 120 times. Here, again, is a highly instructive book,—Maine’s “Ancient Law”; that went out 29 times. Here is a book of tittle-tattle about old times,—“Her Majesty’s Tower”; that went out 127 times. Here, again, is another book of valuable inquiry,—Lecky’s “European Morals”; that went out 23 times. Here is a book of gossip,—“Crabb Robinson’s Diary”; that went out 154 times. Lecky’s “History of Rationalism” went out 13 times; Greville’s “Memoirs” went out 116 times. Herschel’s “Astronomy” went out 25 times; Jesse’s “George the Third” went out 67 times. I have added together these contrasted results, and the grave instructive books, taken altogether, number 118 issues, while the sensational and gossiping books number 584 issues; that is to say, more than five times the number of issues. Now, the London Library is, among circulating libraries at least, the one which is of all the highest in respect of the quality of its readers: it is the library of the *élite* of London. If, then, we see that there go out to these readers five times as many of these books which minister to the craving for excitement, and are really dissipating books, as there go out the grave, serious instructive books, we may judge what will be the proportion of demand for such books in the public at large. Now let us ask what a publisher will do in face of these facts. He knows what these demands are; and he has to choose what books he will reprint. A publisher who has laid himself out for rival editions is comparatively unlikely to choose one of the really valuable books, which needs more circulating. I will not say he will never do it. He will do it sometimes; but he will be far more likely to choose one of these books appealing to a numerous public, and of which a cheap edition will sell largely. Hence, therefore, the obvious result will be to multiply these books of an inferior kind. Now already that class of books is detrimentally large: already books that are bad in art, bad in

tone, bad in substance, come pouring out from the press in such torrents as to very much submerge the really instructive books; and this measure would have the effect of making that torrent still greater, and of still more submerging the really instructive books. Therefore, I hold that if the stimulus to rival editions acted as it is expected to act, the result would be to multiply the mischievous books.

5238. (*Mr. Trollope.*) Do you not think that in making the parallel that you have there made you have failed to consider the mental capacities of readers?—I was about, in answering the next question, to deal indirectly with that; pointing out that while there is a certain determining of the quality of reading by the mental capacity, there is a certain range within which you may minister more or you may minister less. There are people who, if they are tempted, will spend all their time on light literature, and if they are less tempted will devote some of their time to grave literature. Already the graver books, the instructive books, those that really need circulating, are impeded very much by this enormous solicitation from the multitude of books of a gossipy, sensational kind. People have but a certain amount of time, and a certain amount of money, to spend upon books. Hence what is taken of time and money for uninformative books is time and money taken away from the instructive; and I contend that if there were a diminution in the quantity of the books of this sensational kind published, there would be a larger reading of the really instructive books; and that, conversely, the multiplication of this class of lighter books would tend to diminish the reading of instructive books. I am now speaking, not, of course, of the higher amusing books, because there are many that are works of value, but of the lower novels, Miss Braddon’s and others such.

5239. Do you think that a man coming home, say, from his 8 or 10 hours labour in court day after day is in a condition to read Lyell’s Geology as men read one of Miss Braddon’s novels? We are speaking of some ordinary man.—No, not an ordinary man, certainly.

5240. Have we not to deal with literature for ordinary men?—For both ordinary and extraordinary men; the whole public.

5241. Are not the ordinary men very much the more numerous?—Certainly.

5242. Is it not, therefore, necessary to provide some kind of literature, as good as you can, but such that the ordinary mind can receive and can turn into some profit, together with the normal work of life?—I am not calling into question in the least the desirableness of a large supply of literature of an enlivening and amusing and pleasant kind, as well as a large supply of graver literature. My remarks point to the literature that is neither instructive nor æsthetic in the higher sense, but which is bad in art, bad in tone, worthless in matter. There is a large quantity of that literature, and that literature I take to be the one which will be most fostered by the proposed measures. I do not in the least reprobate the reading of lighter works if they are good in quality. I refer to the class of works which I regard as not good in quality.

5243. But do not you think you must leave that to settle itself on those principles of free trade which you have just enunciated so clearly?—Certainly; I am objecting to a policy which would tend to encourage the one and not encourage the other.

5244. (*Sir H. Holland.*) The subscribers to the London Library are, as you say, the *élite* of readers?—Yes.

5245. And is not that the reason why there is this difference as to the reading of good and bad books taken out from that library: is it not attributable to the fact that these people have probably bought and have in their own houses the good books, but that they want to look through these other books, and therefore get them from the library?—There may be a qualification of that kind; but inasmuch as a very large proportion of the readers of the London Library are ladies, and those who come for lighter literature, I

do not think it at all probable that they would have bought Lecky or Maine, or any books of that kind.

5246. I ask the question because I rather think that you will find a very curious difference from that which you have been stating if you go to the Manchester and Liverpool free libraries. You will find there that the working men take out largely Macaulay's "History of England" and that class of book?—Well, whatever qualifications may be made in this estimate, or the inferences from this estimate, I do not think they can touch the general proposition that books of this kind which in the London Library circulate most largely, are books of the kind which circulate most largely among the general public, and books of the kind which a publisher of rival editions would choose. That is my point.

5247. But might not that very evil to which you refer be met by improving the taste of the majority of the poorer readers, by enabling them to get at once cheap editions of good books?—The question is, which are the cheap editions that will be issued. I contend that they are the cheap editions of these books of a dissipating kind; and that the main effect will be to increase the dissipation.

5248. You do not think that the earlier publication of a cheap edition would raise the tone of readers?—I do not see that it would do so, unless it could be shown that that would tell upon the graver and more instructive books. My next answer, I think, will be an answer to that.

5249. If you improve the tone of the readers, of course it does tell upon the graver books for those who have time to read the graver books; but there is a large class of readers who have not that time?—Yes.

5250. (*Chairman.*) Referring to the illustrations which you have just given of works which you would denominate as worthless, or comparatively valueless, did I hear among them historical memoirs and journals?—"Crabbe Robinson's Diary," for instance; I call that a book of gossip which anybody may read and be none the better for it.

5251. The question I should like to ask is, are you not of opinion that books of that sort are extremely valuable to the intending historian of the epoch to which they refer?—It may be that there are in them materials for him. I have not read the "Greville Memoirs" myself, and I have no intention of reading it; but my impression is that the great mass of it is an appeal to the love of gossip and scandal, and that it is a book which, if not read at all, would leave persons just as well off or better.

5252. Take "Lord Hervey's Memoirs," in the reign of George the Second; if you had the privilege of reading that book you would probably say it was an extremely sensational book, but knowing the position which Lord Hervey occupied in the Court and family of George the Second, I presume we may take for granted that the extraordinary facts which he relates are facts; and if so they would form the basis of a great deal of truthful history, which would be written of that reign; would not that be so?—It might be so, no doubt.

5253. Then we understand you to mean that in your opinion the royalty system would not cheapen works that you would describe as valuable?—I think, on the average of cases, quite the contrary. I believe the system would raise the prices of the graver books. Ask what a publisher will say to himself when about to publish a book of that kind, of which he forms a good opinion. "I have had a high estimate given of this book. The man is a man to be trusted; the book possibly will be a success. Still my experiences of grave books generally, are such that I know the chances are rather against its succeeding. If it should be a success, and if I had ten years now to sell the edition, I might print 1,000; but, under this arrangement, a grave book not selling 1,000 in three years, or anything like it, it will never do for me to print 1,000. Should it be much talked about by the end of the three years, there might be a rival edition, and my stock would

" be left on my hands. Hence, now that there is this very short time in which I can sell the book, I must print a smaller number—say 500. But if I print 500 and expect to [get back outlay and a profit on that small number, I must charge more than I should do if I printed 1,000 and had time to sell them. Therefore the price must be raised." In the case of a book which did turn out a success, it might eventually happen that there would be a cheap edition issued, and that that raised price would not be permanent; but this argument of the publisher with himself, would lead him to raise the price, not only of that book, but of the other grave books which he published, all of which would stand in the same position of possibly being successes, but not probably; and of these, the great mass, the nine out of ten that did not succeed, the price would remain higher,—would never be lowered. There would not only be that reason for raising the price: there would be a further one. If a man in the wholesale book-trade, who puts down his name for a certain number of copies, knows that a cheaper edition will possibly come out by-and-bye, the result will be that he will take a smaller number of copies than he would otherwise do. At the beginning he may take his 25 or 13, as the case may be; but as the end of the three years is approaching he will say, "No, I will not take a large number; I must take two or three." Then, still further, the reader himself will be under the same bias. He will say—"Well this book is one I ought to have: I hear it highly spoken of, but it is probable that there will be by-and-bye a cheap edition; I will wait till the end of the three years." That is to say, both wholesale dealers and readers would earlier stop their purchases, thinking there might be cheap edition; and that would further tend to diminish the number printed and to raise the price.

5254. (*Sir H. Holland.*) Might it not be that the publisher, instead of entering into those calculations that you have pointed out, would consider, knowing that other editions may appear, "What is the cheapest form in which I can print this book? What can I afford to give the author consistently with bringing out the cheapest possible book, so that I may be secure against any other publisher bringing out a cheaper edition"?—It would be a very reasonable argument, if he knew which, out of these various books of the graver kind, was going to succeed; but since nine out of ten do not succeed—do not succeed, at least, to the extent of getting to a second edition—do not succeed, therefore, so far as to make it at all likely that there would be a rival edition, and that a cheap edition would pay, he will never argue so; inasmuch as he would in that case be printing, of the nine books that would not succeed sufficiently, a larger edition than he would ever sell. He must begin in all these cases of doubtful grave books by printing small editions.

5255. Where an author brings a book to a publisher, the first question the publisher asks himself is, of course, this, "Is this book likely to take?" and then if he thinks it will take, he has to consider further, in what degree will it take? Will it have a large sale or limited sale? Because, in each case the book may be a success, though in a different degree. Then, if it is competent for any other publisher to publish an edition, it may be assumed that such edition would be a cheap one; and, therefore, has not the original publisher this further question to put to himself: "The book, I think, will take, but looking to the chances of a cheaper edition, I must see what compensation I can give to the author, publishing this book as cheap as possible, so that I may not be underbid hereafter"?—But, I think, that the experiences of publishers show that it does not answer their purpose to run the risk of cheap editions with the great mass of graver books; inasmuch as nine out of ten of them do not pay their expenses—and do not pay their expenses, not because of the high price, but because they do not get into

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vogue at all. The publisher would argue—"It will never do to print cheap editions of all these ten because one out of the number will succeed."

5256. Of course he does not do so now, because there is not any possibility of another publisher underbidding him by a cheap edition; but I am assuming a case where any publisher, on payment of a royalty, can publish a cheap edition: then the original publisher would have to consider, "How cheaply can I publish this edition so that I may not be underbid by another publisher?"—That, I say, would altogether depend upon the experience of the publishers as to what was, in the average of cases, the sale of a new book. In most instances the sale of a new grave book is very small—not sufficient to pay the expenses; and I think the publisher would make a great mistake if, in the case of such a book, he counted upon getting a large sale at once by a low price. The other argument would, it seems to me, be the one he would use. In fact, I not only think so, but I find my publishers think so.

5257. (*Chairman.*) Do you wish to instance any particular case in which you believe that a fixed royalty, such as we have heard about, would have hindered the diffusion of a book of permanent value?—Yes; I have an extremely striking, and, I think, wholly conclusive, instance of the fatal effects,—the extensive fatal effects,—that would have resulted had there been any such system existing as that proposed. I refer to the "International Scientific Series." I happen to know all about the initiation of that. It was set on foot by an American friend of mine, Professor Youmans, who came over here for the purpose. I aided him, and know the difficulties that were to be contended with, and a good deal concerning the negotiations. The purpose was to have a series of books written by the best men of the time, in all the various sciences, which should treat of certain small divisions of the sciences that are in states of rapid growth—giving to the public, in popular form, the highest and latest results; and it was proposed, as a means of achieving this end, that there should be an international arrangement, which should secure to authors certain portions of profits coming from translations, as well as profits from originals at home, and the hope was that some publisher might be obtained who would remunerate these authors of the highest type at good rates, so as to induce them to contribute volumes to the series. Well, this attempt, after much trouble, succeeded. A number of the leading scientific men of England, France, and Germany were induced to co-operate. A publisher was found, or rather publishers here and elsewhere, to enter into the desired arrangements; and an English publisher was found who offered such terms to authors in England as led men in the first rank (and I may mention Professor Huxley, and Professor Tyndall, and Professor Bain, and Professor Balfour Stewart, and a great number of others) to promise to write volumes. These men, I know, were reluctant, as busy men, with their many avocations, and their incomes to get for their families, would naturally be, and were induced to enter into the scheme only on its being made manifest to them that they would reap good profits. The English publisher offered a 20 per cent. commission on the retail price, paid down on first publication, and for every subsequent edition paid six months after date; and there were certain smaller percentages to come from abroad. Now, the English publisher proposed to give those terms, knowing that it would be impossible for him to get back his outlay unless he had a number of years in which to do it. He had to stereotype, he had to pay at once these sums to authors, and he had to publish the books at a cheap rate; for, by the way, I ought to have said that part of the plan was that these books should be sold at low prices: I may instance a volume of 420 pages for 5s. These terms would, I take it, have been absolutely out of the question had there been such an arrangement as that under which the publisher, instead of having many years to recoup himself, would have had rival

editions to compete with in the space of three years. I do not, however, put that as an opinion. I have taken the precaution to obtain from Mr. King, the publisher, a definite answer on the point. This is the paragraph of his letter which is specially relevant:—"Authors can have no difficulty in proving that this" (meaning the system which I told him was proposed) "would be most unjust to them, a confiscation, in fact, of their property; but I, from a publisher's point of view, should like to declare that the terms on which my firm have undertaken the 'International Scientific Series' would be impossible on such a limitation." Now here, then, we have a series of highly valuable books, I think of the kind specially to be encouraged, amounting to between 20 and 30 already published, and potentially to a much larger number, which would not have existed at all had there been in force the arrangement proposed; inasmuch as the publisher affirms that he would not have offered such terms, and I can testify that in the absence of terms as tempting as those, authors would not have agreed to co-operate.

5258. (*Sir H. Holland.*) Was Mr. King made aware that there would be a limited time within which each volume would be protected?—Yes, three years. He did not count upon anything like adequate return in that time. He says—"We are a long way off profit as yet on the series" (I think it is nearly five years since it commenced), "although I am convinced that ultimately we and the authors, too, will be well satisfied."

5259. That would raise the question which I wanted to put, whether in a case like that it would have been possible to have published a cheaper edition than the one now published?—Yes, in the absence of the author's 20 per cent.

5260. In the case which you have brought to our notice may we assume that the cheapest form of edition was published consistently with fair profit to the author and publisher?—I think, certainly, with anything like a tolerable mode of getting up. Of course, you may bring down a thing to rubbishing type and straw paper; but I was speaking of a presentable book. They are very cheap for presentable books.

5261. That, perhaps, would be one of the evils arising from a system of royalty, that you would get extremely bad and incorrect editions published of a book, even in the first instance?—Very likely.

5262. Because it would be the publisher's object, if that system were thoroughly established, to publish such an edition that another publisher could not underbid him at the end of the three years; that would be, would it not, the general object of the publisher?—Yes.

5263. In this case I understand you to say that he could not, consistently with fair profits to the author and publisher, and consistently with its being a properly printed work, without which a work of that kind would be of very little value, have published a cheaper edition?—He could not.

5264. And yet he would not have been able to publish such an edition if he had run the risk of being underbid?—Certainly not. He says—"I confess my idea in proposing such terms as those of the 'International Scientific Series,' looked forward to a yearly increasing interest in scientific literature, and an ever enlarging circle of readers able to appreciate books of a high class." So he was looking for a distant effect.

5265. I am anxious, as Mr. King is not here, to get your own opinion upon that point; do you concur in his views?—Yes, certainly.

5266. (*Chairman.*) Have you any further reasons for thinking that measures of the kind which we have been discussing, taken in the interest of cheapening books, might end in doing the reverse?—I think there is another way in which there would be a general operation of this system of rival editions, which would have, indirectly, the effect of raising the prices all round; namely, the waste of stock. It would in-

inevitably happen that every publisher of an original edition would, from time to time, have a rival edition make its appearance before his edition was sold. In that case his remnant of an edition got up in a relatively expensive style, would either have to be not sold at all or sold at a sacrifice. Further, it would happen from time to time that two publishers, unknown to one another, would issue rival editions, both of which would not be demanded; there would therefore be a waste of stock. Evidently the system of competing with one another in the dark, would continually lead to production in excess of demand. What would be the result? If there is an increased per-centage of waste stock, that has somehow to be paid for, if business is to be carried on at all. And as we know that tradesmen have to raise their average prices to cover their bad debts; so, if publishers find an increase of bad stock they must raise their prices to cover the loss on bad stock.

5267. (*Mr. Trollope.*) Would not the ordinary laws of trade correct such an evil?—This interference with the laws of trade would entail an abnormal production of waste stock. Under the present system a publisher does not publish a cheap edition till the other is gone; but under the proposed system, with cheap copies perhaps sent from the colonies, there must be waste stock.

5268. When the system had been in operation for a time do you not consider that that evil would correct itself by the ordinary laws of trade. We are aware that at first the disruption of an existing state of things will create much confusion, and such evil as you have described; but are you not of opinion that this would rectify itself after a time?—I do not see how it could rectify itself, if the system of rival editions continued, and operated in the way that it is expected to do. But as I have already indicated by certain hypothetical remarks, I do not think it would continue and operate in that way. I say, however, that if rival editions were issued by men not knowing each others doings, there must from time to time occur in the business of each publisher loss of stock.

5269. (*Chairman.*) From the answer to the last question that has been put by Mr. Trollope I gather it to be your opinion that the arrangement would be practically inoperative, so far as the anticipated competition was concerned?—I think that after a period of perturbation, a period of fighting and general disaster in the publishing business, there would arise a tacit understanding among publishing houses, which would, in a large degree, defeat the purpose of the measure; and I say this on the strength of definite facts furnished by trade-practices in America. These facts I have from the before-named American friend, Professor Youmans, with whom from time to time, when over here, I have had to discuss the probability of pirated editions of my own books in America. My books in America are published by a large house there, the Appletons; and they deal with me very fairly—pay me as well as American authors are paid. I have gathered from Professor Youmans that the danger of the issue of rival editions of my books in America is very small; because there exists among the American publishing houses, the understanding that when one house brings out an English book, other houses will not interfere: the mere circumstance of having been the first to seize upon a book, is held to give a priority, such as is tacitly-regarded as a monopoly. That condition of things has been established through a process of fighting; for when it did at first happen that American houses brought out rival editions of the same English book, or one edition, rather, after another, that, of course, was a declaration of war between the two houses, and immediately there was retaliation, and it ended in a fight. The house attacked revenged itself by issuing, perhaps, a still cheaper edition, or by doing the like thing with some work subsequently published by the aggressing house; and after bleeding one another in this way for a length of time there resulted a treaty

of peace, and a gradual establishment of this understanding, that they would respect each other's priorities. If that is what happened in America, when the only claim that a publisher had to the exclusive publication of a book was the claim established by prior seizing of it, and prior printing, much more will it happen here in England, among publishers who have paid for their books, or who have entered into arrangements with authors for half profits, or what not. Having established certain equitable claims to these books they will very much more decidedly fight any houses that interfere with them, by issuing rival editions. If the men who have ill-founded claims fight, still more will the men who have well-founded claims fight. Hence, there would occur among the English publishers, when this system came into operation, a period of warfare lasting, probably, for some years, and ending in a peace based on the understanding that any publisher who had brought out a book would be regarded as having an exclusive claim to it, and would not be interfered with. The fear of retaliation would prevent the issue of the rival editions.

5270. (*Sir Henry Holland.*) And therefore would prevent the publication by a rival publisher of a cheaper edition?—Yes.

5271. (*Chairman.*) Then on the grounds that you have explained, you think the system would become before long wholly inoperative?—Not wholly inoperative, I think: inoperative for good, not inoperative for evil. In the course of this early phase to be passed through, in which houses issued rival editions against each other and got into this state of warfare, it would happen that the weaker would go to the wall: the smaller publishers would not be able to stand in the fight with the larger publishers, and they would tend to fail. And further, although treaties of peace would be eventually reached between the more powerful publishers, who would be afraid of each other, and dare not issue rival editions of each others books, there would be no such feeling on the part of large publishers towards small publishers. If a small publisher happened to issue a successful book, a larger publisher would have no fear in issuing a rival edition of that. Hence, therefore, the tendency would be for the small publishers to be ruined from having their successful books taken away from them. But that would not be the only tendency: there would be a secondary tendency working the same way. For after this fighting had gone on a year or two, it would become notorious among authors that if they published their books with small publishers they would be in danger of rival editions, in case of success, being issued by large publishers; but that, contrariwise, if they published with large publishers they would be in no danger of rival editions. Hence they would desert the small publishers; and in a double way the small publishers would lose their business. We should progress towards a monopoly of a few large houses; and the power which such have already of dictating terms to authors, would become still greater.

5272. And if I understand you rightly, the power would be not only to dictate terms to authors but of price to the public?—Yes, they would be able to combine. When you got a small number of publishers, and they could agree to a system of terms: the public would be powerless against them, and authors would be powerless against them.

5273. Then, in your opinion, is there any way by which works could be cheapened by legislative enactment?—There is one way, and that a way in principle exactly the reverse of that which is contended for in this measure; namely, the extension of copyright. I do not mean the extension in time; I mean the extension in area. On this point I am happy to say there appears to be agreement between the two sides. From the evidence which I have read I gather that it is proposed along with the limitation of copyright in time to extend copyright in area. I do not altogether understand the theory which, while it ignores an author's equitable claim to the product of his brain-work in respect of dura-

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tion, insists upon the equity of his claim to that product of his brain-work, as extending not only to his own nation but to other nations. However, I am glad to have agreement so far; and I hold, along with those who support the proposed measure, that the enlargement of the markets by means of international copyright would be a very effectual means of cheapening books. It would be a more effectual means of cheapening books than at first appears; and especially a means of cheapening the best books. I may refer again to this International Scientific Series. One of the means by which that series has been made cheap, was, that the American publisher and the English publisher, agreed to share between them the cost of production, in so far as that the American publisher had duplicate stereotype plates and paid half the cost of setting up the type. Now it is clear that if the outlay is diminished by having one cost of composition for two countries instead of a cost for each, the book can be issued at a lower rate in both countries than it could otherwise be. And that arrangement which voluntarily made, under a kind of spontaneous copyright, in the case of the International Series, would be forced, as it were, upon publishers in the case of an established copyright. Consequently there would be habitually an economization of the cost of production, by dividing it between the two countries; and hence there would be a lowering of the price. And then there is the further fact that this would tell especially upon the more serious books. On books of a popular kind the chief cost is for paper and print: large editions being printed. Therefore it does not so much matter in America having to set up the type afresh. But in the case of a grave

book of which the circulation is small, the cost of composition is the main element in the cost; and the economization of that cost, by dividing it between England and America, would serve very considerably to lower the price.

5274. (*Dr. Smith.*) Then, if I understand you aright, you do not approve of the principle adopted in the Canada Act, in the Act passed by the Canadian Legislature of 1875, confirmed by the Imperial Act, by which it is necessary in order to obtain copyright in Canada that the works should be set up afresh?—I think that is obviously nothing else than a means of staving off the opposition of printers, and a very mischievous arrangement.

5275. Would it not be the fact that if a work could be set up once for all in one country, and circulate in the two countries, the price of the book would be diminished?—Unquestionably.

5276. (*Sir H. Holland.*) You are aware of the difficulties that have been raised by the United States publishers; that constant attempts have been made ever since 1854 and before to make a copyright convention, and that there is no very great probability of these attempts proving successful. Have you any particular suggestion to bring before the Commissioners which would in your opinion tend towards making the Americans favourable to a convention?—I am sorry to say I do not see my way towards any such suggestion. I was merely replying to the general question whether legislation could do anything to cheapen books, and saying that the only thing I thought it could do would be to get, in some way, an extension of area for copyright.

The witness withdrew.

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

Thursday, 22nd March 1877.

PRESENT:

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

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

J. A. FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS HENRY FARRER, Esq., further examined.

5277. (*Dr. Smith.*) You have given the Commission some interesting information of the prices at which the reprints of English copyright works are sold in the United States, Canada, and Germany respectively, comparing them with the prices at which the same books are sold in England. May I ask you to state what was the exact object you had in view in making this comparison?—I think the object is sufficiently clear from the evidence that I have given. I wanted to show that certain books which have been published in this country at a certain price have been at the same time published and sold at a lower rate in other countries.

5278. But is it not the fact that American publishers need pay nothing for copyright and in many cases do pay nothing?—That is of course more than I can tell. I am told that some of them at any rate have been in the habit of paying something; whether it is adequate or inadequate I cannot say. I was extremely glad to hear from Mr. Froude the other day that under the operation of the recent Canadian Act he has been able to get better terms and more certain terms from American publishers.

5279. But you are probably aware that as a general rule till very recent times American publishers have not paid anything, or at least a sum so small as scarcely to be worth speaking of?—My information is very scanty upon that subject; but I cannot answer your question in the affirmative. I have been told by some

authors, and authors of eminence, that they considered themselves to have been treated liberally by American publishers, considering the state of the law. And in answering the former question I ought to have observed that what I said had relation not only to the United States, where there has been hitherto no law requiring the publisher to pay anything, but also to Germany and to Canada, where the law does require him to make an arrangement with the author.

5280-1. Exactly so; but is it not the fact that Canadian and German publishers pay in general only a very small sum, because English authors look to the sale in England for their remuneration?—That is possible, but I do not know the fact.

5282. You do not know then what Canadian publishers pay?—No, I do not.

5283. Have you seen Mr. Routledge's evidence, in which he states that he received from the Canadian publisher 25*l.* for the copyright of Lord Lytton's "Pausanias," for which he had himself paid 1,000*l.*?—I have not seen that fact.

5284. If we may take this as a fair sample of what Canadian publishers pay for English copyright, am I not justified in saying that they give only a nominal consideration?—I should think if there is any truth in the representations which have been made concerning the effect which the Canadian publications, and the power of publishing in Canada, have on the

American market, the English owners of copyright would get very much larger sums than that from the Canadian publisher, or if not from the Canadian publisher from the American publisher acting in fear of the Canadian publisher.

5285. Do you know what German publishers pay for the right of reprinting English copyright works?—No, not the least.

5286. If I am correct in my information, which has reached me from a trustworthy source, Baron Tauchnitz, who is the chief publisher of English copyright works in Germany pays sums averaging from 30*l.* to 200*l.*, the last-mentioned sum being the largest, but the more usual sum being 50*l.* Assuming this to be the case, is such an amount anything approaching the amount that a successful author receives from his works in England?—I hope not, but the figures that you gave me on the last occasion make me hesitate in giving a positive answer.

5287. But I am speaking now in reference to authors of popular works?—Quite so. I should think and hope it was an extremely small sum in comparison.

5288. Is there not another consideration to be borne in mind in comparing the prices of copyright works in England with the prices of the same works reprinted in the United States, Canada, and Germany, namely, that the foreign publishers reprint only works by well known and successful authors, or those which have been already favourably reviewed, so that they incur no risk of failure?—That of course may be the case. It is only with regard to such works that any of the larger questions we have been discussing can arise. With regard to works for which there is no demand there can be no competition.

5289. But that would be a reason, would it not, why American publishers are able to bring out works very cheap, because they know beforehand that they are sure of a sale?—Yes, no doubt, but I do not think that that is a complete answer. As to a great many of the works which I have mentioned it must be very well known to the English publisher here that they would be likely to be successful—just as well known as it is to the American publisher.

5290. Is there not a third reason, though not so important as the two I have already named, why such reprints are cheaper in Germany and America, namely, that they are reprinted from print and not from manuscript, thereby saving the cost of corrections, which in many cases is very large, sometimes as much or even more than the original composition?—That, of course, has to be considered. I meant to mention that point as one to be considered; however, from the actual accounts which I have got since I was here, the corrections do not seem to me to be so important an item as I had thought they were.

5291. Are you not aware that, waiving the question of corrections, the cost of reprinting a book from print and printing it from manuscript is very different?—I should think it was different; how different I cannot say; I could easily ascertain.

5292. Are not these causes, which I have mentioned, first the necessity of not paying for copyright, or paying only a nominal sum; secondly, the certainty in reprinting these books in Germany and America that they will be successful; and, thirdly, the reduced price in printing, sufficient to a great extent to account for the difference of prices?—Not sufficient to account for the whole difference, I think.

5293. Do you know the prices at which copyright works by American authors are published in the United States?—Not enough to give any general answer. Mr. Appleton of New York told me that they were about 25 per cent. cheaper than English books. It would be a very interesting subject of inquiry, and one on which I proposed to get some information, when offering to get a list of prices of American and English books.

5294. I have had the following list furnished to me by an English publisher taken from American catalogues, which I will read very rapidly and hand over to you; and in stating the prices I should say that, for

convenience of comparison, I have calculated the dollar at 4*s.*, though I believe it is rather less than that:

Bancroft (George), History U. S. 10 vols. \$25=£5.  
 — (H.), Native Races, Pacific States. 8vo. 5 vols. \$27.50 =£5 12*s.*  
 Emerson (R. W.), Works. 12mo. 10 vols. \$20=£4.  
 — Prose Works. Crown 8vo. 2 vols. \$5=1.  
 Hawthorne's (Nathl.), Works. 21 vols. 16mo., each \$2=£1.  
 Longfellow (H. W.), Poems. 12mo. 4 vols. \$10=£2.  
 — — — — — Prose. 12mo. 3 vols. \$7.50=£1 10*s.*  
 — — — — — Works. In 1 vol. 12mo. \$3=12*s.*  
 — — — — — 3 vols. Imp. 8vo. \$15=£3.  
 Poe (Edgar), Works. Crown 8vo. 4 vols. \$9=£1 16*s.*  
 Ticknor's Life and Journals. 8vo. 2 vols. \$6=£1 4*s.*  
 — Spanish Literature. 8vo. 3 vols. \$10=£2.  
 Webster's Dictionary. 4to. (In sheep binding.) \$12=£2 8*s.*  
 Whittier's Poems. 12mo. 2 vols. \$5=£1.  
 Wilson & Bonapartes American Ornithology. 3 vols. 8vo. Text and folio of plates. \$95=£19.

Beecher (H. Ward), Sermons. 2 vols. 8vo cloth. \$5=£1.  
 — Morning and Evening Exercises. Cloth, crown 8vo. \$3=12*s.*  
 Bonner's Child's History of Rome. 2 vols. 15mo. \$2.50 =10*s.*  
 — Greece. The same.  
 Cocker's Christianity. Crown 8vo. 1 vol. \$2.75=11*s.*  
 Curtis (G. T.), History of the Constitution. 2 vols. 8vo. \$6=£1 4*s.*  
 Du Chaillu's Equatorial Africa and Ashango Land. 8vo. \$5 each=£1.  
 — Children's Books. 12mo. \$1.50 each=6*s.*  
 Hayard's St. Domingo. Illustrations. Crown 8vo. \$3.50 =14*s.*  
 Hudson's History of Journalism. Crown 8vo. \$5=£1.  
 Lossing's Field-Book of the Revolution. 2 vols. 8vo. \$14=£2 16*s.*  
 Motley's Dutch Republic. 3 vols. 8vo. \$10.50=£2 2*s.*

In comparing these prices it will be right to bear in mind, will it not, what you have yourself stated that in America the publishing price is the actual price, whereas in England you must deduct about 20 per cent. from the publishing price?—I believe so. But the question of discount in other countries is one on which it is difficult to give a general or a positive answer. Would you allow me to suggest before we leave that list whether it might not be well to print, as part of the evidence before this Commission, the list that is attached to Mr. Morrill's report. It would be extremely interesting to put it in together with these and other prices.

5295. I would direct your attention only to one point in that list. If you would look at the editions printed in 12mo does it not appear to you that such editions are dearer than corresponding editions of similar works in England?—Without looking further into it I can hardly answer that question.

5296. Do you know the prices at which copyrights by German authors are published in Germany?—No.

5297. Should you be surprised to find that the prices of such German books are not very different from the prices of copyright works in England?—No, I should not be surprised, except that I have heard (I do not know whether it is true or not) from retail booksellers that books which are published in Germany or in France and are republished again in this country, are always dearer when published here than they were in the original country. There is a book which I was inquiring about the other day, Heer's Switzerland; I think it was published at 16*s.* in French, at 16*s.* in German, and at 28*s.* in English in England.

5298. Do you mean a translation?—Yes; that is what I have been told, because several times I have wished to get English versions of foreign books and they are always dearer than the French or German books from which they are taken; that is my own knowledge on the subject.

5299. May it not be that the English publisher does not calculate upon such a large sale for the translation as the German or French publisher calculates upon the original book?—That may be the reason, but I doubt it.

5300. May I direct your attention to one or two instances of recent German books. I see, for instance, that the "Denkwürdigkeiten" of Von Hardenburg,

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which has just appeared, and which is sure to excite the greatest interest in Germany (he being with Stein, one of the founders of the present Prussian State, so to speak) is published at 66s., bound in cloth, four volumes octavo, each volume containing on an average 600 pages. Now, if you compare that with Macaulay's *Life* by Mr. Trevelyan, it appears to be exactly the same price, each volume containing about the same matter. So I have seen in the same way the second volume of "*Donau-Bulgarien und der Balkan*," by F. Kanitz, which is published at 18s., which is exactly the same price as Mr. Evans's work on Bosnia. So in the case of Von Reaumont's "*Geschichte Toscana's*," a very valuable book lately published in Germany, one volume, at 15s. Would it not appear from these examples, (I don't wish to take up the time of the Commission in quoting more at present,) that the prices of these books in the two countries are not very different?—If those books are fair examples it would seem to be so. I know that the price of the great German classics before the expiration of copyright was anything but low, and the editions were very few.

5301. Are you aware whether the publishing price in Germany is the same as the retail price as it is in America, but not in England?—I cannot answer that, but I can find out.

5302. Have you examined the prices at which American books, not possessing copyright in this country, are published by English publishers?—No, because I do not know what American books do possess copyright in this country and what do not, since an American author can get copyright in this country if he publishes simultaneously with the American publication. I happened to ask about Ticknor's *Life and Letters* the other day, and I found that the American edition was to be sold at 1*l.* 8*s.* 0*d.* and the English edition at 17*s.*, and I was told that the reason was that that book was not copyright in this country.

5303. You are aware probably that before the case of Routledge and Low was decided in the House of Lords, American authors as a general rule did not know that they could obtain copyright in this country, and consequently did not take out copyright?—I did not know the fact.

5304. Is it not the fact that such books (I mean American books not possessing copyright published in this country) are published here as cheap, if not cheaper, than works by English authors are in America?—I should think that extremely probable. It ought to be so, because print and paper are much cheaper here than they are in America.

5305. For instance, if you take a very popular work both in America and England, "*Innocents Abroad*," by Mark Twain, is sold in England for 1*s.*, while the only edition published in America is an octavo volume at a high price, as much I believe, as two dollars or three dollars, 8*s.* or 12*s.*?—I should think that very probable.

5306. Besides the work I have mentioned by Mark Twain I would just mention two or three other American works with their prices. Emerson's works; the American edition, 2 volumes, crown octavo, 5 dollars, equal to 1*l.*; English edition, 2 volumes, post octavo (Bohn's edition), 3*s.* 6*d.* each. Longfellow's (American edition) works, 12mo., 4 volumes, 10 dollars, equal to 2*l.* Prose 12mo., 3 volumes, 7 dollars 50 cents, equal to 1*l.* 10*s.*; English illustrated edition, 5*s.*; not illustrated, 3*s.* 6*d.*; Pearl edition, 1*s.* and 1*s.* 6*d.*; illustrated by J. Gilbert, 5*s.*, 3*s.* 6*d.*, and 2*s.* 6*d.* Motley's *Rise of the Dutch Republic*, the American edition, 3 volumes, octavo, 10 dollars 50 cents, equal to 2*l.* 2*s.*; the English edition, 3 volumes, octavo, 1*l.* 1*s.* 6*d.* Ticknor's *Life of Bancroft*, Boston, U. S., 1864, quarto 36*s.*, London, octavo, 12*s.* Hawthorne's works, New York, 24mo, per volume, 1 dollar 25 cents, equal to 5*s.*; while in London they are published at varying prices from 1*s.* and 1*s.* 6*d.* to 2*s.* Cooper's novels may always be obtained here at 1*s.* a volume, though I am not able to state the price at which they are published in America?—I can

quite believe what you have stated, and I think that if you will look at the list attached to Mr. Morrill's Report you will find that that list entirely bears out the view which your figures suggest, namely, that where there is not copyright the prices are much lower. Whether the smaller price is due entirely to what the author receives is quite a different question.

5307. I may conclude, then, from what you state, that English publishers publish as cheap as American publishers when they find it their interest to do so?—When they have no monopoly they do so.

5308. But that when authors have to be remunerated the prices of books in England, America, and Germany are much the same?—When author and publisher have together a monopoly I daresay that the prices in both countries will be high.

5309. You mean by a monopoly what?—An exclusive right to publication.

5310. And also that monopoly is a means of remuneration, is it not?—Yes, one means of remuneration. But the very point of my evidence was that monopoly gave power to the owners of the monopoly to charge a price which was out of proportion to the actual remuneration received by the author.

5311. But did I not show, or endeavour to show, to you on a previous occasion that authors, as a general rule, even with what you call monopoly, do not get a very large sum?—You gave me in question 5165 some extremely interesting figures, and I am very glad you have given me an opportunity of referring to them again. Those figures certainly, if I am to take them as typical figures relating to ordinary books, show that the author gets as remuneration a very small proportion of what is paid by the public. I should hope that that case cannot be taken as a typical case. I should hope that there are very few successful books of which many thousand copies are not published, and I should hope that when more than 1,000 copies are published the author gets a great deal more than the 138*l.* which you say he would get out of the sale of 1,000 copies. It seems to me that if that is a typical case we need not trouble ourselves much about copyright or monopoly, because in such a case there would be very little danger of competition. But that does not seem to me at all to prove that what I have stated is not true with regard to books for which there is a larger demand, and I should hope that for by far the greater proportion of good books there is a much larger demand. The conclusions I should draw from your figures are that too many books are published, that authors set too high a value on their books, and (which I am quite ready to admit) that there is risk and difficulty in the publishing trade. But I do not think it proves that it is good, either for the author or for the public, to publish ordinary popular books in an expensive octavo form at 16*s.* a volume, or novels at 36*s.* or 42*s.* Now, I should like to go a little more into detail with respect to your figures, because they are really very interesting, and bear upon a good many questions that have been raised. I have been analysing these figures. You gave me the case of a book of which 1,000 copies were published at 16*s.* apiece, and you gave me all the expenses and deductions which have to be met before the author gets his profit. Now, taking your figures throughout; taking the publishing price at 16*s.* and the actual selling price to the public at 12*s.* 6*d.*, I have analysed the sum received from the public under three heads, first of all what I call the cost of production, viz., print, paper, and binding; secondly what goes to the author; and thirdly, what I may call the cost of distribution, that which goes to the publisher and the bookseller; and I find that the figures are as follows: I assume that 30 copies are given away to reviews and so on. The gross proceeds for 970 copies at 12*s.* 6*d.* would be 606*l.* 5*s.* 0*d.* Of this amount there goes in the cost of production, that is paper, print, and binding, 210*l.* The author receives (that is also according to your figures) 138*l.* This leaves out of the total sum received from the public, as the cost of distribution, that is for the pub-



lisher and retailer, 258*l.* Thus out of the sum paid by the public, 35 per cent. goes in cost of production, 23 per cent. to the author, and as much as 42 per cent. in cost of distribution.

5312. (*Mr. Trollope.*) Have you included advertisements?—Yes, I have taken that as a part of the cost of distribution. Then the 30 copies which go to reviews ought also to be taken in the cost of distribution, but I have not included them. If the book were published on the half profit system, taking again the same figures, the author's percentage would be smaller and the cost of distribution larger; the author would get 120*l.*, and the cost of distribution would be 276*l.* The author would get 20 per cent. and the cost of distribution would be 45 per cent., the cost of production remaining as before. That really brings us near to what I have sometimes heard, but never believed, viz., that for every shilling that the public pays for a copy of a book, 5*d.* goes in cost of production, 6*d.* in cost of distribution, and 1*d.* to the author. It comes to something very near that. Now a reference was made the other day to Gibbon, of whom I said that I thought the amount he was to receive did not enter very largely into his motives; and the more I think of it the more I think so. I find a great deal throughout his biography and his letters about his money matters; he cared a good deal about what money could bring to him, and there are a good many references to what he could get for his estates, but very few references to what he could get for his books. But in the second volume of his miscellaneous works, at page 167, there is an account of the sale of the third edition of the first volume of his History, which corresponds curiously enough with the figures which you have given me, and which I have just analysed. In Gibbon's case, also, a thousand volumes were sold at the same price, 16*s.*, producing 800*l.*; and of this there was spent in cost of production, that is print and paper, 293*l.* 5*s.* 0*d.*; whilst the author received 326*l.* 13*s.* 4*d.*; leaving for the cost of distribution, 180*l.* 1*s.* 8*d.* Thus out of the sum paid by the public 37 per cent. went in the cost of production, 41 per cent. to the author, and 22 per cent. for the cost of distribution. If that is the case I am afraid that the cost of distribution as compared with the author's profit has very largely increased since Gibbon's time. Of course there are certain expenses in a first edition which there would not be in a second edition; but looking at the whole I am afraid the author does not get so large a share as he used to get.

5313. (*Dr. Smith.*) In answer to my last question you have mentioned two entirely different circumstances; one as to the cost of distribution, which I am not prepared to ask any questions upon till I have examined the figures more carefully; but secondly, in reference to the passage you have quoted from Gibbon, and with which I am familiar, may I call your attention to two circumstances connected with it; first that the expense of printing there is printing from a print, and not from manuscript?—Yes, that is so: but the expense of printing is notwithstanding larger than in the figures you gave me for a modern book; it is as 37 per cent. to 35 per cent.

5314. And, secondly, that in the sharing of the profits Gibbon had two thirds, and his publisher only one third, which of course would give him a much larger share?—Yes, but there are no further expenses there for cost of distribution, except the one third which the publisher gets, therefore I am perfectly justified in taking that one third to the publisher, together with the cost of advertising, which I have included as the whole expense of the cost of distribution. And there is one other observation upon these figures that I wish to make. Sir Louis Mallet asked me whether this was not in a great measure a commercial question. Now I think we shall all of us agree that, so far at any rate as the cost of distribution is concerned, it is a purely commercial question, and therefore the analysis of Dr. Smith's figures shows with respect to one very large pro-

portion of the price that it is entirely a commercial question; and these figures also illustrate what Mr. Carey urges so strongly in America, that in giving a monopoly to the author and publisher together, the public pay a great deal to other persons besides the author, and the author gets a very small proportion of what the public pay.

5315. I now pass to the question of colonial, that is to say as far as there is any practical question at present, Canadian copyright. On this point you advocate the repeal, if I understand you right, of the fourth section of the Imperial Act of 1875, and you say that you would "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;" that is so, is it not?—That is so.

5316. And you would also on the same principle admit the German reprints of copyright works?—Quite so, if consented to by the author.

5317-33. You have yourself put in a correspondence between the Board of Trade and the Colonial Office on the subject, showing that the arguments of the Board of Trade in favour of admission of reprints were fully considered and rejected by the Colonial Office have you not?—It is in the Appendix and is marked H. The first letter of the Board of Trade of the 23rd June 1875 was before the Colonial Office at the time when it was arranged that the Act should be passed in its present form with the fourth clause. The second letter of the Board of Trade was written after the whole matter was settled, more for the purpose of putting on record the views of the Board of Trade than for any immediate practical purpose.

5334. But after the settlement of this question would you suggest that at the end of only two years an arrangement embodied in an Act of Parliament should be altered?—Acts of Parliament are very often altered within as short a period as that. You will find if you will refer to the letter from the Colonial Office of the 9th July, that Lord Carnarvon treated the Acts of 1875 as provisional only, pending inquiry (*i.e.*, inquiry by this Commission) into the whole question of copyright: that he fully admitted the existence of the difficulty which I have been pointing out, and expressed a hope that some solution of it might be found.

5335. If you repeal that clause would you make the effect retrospective, namely, that in the case of works reprinted in Canada to which the consent of the authors had been given, copies of them should be imported into this country?—I have not considered that point, but to do so would be a very different thing from making it prospective only, because it might affect contracts which had already been made between authors and publishers in this country.

5336. Did not authors sell their copyright in Canada on the faith of an Act of Parliament preventing these reprints coming into this country?—I do not suppose the Canadian publisher would complain, but the English publisher might.

5337. But might not the English author complain?—The English author and the English publisher might complain.

5338. Do you think that the English author would have sold his copyright for the nominal sum which is all that has been paid by Canadian publishers, if these works could have been introduced into this country?—I think very possibly not.

5339. I ask you that question more particularly, because you stated in your evidence in arguing in favour of the reprints: "This clause 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?'"—Yes; and I abide by it.

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5340. Now is it not the fact, as I said just now, that the author did not look to any fair profit from his sale in Canada, but was depending upon the English market for his fair profit?—I think it exceedingly probable that he did so, that he looked to the English market as that which would give him the largest amount of profit, and to the Canadian market as a sort of supplementary thing.

5341. Was not the English author put in this position: that the Canadian publisher could say to him, if you do not agree to this sum we will not reprint your book and then the Canadians can get cheap copies of it from America, while if you take a small sum you will get something; was it not something like holding a pistol to the author's head?—Yes; but I think that what Mr. Froude told us the other day puts that point in rather a different light. Mr. Froude told us the other day (question 5112) that by holding the Canadian publisher *in terror* over the New York publisher he has been able to get from the New York publisher a promise of larger remuneration or at any rate a more certain remuneration than he ever got before. That is an exceedingly pleasant fact to hear, because it shows that there is some possibility through the means of the Canadian Act of giving the English author some control over the American market. But it is not only a very pleasant fact, but I think very instructive. In the first place I think it supports my suggestion that English authors should be allowed to publish anywhere and get English copyright by so doing. By being enabled to publish in Canada Mr. Froude has I hope been enabled to secure better terms from a New York publisher; that is to say giving him another publisher in another country has enabled him to get better terms. Then I think it leads to the further reflection that if the English people have by their legislation enabled Mr. Froude to get better terms in America it is surely fair that the English people who desire to read Mr. Froude's books should ask to share in this benefit with him. And, thirdly, I think it throws a great deal of light on a former question asked me as well as on the question you ask me now. Mr. Froude said, "If the edition I publish in Canada (or America) may come back into this country, will not my English publisher make it a condition that I shall publish no edition in Canada (or America)," I forget my answer but I know it was incomplete. I should now say that the increase of remuneration already obtained by the very imperfect arrangements we have made with Canada shows that the remuneration which English authors might receive from the American market is no trifle. The English author will think twice before he agrees to abandon it at the instance of the English publisher. Supposing always that the changes I have suggested were adopted, he may possibly say to himself, "I will try publishing for both the English and American markets in America with an American publisher." Possibly again he will say to his English publisher "You must meet the difficulty you raise by publishing an edition here in England that will *by its price* keep out the Canadian or American edition from the English Market." Possibly he will say to his English publisher, "You must publish both here and in Canada an edition which will suit the markets of both countries." At all events he will be loth to give up the American market; he will try to get the benefit of both markets, and the desire to get command of the American as well as the English market will, if the circulation of his books is free, keep down the price in this country.

5342. I am not going into those questions at present; I only want to call your attention to the reason why I asked you the previous question, which was that you assumed that the author got a fair profit from the Canadian publisher, and therefore he could afford to allow the reprints to come into this country. Now what I want you to consider is this; seeing that he did not sell it at what he considered a fair profit, but

merely took it as a small addition, looking to his real profits in England, is that a fair way of stating the case?—If you apply what I say by proposing to introduce the books which have been already published, I should say that I should be very much disposed to agree with you; we must not by *ex post facto* legislation alter the effect of arrangements that have been made on a very different footing. But with regard to the future I think that what I propose is perfectly sound.

5343. Granting that, would not the inevitable consequence be that English authors would refuse to give Canadian publishers the right of reprint, unless Canadian publishers were ready to pay a sum which I do not think they are willing to pay?—That would just depend upon what the value of the Canadian and the American market is; and what Mr. Froude has told us give me hopes that it would be very considerable.

5344. But supposing that, for instance, English authors refused because they were unwilling to let these reprints come into this country, should we not come to a dead lock altogether; the Canadians would then be unable to reprint the books?—I have already said that I thought it was very possible, even with the Act as it stands at present, that the Canadians may be so much dissatisfied that they may require a right of publication on a payment of royalty, or something of the kind.

5345. (*Sir H. Holland.*) I think it rather desirable, for a clearer understanding of this subject, that the history of the legislation should be shortly stated. The Imperial Act of 1842 applied to all the colonies; and the effect of the Act on the colonies was that no one could reprint a British copyright work in a colony without the author's consent; that no one could import into the colony foreign reprints of a British copyright work; that the publication of a work to secure copyright must be in the United Kingdom, and that, therefore, a book published in the colony would not secure copyright throughout the empire, and if there was no colonial law (as is the case in some colonies) a book published in a colony would have no copyright at all?—I believe that is a correct statement of the law as it stood under the Act of 1842 and the decisions upon it.

5346. Then soon after that Act passed, as you have told us, remonstrances were received from the North American colonies, and in truth we may take it, may we not, that the colonial question has been a North American question; no remonstrances I think have been received from any other colony?—I think not. But all the colonies will complain if you deprive them of cheap editions; and I have no doubt that other colonies besides Canada will, as they grow, require the right of publication. Since I was here the other day I have heard that the Australian colonies are supplied in this way. Cheap editions are sent to them from this country; but the long time which elapses before those editions can come back to this country prevents the cheap editions from injuring the dear editions here.

5347. However I am speaking of some time ago. After the Imperial Act passed remonstrances were received from the North American provinces, but I think not from any other colonies?—I think not.

5348. And it was represented that booksellers in the United Kingdom published at a price beyond the power of the colonists to pay, and that the North American colonies were supplied at a cheap rate with United States reprints, and that to stop the importation of these reprints, while works by United States authors were admitted, would be to deprive the colonists of the healthy reading supplied by British authors?—Yes; that is so.

5349. The Government at first resisted, but afterward yielded, and the Foreign Reprints Act (10 & 11 of Victoria) was passed in 1847?—That was so.

5350. The Act, as we have heard, was a failure altogether, so far as regards any payment coming to the British author?—Practically.

5351. Then I think that matters may be said to

have slept till after 1867, when the Dominion of Canada was formed, and practically till the decision in Routledge and Low in 1868 called attention to the question of copyright?—I believe that that was so. But it is within my recollection that there were frequent complaints from English authors and publishers.

5352. But no complaints from the other side of the water?—I do not remember complaints from the other side of the water.

5353. And then in 1869 Canada desired leave to reprint books which were British copyright books, on condition of paying a certain percentage to the British author?—There was a Bill to that effect prepared in Canada; a proposal to that effect came from the Colonial Government.

5354. I think the Board of Trade objected to that proposal; and I may take it that their reasons for objecting are to be found in a letter from the Board of Trade to the Colonial Office of the 27th of July 1869?—Yes.

5355. But though the Board of Trade objected to the proposal that Canadians should have power to reprint English copyright books, they agreed that publication in any part of the British dominions ought to give copyright throughout the dominion?—They did.

5356. And was it not the case that a Bill was framed to meet that special point in 1870?—A separate short Bill; I remember that there was such a Bill.

5357. And that Bill was sent out to the colonies in June 1870 for their consideration. That you are perhaps hardly aware of?—I dare say that was so.

5358. And were not the colonists at that time asked, by desire of the Board of Trade, as to their views about repealing the Foreign Reprints Act?—Yes.

5359. And Canada and some other colonies objected in their answer to the repeal of the Foreign Reprints Act?—I think that was so.

5360. Was it not subsequently thought desirable by the Colonial Office and the Board of Trade together, to deal with the whole subject, and as far as possible to put the United Kingdom and the Colonies on the same footing as to the question of copyright?—No doubt there was a great desire to do that if possible.

5361. And that gave rise to this draft Bill of 1873?—I think that was so.

5362. That draft Bill was subsequently sent out to the colonies in a circular from the Colonial Office, and answers have been received?—Yes.

5363. But the Bill itself was never proceeded with, and never presented to Parliament?—No, and it would appear from Lord Kimberley's letter of the 24th of July that it was sent out as a tentative measure to ascertain what the views of the colonies were upon it, and whether it would satisfy them.

5364. The Bill therefore was never finally settled?—Never finally settled; it was put into the form of a Bill as the best mode of eliciting the opinions of the colonies.

5365. There was no conference, was there, between the Colonial Office and the Board of Trade upon the answers received from the colonies?—Not that I am aware of; nor any conference with a view to settling that Bill for the purpose of bringing it into the English Parliament.

5366. Subsequently to that there was a Bill passed by the Canadian Legislature which was reserved and disallowed by Her Majesty on the ground of being repugnant to the Imperial law?—That is so.

5367. And subsequently to that, again, the present Canadian Bill was passed and sent over to this country?—Yes.

5368. Doubts were entertained whether it was repugnant to the Imperial law, and the Imperial Act of the session of 1875 was passed to remove the doubts, and included that section as to the import of colonial reprints to which you object?—That is so.

5369. Turning back then to the draft Bill of 1873, you have stated in answer to Sir Fitzjames Stephen

that if that Bill had become law the result would have been that the Canadian publishers would have had the power of publishing copyright books without the consent of the copyright owner, and of introducing those books into England, so as to bring down the price of the copyright. But would you turn now to the Bill itself, and to section 6, which is headed "Colonial Books in the United Kingdom," and which provides that "in the case of a book first published after the commencement of this Act in a British possession, every person shall be entitled to the same right of copyright, and to the same benefits as if it had been first published in the United Kingdom, subject nevertheless" to certain provisions, those provisions being that if within 20 days after the first publication of the book, the book is not published in the United Kingdom in sufficient numbers, any person may apply to Her Majesty in Council for a license to publish such book; and that after the expiration of six months from the first publication of the book, if the book is not then published in the United Kingdom in such number and manner as are suitable for general circulation therein, any person may, notwithstanding anything in any Act, but subject to the provisions of this Act, import into the United Kingdom foreign reprints of such books?—Yes.

5370. That section, therefore, solely applies to books first published in a British possession?—Yes.

5371. There is no provision made for the introduction into a colony of reprints of such a book, if it is not sufficiently and properly published for the convenience of the public in the colony?—No. The meaning of this section is, that if an author first publishes in a colony and gets copyright throughout the empire by means of the Act, then if the United Kingdom is not sufficiently supplied with books there shall be means of getting the book published in the United Kingdom.

5372. And therefore there is no provision made by this section for securing a cheap edition in a colony of such a book first published in such colony?—In this section there is nothing of the kind.

5373. And so far as this section is concerned, an English author could always avoid coming under it by publishing first in the United Kingdom, because the section only applies to books first published in a British possession?—Yes.

5374. So that if he chooses to publish first in the United Kingdom there is no provision for introduction into the United Kingdom of foreign or colonial reprints, as far as this section is concerned?—I dare say you are right. It comes back to my recollection now that the idea was that if a book was published in the United Kingdom the colony should have power to provide itself with such editions as might suit its market. On the other hand, if the book was published in the colony there should be a reciprocal provision enabling the United Kingdom to provide itself with books.

5375. Therefore, as far as section 6 is concerned an English author by first publishing in the United Kingdom would avoid coming under section 6, which alone refers to the importation of foreign reprints into the United Kingdom?—Yes.

5376. Then section 7 applies to books first published in the United Kingdom, and if the author does not supply any colony, the supply can be taken out of his hands by license, or by exercise of the Foreign Reprints Act; but in that section there is no provision made for importing these colonial or foreign reprints into the United Kingdom?—That is so. But then there would remain the question how far this Act would affect the then existing prohibitions of the importation of books, either into the colonies or into the United Kingdom?

5377. There is no law that would allow foreign or colonial reprints of a work copyrighted here to be brought into England, or colonial reprints?—They are kept out of England under a special section in the 5th and 6th Victoria, strengthened by the Customs Act

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If those sections are not repealed, then, so far as not repealed by this Bill, they would remain in force.

5378. And foreign reprints, as I have already pointed out, of a book first published here, could not come under Section 6, because that only applies to first publication in a British possession?—Quite so.

5379. Therefore, was not, in truth, your answer to question 4933 given under a misapprehension or forgetfulness of the provisions of the Act?—That may possibly be so: but I should like to look further into the Acts and Bill.

5380. I must just direct your attention to section 14, sub-section 1, which says, "Where foreign reprints of any book are imported under this Act there shall be paid for the benefit of the proprietor of copyright in such book a percentage upon the value of each foreign reprint imported of such amount, and collected and accounted for in such manner as may from time to time be determined, 1st, if the reprint is imported into the United Kingdom by Order in Council." That, of course, refers to section 6, the Reprints of Books published in a British Dominion?—Yes, it is satisfied by that.

5381. Was not the whole point of the Act this, that if a book was first published in the colonies sufficient editions of that book should be provided for the United Kingdom; and, therefore, if there were not sufficient editions published for general circulation a person might publish the book under a license, or might import into the United Kingdom foreign reprints?—Quite so; that was the main purposes of Lord Kimberley's Bill.

5382. And conversely, if a book was first published in the United Kingdom, then with a view of securing a cheap and sufficient circulation in the colonies a person might publish such book in the colonies under a license, or foreign reprints might be introduced?—Yes.

5383. But in neither case was there provision made for the introduction of foreign reprints into either the United Kingdom or the Colonies, wherever the book

was first published?—I can see no special provision in the Act authorising that. What the effect of the Bill might have been on the then existing prohibitions I am not able to say without looking further into them.

5384. Perhaps you would kindly consider that point, and let us know what your views are?—I will.

5385. Shortly, then, as far as you remember, the object of the Bill was to provide for a cheap and sufficient circulation of the book in the place where it was not first published?—I think that was the object of it: and I may add, that, if I remember right the discussions that took place, Mr. Robertson Blaine, who was then the adviser of the authors and publishers, strongly recommended them not to give up any iota of the control which their monopoly gave them, even though it might be attended with a present advantage, and on that account he objected to any power of republication being given by Act of Parliament without the consent of the author or the copyright owner.

5386. (*Dr. Smith.*) Am I then to consider that authors and publishers in this country were under a complete misapprehension as to the Bill, if it had been brought forward, authorising foreign reprints to be introduced into this country of books first published in this country?—If Sir Henry Holland's view of the Bill is correct, on which I give no positive opinion at this moment, they were under a misapprehension if they supposed that it would authorise the introduction into the United Kingdom of reprints of books first published in the United Kingdom.

5387. (*Sir H. Holland.*) So far for that Bill. Then I think the answer to question 4971 is not quite correct. Sir John Rose assumed that there was an import duty imposed in this Bill in addition to the royalty on the importation into England, and your answer is that it was in Lord Kimberley's Bill, but I think upon examination of the Bill you will find that there is no import duty at all spoken of; probably, therefore, there is a little misapprehension as to that point also. There is no import duty, as is supposed, in addition to the royalty imposed by this Bill?—Possibly, but I will look again at the Bill.

The witness withdrew.

Adjourned to Tuesday, the 10th of April, at half-past 2 o'clock.

Tuesday, 10th April 1877.

PRESENT:

THE RIGHT HONOURABLE THE EARL OF DEVON in the Chair.

SIR HENRY T. HOLLAND, Bart., K.C.M.G., M.P.  
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.  
SIR JULIUS BENEDICT.  
FARRER HERSHELL, Esq., Q.C., M.P.

E. JENKINS, Esq., M.P.  
DR. WILLIAM SMITH.  
J. A. FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

BOYDELL GRAVES, Esq., further examined.

*B. Graves,*  
*Esq.*

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5388. (*Chairman.*) I think you wish to supplement your evidence upon certain points, and also perhaps to make some suggestions?—I do, if you please.

5389. You made in your former evidence certain suggestions in reference to copyright in works which were to be executed upon commissions given, and I think that is one point on which you wish to make some observations?—Yes. I would wish to be permitted to explain, that in answering questions as to "paintings on commission," I had more particularly in my mind the cases with which I am the most familiar, namely, where a commission is given to an artist to paint a work with a view to subsequent engraving. In such a case it is of course essential that the person commissioning, and not the artist, should have the copyright; as, however, this could always be the subject of a mutual and special agreement, I am, on careful reconsideration, disposed to think that on the whole, portraits alone excepted, it would tend to

greater simplicity and be much less open to dispute were commissioned works, as regards copyright, put on the same footing as sales. If for the sake of uniformity in the law it might be deemed desirable that copyright, even in the case of portraits, should be vested in the artist, it is worthy of consideration whether an artist should not be debarred from either repeating or copying a portrait without the express permission of the sitter. This observation applies also, and more especially, to copyright in photographs. The same reservation would in like manner be applicable to commissioned works strictly so called.

5390. Then you would not leave it to be matter of agreement between the subject of the portrait, the person commissioning, and the artist whether or not the copyright should pass?—I think it would be better that it should be vested in the artist.

5391. And you would wish to make that a matter of legislative provision?—I think so.

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Esq.  
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5392. The next point you wish to speak to is with reference to registration, upon which various questions were asked you before. Will you kindly add whatever you wish to say upon that point?—In suggesting the term of five years, within which time, dating from the first sale or disposition of a work of fine art, it should be compulsory on the artist to register his copyright, I was seeking, first, to find some real relief for the artist against the constant troubles which would be entailed on him were registration made compulsory for the purpose of fixing a date of first publication of his work; secondly, to meet the not improbable difficulty of Parliament imperatively insisting upon enforcing registration as a set-off for providing such stringent remedies as alone would, so far as the commoner forms of piracy are concerned, prevent any Act which the Legislature might pass, from becoming a dead letter; thirdly, to endeavour to put a permanent check upon the needless multiplication of useless copyrights. But I would wish to add, that I am none the less of opinion that if registration were left voluntary, as at present, (the penalty for non-registration being the inability to take proceedings or to enforce a speedy remedy for piracy,) it would in many respects be preferable. If, however, your Commission should be disposed to recommend that registration of some kind be enforced, you will perhaps pardon me the liberty I take, if I venture to lay before you a brief summary of what it has seemed to me might prove to be an acceptable compromise in respect of this vexed question of registration. I would ask you to bear in mind that complete compulsory registration of all works of art would not only be extremely onerous and most difficult, but almost impossible to carry out practically; and, if it meets with your approval, respectfully suggest first, that no registration should be required of an artist previous to the first sale or disposition, whether by way of sale or gift, of his painting; secondly, that such first sale or disposition of his painting should alone be deemed the equivalent of first publication (as *e.g.* of a book) on the part of the artist; thirdly, that such first sale or disposition of his painting, if the copyright remain unsold, should render registration as to the proprietorship of copyright necessary on the part of the artist within three months of such first sale or disposition, but that failing such registration it should be competent for the artist to revive his right at any time within a given period, *e.g.*, five years, or, as an alternative of such a mere arbitrary term, the statute of limitation, or possibly, in order to meet Mr. Trollope's objection (Q. 3210), during his lifetime, on payment of a fine, say five pounds; fourthly, that where a copyright is sold or disposed of, whether by way of sale or gift, by the artist, registration should be required of the assignee or owner of the copyright within three months of such sale or disposition, with the proviso, however, that neglect on the part of such assignee or owner to register need not, so long as he has not parted with his right, necessarily involve the loss of such right, but that such assignee or owner should still be entitled to register within an extended fixed period, whether it be five years or the statute of limitation, on payment of a heavier fine than in the case of the artist, say 15*l.*; fifthly, that should the first assignee or owner of the copyright fail to register within such extended and limited period from the date of purchase, all his title to copyright be lost; similarly, if the artist should fail or neglect to register during such extended and limited period, or may be during his lifetime, all claim to copyright on behalf of his representatives or assigns should then cease and determine. The practical effect of such an arrangement as here indicated would be: 1, that most, if not all, copyrights of especial value would be registered within three months; 2, that all copyrights of doubtful value at the time of the artist's first sale of his original painting would either lapse or be subsequently registered on payment of the fine. The advantages would be: 1, that whereas no injustice would be done to,

or needless difficulty imposed upon, the artist, every reasonable facility would be given him for the registration of valuable or possibly valuable copyrights: 2, that means would be provided for the revival of copyrights, which, through neglect, want of information or misadventure, had not been duly entered on the registry; 3, that the great majority of copyrights, being of little or no moment, would lapse in due course of time; 4, that the registry would not be encumbered by a mass of needless entries; 5, that the public search of the registry would be greatly facilitated, much inconvenience and loss of time in the making of such search being thereby obviated.

5393. (*Sir H. Holland.*) Then, as I understand your propositions, you would allow the copyright to remain dormant; supposing that the artist does not register within the three months after the sale of his work, his copyright remains dormant, that is to say, he can revive it, but he cannot sue upon it until he has registered and paid a fine?—That would be the effect.

5394. And that copyright is absolutely to lapse on his death?—If he should not have registered during his life.

5395. So that his representatives would have no copyright; they cannot register and revive a copyright as he can?—That is what I meant.

5396. And then I presume that you would not allow the artist to sue for an infringement committed before registration?—I almost think I would.

5397. You are aware that at present by the Fine Arts Act, differing in that respect from the Copyright Act of 1842, an artist cannot sue for an infringement committed before registration?—I am aware of that.

5398. Do you wish to see an alteration of the law in that respect?—I think it would be advisable.

5399. Is it not rather hard upon the public if a man may allow his copyright to remain dormant for years, and allow copies to be made of his work, and not take the trouble to register till many years after these copies have been made, and that then he should have the power to stop the sale of these copies and to sue for infringement?—I think it is very hard on innocent purchasers for sale, that is to say, on those who may have purchased from those who made the copies; but I do not see that it would be hard on the original persons, who must well have known they were infringing on someone's property.

5400. Might they not assume that if a person does not register his work, he does not consider it of sufficient importance to protect it?—Hardly so. In the mere copying they must well know that they are copying some person's work; and I do not see why the artist should be compelled to register.

5401. But one of your reasons was that persons would always register where they considered it of any importance. If a person does not register, may not the public consider that he does not care to prevent copies being taken of his work?—I think you would find it too difficult to carry out a complete system of registration practically. I fail to comprehend why it should be thought hard on the public.

5402. What special reason have you for wishing to see an alteration in the law, so as to enable an artist to sue for infringements made before he registers?—First, that it would make it analogous to the Book Act; and secondly, I think it would be more just, because at present the persons who sell after the artist has registered are liable to be sued for penalties, whereas the persons who have made copies previous to his registration are exempt. That really seems rather hard.

5403. The effect of an alteration would not be to exempt the second purchaser?—Certainly not, but the effect would be that persons finding their right infringed would proceed against the first and not the second.

5404. That would very much depend upon whether the first was solvent, or whether the second was solvent?—It might be so; but as it is at present, the persons who sell that which they have bought innocently

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cently become liable if the artist has registered after he finds his right has been infringed; and the question is whether it would not be better to say that no person shall copy without the permission of the artist.

5405. Have you considered whether it might not be better to alter the law in another direction; namely that the artist might sue for infringements committed before he registers, but not proceed against *bonâ fide* purchasers?—It might be so enacted, or the artist might be debarred from suing for penalties, but not for damages.

5406. (*Sir D. Wolff*.) Supposing he paints a picture at Rome, and the picture is sent over to this country, and an illustrated newspaper wants to copy the picture, how can they get at him?—They can write to him I presume. There are so many pictures produced, it would be extremely onerous that in every case the artist should be compelled to register.

5407. There might be some regular arrangement for that. The other day, for instance, it was proposed that the catalogue of an exhibition registered by the promoters of the exhibition should give a provisional protection to the artist?—I demur to that suggestion, because there might be many works entered in the catalogue as the property of the artist of which the copyright might belong to private owners.

5408. But for the moment, so long as the exhibition lasted, there would be a provisional protection for the artist?—Even if he had sold his right, would there?

5409. Then the other person ought to have some right of protecting himself. I do not see why an artist should be protected against the infringement of his copyright when he has taken no precautions to protect himself. That is practically what you are insisting upon, that he takes no precautions to protect himself, and that he is to have a law made in his own behalf to protect himself against his own neglect?—I say it is practically impossible for him to carry out this idea of registration in every case.

5410. Why?—He would be constantly sending to register.

5411. But then it is his profession to paint, and his business to register what he paints?—I think it would be very hard upon him.

5412. (*Mr. Trollope*.) If I understand you, you are not yourself proposing any alteration of the present law; you are only suggesting that if the Commission should propose some more stringent rule as to registration, the compromise suggested by you would be better than an absolutely compulsory registration?—Yes, that is so.

5413. Therefore I am justified in supposing that you are not yourself recommending any additional system of registration, but only recommending that if an additional system of registration be proposed it should not be absolutely compulsory?—That is what I mean.

5414. And you are still of opinion, as you were before, that the enormous number of works of art which are created from day to day would render anything like compulsory registration altogether out of the question and impossible?—That is decidedly my opinion.

5415. (*Mr. Jenkins*.) What is this practical difficulty; how many works of art can a man produce in a year; take Gustave Doré, perhaps the most prolific of artists?—If you include all sketches and suggestions and slight pencil drawings, I have no idea how many he might produce.

5416. He could not produce one every minute, I suppose, or anything like?—I daresay not, but he might possibly make ten sketches a day.

5417. To take his as an extreme case, would you say it was practically impossible for him to keep all his productions that were worth registration registered?—If not actually practically impossible, it would be needlessly harassing.

5418. Are you not aware that some men make entries at the Custom House sometimes to the extent of hundreds a day throughout the year. A man often has to go to the Custom House regularly every day to

have entries made in books?—That is in the regular way of trade.

5419. Is not this in the regular way of trade?—I think there is a great difference. The great number of works produced would be a bar to effective registration.

5420. Do you mean that there would be a physical difficulty in getting them registered at any office, or that the artist himself could not attend to the registration of all that he produced?—I think he could not attend to it himself; and in the next place, if he lived at a distance from London he would have to employ another person to do it for him.

5421. Supposing it were arranged that you might register by post. Supposing that a man who wished to register any particular picture could post a letter containing a certificate which he had signed in the presence of a witness, and supposing that he enclosed, say, 12 postage stamps as the fee, and it were understood that thereupon he was to receive a reply, do you see any difficulty about that?—Yes; I see this, that a central office would have to be formed then, and persons would have to send to London to search the register to see what was registered if they wished to copy a work, supposing London were the central office.

5422. Is not that a ground for registration?—I do not see the practical use of registration of paintings and drawings. Really and truly I do not myself see what is the good of it. I am only suggesting a kind of compromise. I cannot see any reasonable objection to a limited system of registration being required, but I utterly fail to understand the public benefit which compulsory registration may be supposed to serve. That registration not only may be, but is of great use to the owners of copyright, I would most distinctly affirm, since it enables them to put in a certificate of *primâ facie* evidence of title which must be received as such in all courts of law and summary proceedings unless rebutted by some person whose title conflicts with that of the registered owner. On the other hand, it is by no means so certain that the advantage to the public of compulsory registration would be at all commensurate with the difficulties and petty worry thrown in the way of a body of men whose mind is given up to and absorbed in their art. (the case not being analogous to that of authors, their publishers, men of business, being ready and willing to take all trouble off their hands,) and who for that very reason are unable to comprehend why they should be trammelled with tedious forms and abstruse regulations in order to be in a position to protect the very property they have themselves created.

5423. Then you observe that the effect of your argument, if carried out, would be this, that you would place all those who dealt in pictures in a far better position than those who dealt in books, because *primâ facie* every man who saw a picture would be bound to believe that it belonged to somebody, and that he had no right to reproduce it?—Certainly he would. So it is with books.

5424. The effect of that would be, would it not, undoubtedly to diminish the number of pictures that would be published; that is, it would diminish the number of persons who would engage in the republication of pictures; is that so?—I do not think so, unless you assume that all people are anxiously looking out to seize upon other people's property.

5425. We need not consider that everybody is a thief who wishes to reproduce a picture; he may see one that he may think he would like to reproduce; under your system he dare not do it, and there is no means by which he can ascertain whether or not it is safe for him to do so?—He can write to the artist.

5426. Supposing the artist has sold it, and declines to give him the name of the person to whom he has sold it, how is he to follow it out?—But according to my suggestion the artist would under a penalty be obliged to register within three months.