of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other local causes, and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

Questions 5839–5846.

Questions 3928, p. 202.

196. The Canadians proposed that they should be allowed to re-publish the books themselves under licenses from the Governor-General, and that the publishers so licensed should pay an excise duty of 12½ per cent. for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the customs. Objections, however, were made to the proposal, and it was not carried out.

197. These considerations led to the suggestion that re-publication should be allowed in Canada under the authors' sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions, which would be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies.

198. Matters were in this state when "The Copyright Act of 1875," was passed by the Dominion legislature. The Act was sent over in the form of a Bill reserved for Your Majesty's assent; but as doubts were entertained whether the Act was not repugnant to Imperial legislation, and to the Order in Council made in 1868, by which the prohibitions against importing foreign reprints into the Dominion of Canada had been suspended, power was given to Your Majesty by an Imperial Act passed in 1875 to assent to the Canadian Bill, and thus make it law. Your Majesty's assent was subsequently given.

Question 3930, p. 208.

199. It is in this Imperial Act that a clause will be found, which has been strongly objected to by Mr. Farrer in his evidence before us, prohibiting the importation into the United Kingdom of Canadian reprints.

200. The Canadian Act gave to any person domiciled in Canada, or in any part of the British possessions, or being a citizen of any country having an international copyright treaty with the United Kingdom, being the author of any literary or artistic work, power to obtain copyright in Canada for 28 years, by printing, and publishing, or re-printing, or re-publishing, or, in the case of works of art, by producing or re-producing his work in Canada, and fulfilling certain specified conditions. The copyright thus capable of being secured by British copyright owners is in addition to and concurrent with the copyright they have throughout the British dominions under the Imperial Act.

Question 3930, p. 207.

Appendix to Mr. Farrer's evidence, paper G., p. 373.

201. The Dominion Act has been in force for so short a time that it is difficult to ascertain its full effect; but from a return obtained from Canada by the Secretary of State for the Colonies in November 1876, it appears that 31 works of British authors had been published in Canada under the Act up to that date. A comparison of the prices of these works shows that if the English editions were sold in Canada at any price over about half a dollar, or 2*s*., there was a reduction more or less considerable in the price of the Canadian edition, the reduction in one instance being as great as from $12 60 or 2*l*. 11*s*. 8½*d*. to $1 50 or 6*s*. 1¾*d*. It also appears that of many of the books re-published in Canada under the Act the American reprints were, as a rule, kept out of the Dominion; and that the prices of American reprints sold in the Dominion were higher than those of the Canadian reprints.

202. We have thought it desirable to give this brief sketch of the law of colonial copyright, as it enables us to explain more clearly the questions we have had to consider. The remedies we propose are intended to meet the grievance put forward by the colonial readers.

203. The main grievance, as we have already pointed out, lies in the difficulty experienced by the colonists in procuring, at a sufficiently cheap price, a supply of English copyright books.

204. The Canadian Copyright Act of 1875 may have the effect in time of securing cheap editions of British works in the Dominion. But, in the first place it is too soon to judge of this, and no similar Act has, as yet, been passed in other colonies; and in the second place, it is questionable whether such an Act would work at all in small colonies.

205. We may at once state that we do not propose to interfere with the Canadian Copyright Act, 1875, or with the principle of that law.

206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st. By the introduction of a licensing system in the colonies: and, 2nd. By continuing, though with alterations, the provisions of the Foreign Reprints Act.

207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. We recommend that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by re-publication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon an application, be granted to re-publish the work in the colony, subject to a royalty in favour of the copyright owner of not less than a specified sum per cent. on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the Imperial Legislature. We should prefer to leave the settlement of such details to special legislation in each colony.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers over which the late Earl Stanhope presided, the following resolution was passed: "That a representation be made to the "Right Honourable the First Lord of the Treasury, pointing out the great hardship "sustained by British authors and publishers from the operation of the Imperial "Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's "Government may deem it right to propose its prompt repeal." 10 & 11 Vict. c. 95.

210. We are fully sensible of the weight that must attach to the opinion of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of Your Majesty's colonies—and upon this point we would refer to the answers returned by the colonies to Lord Kimberley's Circular Despatch of the 29th July 1873—we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in Your Majesty, of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors. Parl. Papers, Colonial Copyright. C., 1067. July 1874, and 144. 13 April, 1875.

211. We believe that although the system of republication under a license may be well adapted to some of the larger colonies, which have printing and publishing firms of their own, and which could reprint and re-publish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright, whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to Your Majesty to repeal the existing Orders in Council; and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it would be desirable to grant a certain period to the colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that Your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to Your Majesty in Council to revoke, at

any time, any future Order in Council, should the provisions of the colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this Commission to suggest what provisions Your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected, by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some penalty might not also be affixed to the dealing with unstamped copies.

216. And having regard to the power which we have contemplated, for authors to obtain colonial copyright by re-publication in the colonies, and to the licensing system which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or,
3. After there has been a re-publication under the licensing system.

217. A subject of great moment with reference to colonial copyright, is the propriety of permitting the introduction of colonial reprints into the United Kingdom. This question has given rise to much discussion, as may be seen by reference to the correspondence, which, at the time The Canada Copyright Act, 1875 was under consideration, passed between the Colonial Office and the Board of Trade. Ultimately the 4th section of that Act was passed by which it is enacted, that, where any British copyright work has acquired copyright in Canada under the colonial Act by re-publication, it is unlawful for any person other than the owner to import Canadian reprints into the United Kingdom. This provision is analogous to that in force in the case of books reprinted in foreign countries.

Appendix to Mr. Farrer's evidence, paper H., p. 373.

Question 3930, p. 208.

218. We have been urged to recommend the repeal of that section, so far at all events as to admit the importation into the United Kingdom of copies published with the consent of the copyright owner.

219. We may state generally that authors and publishers, who are the persons most interested in copyrights, are strongly opposed to the introduction of colonial reprints into the United Kingdom, on the following grounds:—That the cheaper price of those reprints would cause great pecuniary loss to the owners of copyrights:—that the present system of trade, which has been found most remunerative to authors and publishers, would be disarranged:—and that publishers would not be willing or able to offer so much to authors for their works.

220. It is argued that, if importation is allowed, no copyright owner will consent to re-publication in the colonies by himself or others, because all such re-publications, being made with his consent, would be liable to be introduced here, and that the colonial readers would therefore suffer to a certain extent by the alteration in the law. This last argument will, however, lose its force, if effect is given to our suggestion of permitting re-publication in the Colonies under a licensing system.

221. The arguments in favour of admission of colonial reprints are based on consideration of the public interest, which is alleged to be greatly injured by the high prices at which books are now published—prices that are altogether prohibitory to the great mass of the reading public; and it is said that if the cheaper colonial editions were to be allowed in this country, the necessary effect would be that prices generally would be greatly reduced.

222. It is also urged that if the law gives British copyright owners the benefit of copyright throughout the empire, and the exclusive command of the colonial market, it is unfair to the British public that they should be deprived of the advantage they might derive from that extended copyright, and that they should be the only section of Your Majesty's subjects who are debarred from participating in the advantages of cheap colonial editions.

223. It is also said that it is a mistake to suppose that authors would really be injured by the introduction into the United Kingdom of the colonial editions, for that the profit which would be derived from the extended market would more than compensate for the loss resulting from publication at lower prices. Thus the public would

derive the benefit of cheap literature, while authors would reap profit equal to or greater than that they now enjoy.

224. The witness who principally advocated the introduction of these reprints was Mr. Farrer, the Permanent Secretary to the Board of Trade, which is the department specially charged with legislation affecting copyright. Having regard to the great attention he has devoted to the subject and to his official position, we desire to state that we think his opinions are entitled to much consideration. The arguments adduced by him will be found fully stated in his evidence.

Question 5819.

Questions 3930, p. 208, 5034, 5081–90, 5315–44.

225. We have carefully weighed this evidence with the views of other persons who are opposed to the introduction of colonial reprints into the United Kingdom; and on the whole we think that the admission of such reprints would probably operate injuriously towards British authors and publishers, and that it is doubtful if it would be attended in many cases with the result anticipated by Mr. Farrer, that is to say, the cheapening of books for home consumption. We think the almost certain result would be, that it would operate as a preventive to re-publication in the colonies by authors themselves, so that, if no publisher re-published under the licensing system, the colonial reader would be in no better condition than he is now.

226. We therefore think that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners; and, conversely, that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into such colony without the consent of the copyright owners.

227. It will have been observed that in suggesting the above alterations in the existing law of copyright, we have not proposed to interfere with the existing powers of colonial legislatures to deal with this subject. An author who first publishes in a colony should only be entitled to secure copyright throughout the British dominions, if he complies with the requirements of the copyright law for the time being of that colony. It will rest, therefore, with each colonial legislature to determine the nature of those requirements, such as registration, deposit of copy, and so forth; and we cannot doubt that they will be alive to the expediency of adopting for the colony, so far as it is practicable, the principal provisions of the Imperial Act, which, if effect be given to our suggestions, will, as to all such matters of detail, be hereafter limited to the United Kingdom. By this means uniformity of practice will be secured throughout Your Majesty's dominions, and certain difficulties will be avoided, which might arise if, for example, registration were in some colonies compulsory, and in others voluntary.

228. But important as uniformity is in matters of detail, it becomes still more important in respect of the term to be fixed for the duration of copyright. As the law now stands, we apprehend that each colony has a right to decide what shall be the term during which an author who publishes in the colony shall have copyright therein. The exercise of this power does not, it is true, override the provisions of the Imperial Act, which gives copyright in such colony to a work first published in the United Kingdom, but the existence of this double term is inconvenient. If, as we recommend, publication in any colony shall for the future secure copyright throughout all Your Majesty's dominions, in the same way and for the same term as if the work had been first published in this country, the necessity for fixing a term for duration of a copyright in a colony will practically cease. In truth the difference between colonial and imperial copyright will disappear, as colonial copyright will merge into imperial copyright; and we may fairly assume that where, as in Canada and at the Cape, a term has been fixed for copyright in the colony different from that fixed by the Imperial Act, the colonial legislature will be ready to repeal *pro tanto* the colonial law, and to confine legislation to matters of detail.

229. Should, however, our anticipations on this point be incorrect, it will become a question whether, with a view to secure uniformity, the concession to any colony might not be made conditional upon the adoption by the legislature of such colony of the same term as that fixed for the time being by the Imperial Act.

230. In concluding our remarks upon this part of the subject, we recommend that the production of a copy of the colonial register (if any), certified by some duly authorised officer in that behalf, shall be *primâ facie* evidence in Your Majesty's Courts of

compliance with the requirements of the local law, and of the title to copyright of the person named therein. A provision to this effect would have to be made by the different colonial legislatures for the guidance of colonial courts.

231. It has been suggested to us that some re-registration, or notice of the original registration, should be made in England of a work published in a colony, and that a copy of every work published in the colonies should be deposited at the British Museum, within a certain time after publication. Upon the whole we are not disposed to recommend the adoption of either of these suggestions. Publication in a colony will give copyright throughout the British dominions, and if re-registration of the work is desirable in England, it is equally so in all the other British possessions in which the work obtains copyright. But to require such a general re-registration would throw a considerable burden upon the owners of colonial copyright, and it appears to us not unreasonable to call upon a person who desires to reprint a work which has already been published to take the necessary steps to ascertain whether the work has been duly published and, if necessary, registered in the place of publication, and whether the term of copyright has expired. Should, however, a notice of registration be thought desirable, we suggest that it should be officially given by the registering department in the United Kingdom or colony; and the fee for original registration might be made to cover the expenses of giving such notice.

232. As regards the second suggestion, we are of opinion that the Trustees of the British Museum may fairly be expected to purchase such colonial works as they want, considering that the author or owner of the copyright will doubtless be required by local law to deposit a copy in the place of publication. Indeed it was stated to us by officers of the British Museum that many such works are now purchased.

Question 1665.

INTERNATIONAL COPYRIGHT.

The American Question.

233. As to continental nations, few questions have, in the course of our inquiry, been raised with regard to the general regulations of international copyright; but we find it to be impossible to exclude from examination the present condition of the copyright question between Great Britain and the United States. There is no international protection of copyright as between ourselves and the Americans, although, owing to causes to be presently referred to, the United States is of all nations the one in which British authors are most concerned,—the nation in regard to which the absence of a copyright convention gives rise to the greatest hardships.

234. When deciding upon the terms in which we should report upon this subject, we have felt the extreme delicacy of our position in expressing an opinion upon the policy and laws of a friendly nation, with regard to which a keen sense of injury is entertained by British authors. Nevertheless, we have deemed it our duty to state the facts brought to our knowledge, and frankly to draw the conclusions to which they lead.

235. Although with most of the nations of the continent treaties have been made, whereby reciprocal protection has been secured for the authors of those countries and Your Majesty's subjects, it has hitherto been found impracticable to arrange any terms with the American people. We proceed to indicate what in our view are the difficulties which have impeded a settlement.

236. The main difficulty undoubtedly arises from the fact that, although the language of the two countries is identical, the original works published in America are, as yet, less numerous than those published in Great Britain. This naturally affords a temptation to the Americans to take advantage of the works of the older country, and at the same time tends to diminish the inducement to publish original works. It is the opinion of some of those who gave evidence on this subject, and it appears to be plain, that the effect of the existing state of things is to check the growth of American literature, since it is impossible for American authors to contend at a profit with a constant supply of works, the use of which costs the American publisher little or nothing.

Questions 598–601, 1365–1372, 1840–1848.

237. Were there in American law no recognition of the rights of authors, no copyright legislation, the position of the United States would be logical. But they have copyright laws; they afford protection to citizen or resident authors, while they

exclude all others from the benefit of that protection. The position of the American people in this respect is the more striking, from the circumstance that, with regard to the analogous right of patents for inventions, they have entered into a treaty with this country for the reciprocal protection of inventors.

238. Great Britain is the nation which naturally suffers the most from this policy. The works of her authors and artists may be and generally are taken without leave by American publishers, sometimes mutilated, issued at cheap rates to a population of forty millions, perhaps the most active readers in the world, and not seldom in forms objectionable to the feelings of the original author or artist.

239. Incidentally, moreover, the injury is intensified. The circulation of such reprints is not confined to the United States. They are exported to British Colonies, and particularly to Canada, in all of which the authors are theoretically protected by the Imperial law. The attempts which were made, by legalising the introduction of these reprints into Canada, to secure a fair remuneration to British copyright owners have, as we have shown, completely failed. *Ante.* para. 193.

240. This system of reproduction is not confined to books, but extends to music and the drama, and we have been told that it is not an uncommon thing when a new play by an author of eminence is produced in London, for shorthand-writers to attend and take down the words of the play for transmission to the United States. Questions 2507 and 2639.

241. But though there is no law in the United States to protect a foreign work from republication by any number of publishers, the natural result of general publication and rivalry was to make the competition which arose disastrous to those engaged in it. Firms of eminence and respectability rivalled each other in the efforts of their agents in England to secure early sheets of important works, but when the sheets were obtained, and an edition issued at a moderate price, some other firm would undertake to supply the public with the same article at a lesser rate. American publishers were thus obliged to take steps for their own protection. This was effected by an arrangement among themselves. The terms of this understanding are, that the trade generally will recognise the priority of right to republication of a British work as existing in the American publisher who can secure priority of issue in the United States. This priority may be secured either by an arrangement with the author, or in any other way. The understanding, however, is not legally binding, and is rather a result of convenience and of a growing disposition to recognise the claims of British authors, than of actual agreement. Questions 902–906, 1298–1302, 1906–1909, 3387, and 5269.

242. The effect of this trade understanding has no doubt been profitable to a certain number of British copyright owners, since, now that American publishers are practically secured from competition at home, it is worth while for them to rival each other abroad in their offers for early sheets of important works. We are assured that there are cases in which authors reap substantial results from these arrangements, and instances are even known in which an English author's returns from the United States exceed the profits of his British sale, but in the case of a successful book by a new author it would appear that this understanding affords no protection. Even in the case of eminent men, we have no reason to believe that the arrangements possible under the existing conditions are at all equivalent to the returns which they would secure under a copyright convention between Your Majesty and the United States. Questions 1280–1283, 1298–1307, 1379–1380, 2664–2671.

243. We may remark in this place that as authors of books in some cases obtain payment for early sheets from American publishers, so also dramatic authors of note sometimes obtain remuneration for the right to perform their plays. There appears, however, to be a difference in the law relating to books and plays in the United States; for although the English author of a book can give no copyright to an American publisher, yet it is stated that the author of an English play can give an American theatrical manager a right of representation, if the play has not been published anywhere as a book, and for this purpose a distinction is made between such publication and public performance. Question 2594. Questions 2556 and 2586–2595

244. It is, without doubt, a general opinion that a copyright convention with the United States is most desirable. We have, therefore, endeavoured during our inquiry to ascertain the feeling of Americans on the subject, and wherein, if at all, their interests would be prejudiced. We have also endeavoured to find out what practical difficulty there is in the way of such a convention, and if by any means such difficulty can be surmounted. Questions 544, 876.

Steph. Dig., Art. 6.
Questions 97–99, 133–135, 1313–1315, 1454–1456.

245. It may be stated that American authors have not the same need of a convention as those of Great Britain, since our law affords copyright protection throughout the British dominions to foreigners as well as to Your Majesty's subjects, provided they publish their books in the United Kingdom before bringing them out elsewhere, while the American law, unlike ours, does not make first publication at home a condition for obtaining copyright. It is consequently the practice of some American authors to publish their books first in England, and so to obtain British copyright, and then to re-publish them in the United States and obtain American copyright, or to publish in the two countries almost simultaneously.

Questions 1819, 1820, 1839–1844, and 1448.
Questions 1365–1372, 598–601.

246. We have it in evidence from Mr. Putnam, a member of a large American publishing firm, that American authors are unanimous as to the advantage of international copyright between the United States and this country. We have also been told by another American witness that as publishers can bring out reprints of English books without paying the authors, it is so much more to their interest to do so than to pay American authors, that they frequently refuse to publish American works unless at a low rate of payment. Hence it appears that, in the opinion of many Americans, international copyright is desirable for American authors.

Question 1356.

247. This question has been before the United States legislature on more than one occasion, and the Senate has twice agreed in a recommendation made to them by the Government on the subject.

Questions 1192, 1478–9, 3541–3557.

248. We are therefore satisfied that, though there are other obstacles, the most active opposition in the United States arises from the publishing and printing interests. It is feared that if there were international copyright, British authors would be able to select their own mode of manufacturing their books, and to choose their own publishers, and that they would in many cases have their books printed in this country, and perhaps prepared for sale, so as to avoid the expense of producing them in America. Moreover, the American publisher fears the competition of the English publisher, because at the present time books cannot be as cheaply manufactured in the United States as in Great Britain; and, but for the protective tariff, there would no doubt be a great inducement to British publishers to compete with those of America in the large and important market of the United States.

Question 1192.

249. These fears have indeed been urged with a discouraging effect upon the negotiations and proposals for international copyright, and have induced the Americans to claim that the privilege of copyright in the United States should only be granted on condition that the book is wholly re-manufactured and republished in America. On the other hand the British copyright owner feels that such conditions would lead, in many cases, to a useless outlay for the re-manufacture of stereotype plates and the reproduction of illustrations, practically at his expense and to his loss, because this outlay would have to be taken into account by the publisher in considering the sum he could afford to pay for authorship. While the English author desires not to be restricted in the selection of a publisher, he apparently does not care much whether the publisher be an American or an Englishman.

250. Although it has hitherto been the practice, we believe, of Your Majesty's Government to make international copyright treaties only with countries which are willing to give British subjects the full advantage of their domestic copyright laws, untrammelled by commercial restrictions, in exchange for the protection afforded to their subjects by our own copyright laws, yet we think it not unreasonable for the American people to wish to ensure the publication of editions suited to their large and peculiar market, if they enter into a copyright treaty with this country. On the whole, therefore, we are of opinion that an arrangement by which British copyright owners could acquire United States copyright by reprinting and republishing their books in America, but without being put under the condition of reproducing the illustrations or re-manufacturing the stereotype plates there, would not be unsatisfactory to Your Majesty's subjects, and that it would be looked upon more favourably in the United States than any other plan now before us.

Questions 140–143, 1316–1318, 1457–1460.

251. It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country.

We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our law should be based on correct principles, irrespectively of the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is one of universal application. We therefore recommend that this country should pursue the policy of recognising the author's rights, irrespective of nationality.

252. Before leaving this subject we ought to notice a suggestion that was made to us by Mr. Edward Dicey, one of the witnesses who gave evidence before us. He thought that it might be possible for a mixed commission to arrange terms for a copyright convention, which would be mutually acceptable. Looking to the great importance of securing an international convention with the United States, we venture to express our opinion that the appointment of such a mixed commission to examine into and report upon the whole subject might be attended with advantage. Questions 1474–1479.

Amendments required in the existing Law as to Registration, Deposit of Copy, Translations, &c.

253. Having thus reported to Your Majesty the result of our inquiry, so far as it relates to the American question, we pass on to several matters of detail, relating to international copyright, in which it has been represented to us that amendment in the law is required.

254. With reference to these we may call attention specially to the evidence of Monsieur Gavard, who, as representing the French Government, favoured us by giving evidence on sundry points in the law from which inconvenience and annoyance arise to subjects of those states with which we have copyright conventions. We believe the objections pointed out by him are shared by other nations, and in particular by Germany.

255. Before proceeding to notice these points specifically, we may call attention to the fact that in the year 1851 a copyright convention was concluded between Your Majesty and the French Government, and that as some of the stipulations on the part of Your Majesty required the authority of Parliament, an Act was passed to give the necessary authority and to enable Your Majesty to make similar stipulations in any treaty on the subject of copyright which might thereafter be concluded with any foreign power. Statute 15 & 16 Vict c. 12.

256. The formalities imposed by this and other conventions as conditions for obtaining copyright, give rise to some of the inconvenience and annoyance to which we have alluded.

257. As this inconvenience and annoyance depend upon the terms of the conventions as well as upon our law, it will be necessary that those terms should be amended, if it be decided to give effect to any of the changes we are about to propose.

Registration, Deposit of Copy, and Evidence of Copyright.

258. Our attention has been directed to the necessity for registration in this country of foreign works which have copyright in the country of production, and for deposit of copies in certain cases, before copyright can be secured in this country. Questions 1763–1773 and 3724.

259. Although registration and deposit of British works, as has been pointed out, are not essential to the acquisition of copyright in this country, they are both essential for the purposes of international copyright in the cases of books, dramatic pieces, musical compositions, engravings and prints, while for sculpture registration only is necessary.

260. The French are desirous that the necessity for registration and for the deposit of copies of French works at the British Museum, and of English works at the National Library in Paris, should be dispensed with, and that in either case compliance with the requirements of the law of the country of publication should be deemed sufficient. Questions 1763, 1764.

261. It appears that the French have copyright conventions with 37 states, and that none of these, with two exceptions, namely, England and Spain, require a copy of the work to be deposited, and that four countries which require registration are Questions 1769–1772, and 3725.

satisfied that it shall be performed at their legations in Paris, and do not require it in their own countries.

Question 1764. 262. Monsieur Gavard stated that "if an author were obliged to deposit and register "his work in every country, it would be a serious burden to him, because of the price "of each copy and the difficulty of making the deposit in due time everywhere."

263. As to registration of foreign works, the principal object in insisting on such a formality is that, in the event of legal proceedings, the register may be *primâ facie* proof of the title to copyright, and that the necessity for bringing witnesses from other countries to Your Majesty's courts may be avoided.

264. Except for this purpose, we think such registration unnecessary, and we believe the evidence may be supplied by another provision, equally effectual, and yet free from the objections that have been made to registration.

265. We propose that registration of foreign works in this country should not be required for the purpose of securing copyright here, or the right of representation or performance of musical and dramatic works, and that the production of a copy of the foreign register, attested by a British diplomatic or consular officer, should, in all legal proceedings, be *primâ facie* evidence of title to the copyright of the foreign work.

266. We shall presently have to deal with English translations of foreign works and adaptations of foreign plays to the British stage, but we may state in this place that we do not intend the above remarks and the proposal we have made to apply to them if published in this country. In that event they should, in our opinion, be regarded as English works, for the purposes of registration and deposit, and be subject to English law; but we think that if a translation of a book or other work, or an adaptation of a dramatic piece, be published in a foreign country, a copy of the foreign register, attested by a British diplomatic or consular officer, should, as in the case of original works, be *primâ facie* evidence in all legal proceedings of the title to the copyright in the translation or adaptation.

267. We also propose that the obligation to deposit copies of foreign books and other works for which authors may desire to obtain copyright in Your Majesty's dominions should be abandoned.

Questions 1642–1645. 268. With a view to ascertaining whether we could with propriety make this suggestion we consulted Mr. Winter Jones, the Principal Librarian of the British Museum, and he stated that he did not think the right was of any value; that only works for which authors desired to obtain copyright were sent; and that the greater part of them were music, and not works of importance to the collection at the Museum. Question 1644. The witness also told us that in the year 1875 the Trustees of the British Museum had informed the Board of Trade that they would not object to relinquish the article of the convention with the French Government which relates to the deposit of books at the Museum.

269. We need scarcely say that, if it should be determined to give up the right to copies of foreign books, foreign Governments should be requested to give up their rights to deposit of English books. We have been informed that the French Government is willing to do so.

270. If, according to the request of the French Government, registration and deposit of copies and all formal acts for the purpose of obtaining copyright for works in France and in this country respectively be given up, it becomes a question how the people of one state are to know what works of the other are protected, and what are not. Questions 1779–1787. Monsieur Gavard suggested that every book published in France should have a right to protection in England under the general law, and that every book published in England should be protected in France. A difficulty, however, arises, if forms are required in the country of production to secure copyright there. If those forms have not been complied with, is the book to be protected abroad though it is not protected at home? Questions also may arise as to whether copyrights have expired. Monsieur Gavard was, we think, only considering the case of French books, and the system of compulsory registration and deposit adopted in France, when he made the proposal, but we have to consider our own law, as well as the regulations of those states with which copyright conventions may hereafter be made. We think the best way of treating

this question will be by allowing a presumption that every book has copyright and is protected in the country of production; but, in case of legal proceedings, if the copyright in the country of production is disputed, proof of copyright should be required; and, as we have already proposed, such proof should be supplied by the production of an attested copy of the foreign register.

The Right of Translation, Copyright in Translations, and Adaptation of Foreign Plays to the English Stage.

271. By the present law Your Majesty may, by Order in Council, direct that authors of books published in any foreign country shall, subject to certain conditions, be empowered to prevent the publication in the British dominions of unauthorised translations. This is to be done for a time to be specified in Your Majesty's Order, which shall not extend beyond five years from the publication of an authorised translation. On such Order being made, the laws for the protection of British copyright apply to prevent unauthorised translations. Steph. Dig., Art. 43. 15 & 16 Vict. c. 12. sect. 2. Sect. 3.

272. In like manner Your Majesty may, by Order in Council, direct that authors of dramatic pieces first publicly represented abroad may, subject to certain conditions, be empowered to prevent the representation in the British dominions of unauthorised translations of such pieces for a time not extending beyond five years from the first public performance or publication of an authorised translation. On such Order being made the right of representation of translations is protected. Sect. 4. Sect. 5.

273. The conditions we have referred to are as follows:— Sect. 8.

1. The original work must be registered and a copy deposited in the United Kingdom within three months of first publication in the foreign country. Steph. Dig., Art. 44.
2. The author must notify on the original work that it is his intention to reserve the right of translation.
3. An authorised translation of the original work, or a part of it, must be published, either in the foreign country or in the British dominions, not later than one year after the registration and deposit in the United Kingdom, and the whole of the translation must be published within three years from such registration and deposit.
4. The authorised translation must be registered, and a copy deposited in the United Kingdom, within a time to be mentioned in the Order.
5. In the case of books published in parts, each part must be registered and deposited in this country.
6. In the case of dramatic pieces, the authorised translation must be published within three months from registration of the original work.

274. Sundry objections to these conditions have been brought to our notice, on the ground that they are unreasonable, inconvenient, or useless.

275. In considering this subject it is necessary not to lose sight of the distinction between a right of translation and copyright in a translation. We have referred in paragraph 266 to the latter, when we recommended that if a translation be made abroad, no registration or deposit should be required, but that if it should be made in the United Kingdom, it should be regarded as an English work, and be subject to English law on these points.

276. It will be seen that the right of translation, both of books and plays, is by the present law, made to depend upon registration and deposit, not only of the original work, but also of an authorised translation. We have already dealt with the subject of registration and deposit of original foreign works for the purpose of obtaining copyright in them, and as we recommended that these forms should not be required in future for that purpose, we think it would be inconsistent if we did not also recommend that they should not be required for the purpose of protecting the right of translation. Apart, however, from the inconsistency, we are satisfied that, as it is unnecessary to insist on these forms in the one case, it is equally so in the other. We therefore propose that they shall be omitted from any future law.

277. Independently of registration and deposit of an authorised translation, one condition for the preservation of the right of translation is, that in the case of a book, an authorised translation of a part at least must be published, either in this or the

foreign country, within one year of the registration and deposit, and the whole must be published within three years from that time; and in the case of dramatic pieces, that the authorised translation must be published within three months from registration and deposit.

Questions 1788–1799.

278. Monsieur Gavard represented to us that in the opinion of the French Government the period was too short, as it was found to be impossible to ascertain in the country of origin in so short a time, whether a work would be sufficiently successful to warrant a translation. He asked for an extension of the shorter period for partial translation, and suggested that if the period of one year for partial translation were extended to three years, the period of three years for complete translation should be proportionately extended; but as that would allow an author nine years during which no other person could issue a translation, we think such an extension of time would be unreasonable.

279. Instead of simply extending the periods for partial and complete translation, we think the better course will be, that an unconditional right of translation shall be reserved to every foreign author, belonging to any state with which Your Majesty has entered into a copyright convention, for three years after publication of the original work.

280. The duration of the right of translation is not at present fixed by law, but, by the 2nd and 4th sections of the Act which was passed in the 15th and 16th years of Your Majesty's reign, it has to be specified in the Orders in Council under which authors are enabled to prevent translations. The duration may thus vary in the case of different nations with which copyright conventions may have been made.

Questions 1799–1802.

281. Under the treaty with France the period for the right of translation is at present five years. Monsieur Gavard proposed, in the interest of authors, that this period should be extended to ten years. We are disposed to concur in this proposition, as we think five years must in many instances be insufficient to secure a fair remuneration for the labour and outlay attendant upon the publication of a translation.

282. It is a question whether this change should be effected by any alteration in our law, or whether it should be carried out by amendment in the terms of the convention with France. In considering this question it is, of course, to be borne in mind, that although the Act of the 15th and 16th years of Your Majesty's reign was passed specially with reference to the convention then recently concluded with the French Republic, it was designed also to enable Your Majesty to enter into engagements with other States. If, therefore, our law should be altered, and the time for the duration of the right of translation should be fixed by Act of Parliament, that time must be the same in all cases, whatever may be the nationality of the author, and whether a similar period can or cannot be secured for Your Majesty's subjects in his country. Reciprocity must therefore to that extent be sacrificed. We are, however, inclined to think that uniformity, and therefore certainty, in the duration of the right of translation is more desirable than strict reciprocity. At present, before it can be known whether a translation has copyright, and whether a right of translation is subsisting in the author, inquiry must be made as to the nationality of the translator, whether the translation was published in this or some other, and what country, by what convention (if any) it is governed, what is the duration of the right of translation under that convention, and whether the period is still subsisting.

283. The necessity for these inquiries is obviously objectionable, and the existence of the right of translation must frequently be difficult to ascertain. It appears to us that it will be better to sacrifice reciprocity in some cases than to perpetuate the evil. We have, therefore, determined to recommend, that if an author publishes an English translation of his work in this country, within the three years during which we have proposed to reserve the right of translation for him, his work shall be protected against unauthorised translations for a period of ten years from the date of publication of such translation.

284. With regard to the right of publication or representation of translations of dramatic pieces, we have shown that not only are the same formalities required as in the case of the right of translation of books, but that the publication of the authorised translation must be within three months of the registration of the original work.

285. Monsieur Gavard, on behalf of the French Government, proposed an extension of this term to three years, on the ground that the time allowed was too short to ascertain if a piece would prove a success, and be worth translating. Questions 1934–1943.

286. If the condition of publishing a translation as explained in paragraph 273 be retained, we are inclined to think that the period of three months should be considerably extended. We have, however, been told that the translation of the piece, now required to be made, registered, deposited, and published is costly and wholly useless. It appears that the translation required to protect the right is a literal translation, which is utterly worthless for stage purposes, and that without alteration and adaptation, translations of foreign plays could not be represented on the British stage. Questions 2623–2634.

287. In connexion with this subject we ought to remark, that until recently there was another objection on the part of the French government to our law. This had reference to the practice which was permitted of imitating and adapting French plays for the English stage, and to the 6th section of the Act which was passed in the 15th and 16th years of Your Majesty's reign.

288. Although the original of a French play might have obtained copyright in this country, and although the author might have secured the right of translation, he was not protected against imitation and adaptation. Indeed, the Act expressly states in the 6th section, that nothing therein contained should be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

289. To remove this objection it was enacted that it should be lawful for Your Majesty, in any Order in Council made for the purpose of extending protection to translations of dramatic pieces first publicly represented abroad, to direct that the 6th section of the above-mentioned Act should not apply to such dramatic pieces, and that thereupon the Act should take effect as if the 6th section were repealed. This provision was considered satisfactory. 38 Vict. c. 12.

290. We propose, however, to put the right of translation and adaptation of dramatic pieces and the right of performance of translations and adaptations on the same footing as the right of translation of literary works. We recommend, therefore, in the first place, that there shall be no obligation to publish a literal translation, in order to acquire these rights, but that, in countries with which international treaties exist, a right to translate and adapt to the English stage shall be reserved to the foreign dramatist, for a period of three years from publication or first public representation of the original work. We recommend also, that if an authorised translation or adaptation be published in this country within the three years, the dramatist's work shall be protected against unauthorised translations, adaptations, and imitations for a period of ten years from publication or first public representation in this country of the translation or adaptation.

291. Independently of the rights of translation and adaptation, the copyright of the translator or adapter in his translation or adaptation and the right of representation have to be considered. With regard to these points, translators, whether of plays or books, and adapters of dramatic works to the English stage should, in our opinion, have the same rights as authors of original works; and the right of representation on the stage of a translation or adaptation should endure for the same term as if the translation or adaptation were an original work.

292. If, however, our proposals should be adopted, some provision will be required for cases in which the foreign author, whether his work be a book or a play, is not himself the translator or adapter. The author rarely translates or adapts his own work, and we therefore think that all rights in authorised translations and adaptations made for a foreign author should be regarded as made by him, but that if they are made by a British subject for himself, under a license or assignment, all rights, whether of copyright or of representation, in respect of such translations and adaptations, should belong to such British subject.

293. We may add, that if a foreign author fail to take the necessary steps to secure his copyright within the three years, it should be open to any person to secure copyright in any translation or adaptation he may make.

294. In concluding our labours we beg leave to express our hope that we have duly considered and made our report upon all the matters intended to be referred to us by Your Majesty's Commission. We are conscious that there may be points of detail upon which we have not touched, but these, if noticed by us, would have lengthened our Report, without, as we think, affording any substantial assistance to those upon whom the duty of legislating may hereafter devolve.

All which is humbly submitted to Your Majesty's gracious consideration.

Dated the 24th day of May 1878.

JOHN MANNERS. (L.S.)
Subject to my Dissent from a part of paragraph 150.

DEVON. (L.S.)

CHARLES LAWRENCE YOUNG. (L.S.)
Subject to my Note appended hereto.

H. T. HOLLAND. (L.S.)

JOHN ROSE. (L.S.)
Subject to Dissent and Separate Report.

H. DRUMMOND WOLFF. (L.S.)
Subject to my Separate Report and Dissent from part of paragraph 150.

J. F. STEPHEN. (L.S.)
Subject to a Note appended hereto.

JULIUS BENEDICT. (L.S.)

F. HERSCHELL. (L.S.)

EDWARD JENKINS. (L.S.)
Subject to my Separate Report.

WM. SMITH. (L.S.)
Subject to my Dissent from a part of paragraph 150.

J. A. FROUDE. (L.S.)

ANTHONY TROLLOPE. (L.S.)
Subject to my Note of Dissent as to paragraphs 153 and 154.

FREDERICK RICHARD DALDY. (L.S.)
Subject to my Note of Dissent as to paragraphs 147 and 154.

Dissent from the Report of the Commissioners, relative to Registration of Copyright.

1. We are unable to concur in recommending the transference of registration from Stationers' Hall to a Government office.

2. With the improvements of the present system suggested in paragraphs 143 to 148 inclusive, we are of opinion that the work of registration might safely and advantageously continue to be done at Stationers' Hall, and we are not disposed to deprive an ancient company of public functions which it is willing and able to discharge.

JOHN MANNERS. (L.S.)
H. DRUMMOND WOLFF. (L.S.)
WM. SMITH. (L.S.)

Note appended to the Signature of Sir Charles L. Young.

With reference to the term for which copyright should last, I agree with Sir Louis Mallet in thinking that the term should be "a fixed number of years to be reckoned from the date of registration." I am of opinion that such a limitation is the most simple, reasonable, and practical; and I adopt his suggestion that, in the case of books, a period of 50 years is a proper time for a work to be protected. I am further in accord with Sir Louis Mallet in considering "that the works of a British author, "wherever they are first published, should be entitled to the same benefits, remedies, "and privileges as they would be entitled to under the existing Imperial Act if they "had been first published in the United Kingdom."

With reference to the dramatisation of novels, I am inclined to think that the conclusions arrived at in paragraphs 80 and 81 of the Report should be modified. I do not see why a novelist should have an absolute right of preventing his fiction being presented to the public in a dramatic form—a right which the recommendations of these paragraphs appear to give him,—and therefore I venture to suggest that at the expiration of five years from the date of registration of a work of fiction, it should be open to any dramatic author to take such work (if not already dramatised by the novelist, or with his consent) and adapt it for representation on the stage, on the condition of his paying a percentage of the profits to the original author.

I think that paragraph 88, referring to newspapers, should have drawn attention to the case of weekly journals which, in the present uncertain state of the law, are in a peculiarly difficult position. Original articles so published, and having nothing to do with ordinary news or politics, ought, in my opinion, to be amply protected from unauthorised and contemporaneous re-publication.

CHARLES LAWRENCE YOUNG. (L.S.)

Separate Report by Sir John Rose, Bart., K.C.M.G.

1. I am unable to concur in the 225th and 226th paragraphs of the Report, which recommend the exclusion from one part of the Empire of works published with the consent of the author in any other part.

2. While no change, calculated even remotely, to affect the interest of authors unfavourably, ought to be lightly proposed by way of experiment, it seems difficult, on principle, to reconcile the exclusion from Great Britain of copies published in a colony, with the recommendation that publication in any part of Her Majesty's Dominions shall confer copyright throughout those dominions, a privilege now attainable, under the existing law only on condition of first publication in the United Kingdom.

3. The aim of the branch of the Report on colonial copyright is undoubtedly to place the question rather on an Imperial than a local footing; to abolish restrictions as to local publication, and to encourage the manufacture and free circulation of books (no matter where published) in all parts of the Empire. Its object is also to provide in favour of the author, not only a more extended field of competition for the publication

of his works, but at the same time to ensure him new and effectual means of protection in all parts of Her Majesty's dominions against unauthorised copies. In return for these advantages it seems not unreasonable to require that there should be some equivalent in favour of the public, and I cannot but think that the anticipated injury to the author from the importation of colonial copies into Great Britain (arising from the fear that English publishers would not make as favourable arrangements with him as they would were a monopoly of the English market secured to them) is illusory.

4. It is argued that the author, considering this to be a real danger, and having the remedy in his own hands, would not consent to colonial publication, were copies printed there allowed to come to Great Britain; but that if he refused he would be liable to have his book published in the colony subject to a royalty—a plan less to his taste and advantage than arranging with a publisher of his own choice there. One answer to this objection, however, is that he may supply the colonial market with cheap editions published in England—the right to print on a royalty being only recommended in case the colony is not supplied with editions suitable to its circumstances at a reasonable price. But it is said, there is still the fear that any cheap editions so exported for colonial use would come back to the United Kingdom. This would only be the case, if a taste for cheap, as opposed to dear, editions became general and marked here; and if it did so, it seems difficult to justify an artificial rule which would repress such a taste by restricting the circulation of a book printed in Great Britain to a particular place, while copyright was at the same time secured to that book throughout the Empire. It does not seem defensible that the authority of Parliament should be invoked to debar Her Majesty's subjects residing in the United Kingdom from obtaining—should they desire it—literary productions on the same terms as those who reside in a colony. Nor does it seem consistent to sanction a rule by which English copies may be imported into a colony, while colonial editions are precluded from admission to the United Kingdom; for it must be noted that Parliament has already (vide the Canadian Copyright Act) sanctioned the principle that colonial copyright shall not exclude English editions, but only foreign reprints from the colony. It is to be noted also that the recommendation contained in the 226th paragraph of the Report, that English copies shall not be admitted to the colony, is limited to the case of books "first published in the colony," but does not extend either to the case (which would undoubtedly apply to the great majority of books) of first publication in the United Kingdom, nor to the case of publication on a royalty, within the colony. In both these cases English editions may be sent to the colony, and the proposed exclusion of colonial editions from the United Kingdom seems at variance with the principle so applied.

5. While the effect of high-priced editions in restricting the benefits of co-temporary literature in Great Britain, may be to some extent mitigated by the facilities afforded by circulating libraries and book clubs, I cannot but think it to be an object of serious public concern to avoid interposing any unnecessary obstacles to the enlarged dissemination, as well as to the permanent acquisition, of literary works, by the masses, on terms within the reach of their means.

6. So long, however, as the taste and habits of readers in the United Kingdom induce them to prefer the present expensive editions, it is hardly within the bounds of probability that colonial enterprise could for many years to come compete, as respects editions of that character, with English publishers, with their larger capital, cheaper labour, intimate knowledge of the markets, and long-established connexions with circulating libraries, &c. Should, however, the demand for editions, different from those now supplied by the English publishers, at any future time become so marked and general as to induce colonial publishers to attempt to supply it, the English publisher would still be placed in a much more advantageous position for meeting the demand that any colonial publisher could be. Nor must it be forgotten that English publishers may form connexions and make their own arrangements with publishers in the colony, or establish branches of their business there, and so regulate the kind of editions suitable for each market.

7. Looking at the subject practically, the fear of competition appears therefore to be groundless, except on the hypothesis of English publishers refusing to meet a pressing public demand for cheap editions, such as an independent colonial publisher, fettered by no English connexions, could supply.

JOHN ROSE. (L.S.)

Separate Report by Sir H. Drummond Wolff, K.C.M.G., M.P.

MAY IT PLEASE YOUR MAJESTY,

THOUGH concurring generally in the Report now submitted to Your Majesty, I am unable to support all the recommendations affecting colonial and international copyright.

While anxious to establish for writers to the fullest possible extent, and in all countries, a right of property in their works, I am of opinion that, this protection once secured, the traffic in books, as a manufactured commodity, should fall within the ordinary laws of political economy.

At present such is not the case. The existence of copyright is in this country made use of to maintain a system which has and can have no analogy in any other trade—viz., that of circulating libraries—by which means the price of books, to the great detriment of the reader and purchaser, is artificially kept up at a rate far beyond the cost of production.

So long as copyright is confined to the United Kingdom it will perhaps be impossible to alter this system, without some practical interference between a writer and his publisher, or between the publisher and the public, which could not be recommended. But when the Government and the Legislature are called upon to obtain for English authors the benefit of copyright in other countries, it is clear that the public at large are entitled to some consideration in the new arrangements. Otherwise the anomaly would be created, under legislative sanction, of copyright books being sold in the United Kingdom alone, at higher prices than those demanded for the same article in America, or in any other country with which international copyright might be established.

I would, therefore, propose that no restriction should be maintained on the importation, into the United Kingdom, of books published or sold with the author's sanction in the colonies or in foreign countries where the British author now enjoys, or may hereafter become entitled to, copyright.

I venture to submit this recommendation to Your Majesty in the full belief that, by the wider sale of early editions, at low prices, the author would reap increased advantage both in reputation and in pecuniary returns, while the reader and student might, by the purchase of new books, pursue their studies under far more favourable conditions than are compatible with the hurried and superficial perusal of works hired, for a few days, volume by volume, from a subscription library.

Question 3928, pp. 203–4, 3930, pp. 204–206, 4983–4997, 5034, and 5699.

All which is humbly submitted to Your Majesty's gracious consideration.

H. DRUMMOND WOLFF. (L.S.)

Separate Report by Sir Louis Mallet, C.B.

MAY IT PLEASE YOUR MAJESTY—

1. It is with much regret that I find myself compelled to dissent from some of the most important recommendations of the foregoing report, and to submit the conclusions at which I have arrived, after a careful consideration of the questions referred to this Commission, and of the evidence which it has taken, for I am conscious that my personal opinions, unsupported by those of my colleagues, can carry little weight.

2. I should have been content, if I had been able to concur generally in the practical conclusions of the Commission, to avoid all reference to the abstract principles upon which the law of copyright ultimately rests; but I feel that it is impossible adequately to explain and justify the course which I have taken in dissenting from those conclusions, without adverting to the reasons which have obliged me to adopt it.

3. I do not consider that a copyright law, or, in other words, a law which enables a copyright owner to prevent other persons from copying published works, rests upon the same grounds of public expediency as those which justify the recognition by law of proprietary rights generally. Nor does it appear that in modern times it has been ever so regarded by the legislation of the countries where it exists.

4. The right conferred by a copyright law derives its chief value from the discovery of the art of printing; and there appears no reason for giving to authors any larger

share in the value of a mechanical invention, to which they have contributed nothing, than to any other member of the community. It is not even claimed that an author should have a right of property in ideas, or in facts or in opinions. It is impossible ever to ascertain or to define how far these are the product of his own thought or of his own labour. It is merely the form in which they are presented for which this claim is advanced, and for this all that is in principle required appears to me to be that he should be protected in any contract which he desires to make once for all in the original publication of his work.

Questions 5567, 5573.

5. Some of the witnesses whose evidence has been received by Your Majesty's Commission have urged the claim of authors to perpetual copyright, on the ground that the right of an author to property in his published works is as complete and extends as far as the right of any person to any property whatever.

Questions 228 and 5580–81.

6. If this analogy were admitted, it appears to me that it would be difficult to dispute the claim of an author to perpetual copyright; but I venture to submit that the claim of an author to a right of property in his published works rests upon a radical economic fallacy, viz., a misconception of the nature of the law of value.

7. The necessity which is recognised in all civilised societies of conferring rights of private or personal property, arises from the limited supply of that for which there is an unlimited demand. It is only from a limitation of supply that there can be any value in exchange.

8. But supply may be limited either by natural or by artificial causes.

9. Wherever supply is limited by natural causes it is necessary in the public interest to limit the demand, by investing the possessor of the subject of it with proprietary rights, for without them the progressive increase of an unlimited demand operating on a limited supply would lead to the dissolution of society. To whatever extent these rights partake, as they often must, of the character of a monopoly, they do so in virtue of attributes derived from the nature of things, which may be regretted, but must be accepted as inevitable, and which the law is therefore compelled to recognise.

10. There is no such necessity in the case of those objects which are useful or necessary for mankind of which the supply is unlimited. In that which is absolutely unlimited, in the air, in sunlight, in the forces of nature, such as heat, electricity, magnetism, &c., there is no natural exchangeable value, and therefore no property; in that which, although not absolutely unlimited in itself, nevertheless exceeds all probable or possible demands in exchange, there can be little or no value, and little or no property, *e.g.*, in the sea, in the water of large or unfrequented streams, in the game of a wild country, or in the fish of the sea. It is in fact scarcity which creates value, and renders property necessary. Property exists in order to provide against the evils of natural scarcity. A limitation of supply by artificial causes, creates scarcity in order to create property. To limit that which is in its nature unlimited, and thereby to confer an exchangeable value on that which, without such interference, would be the gratuitous possession of mankind, is to create an artificial monopoly which has no warrant in the nature of things, which serves to produce scarcity where there ought to be abundance, and to confine to the few gifts which were intended for all.

11. It is within this latter class that copyright in published works must be included. Copies of such works may be multiplied indefinitely, subject to the cost of paper and of printing which alone, but for copyright, would limit the supply, and any demand, however great, would be attended not only by no conceivable injury to society, but on the contrary, in the case of useful works, by the greatest possible advantage.

12. The case of a book is precisely analogous to that of a house, of a carriage, or of a piece of cloth, for the design of which a claim to perpetual copyright has never, I believe, been seriously entertained.

As is stated by Mr. Farrer, the Secretary to the Board of Trade, in a paper of remarks on the evidence of some of the witnesses, which was circulated for the information of the Commission,—

"Professor Huxley, and I think Mr. Spencer and Professor Tyndall agree with him, states in the strongest and clearest terms his view that the foundation of copyright law is the absolute right of the author once and for ever to the form in which he has uttered his thoughts, and he ingeniously suggests that this law is merely a convenient substitute for a sale by the author of each copy, with a condition attached that the purchaser shall not copy. It is needless to say that this suggestion is as fictitious as it is ingenious. A chattel going about the world with an implied covenant by every one, who with or without consideration gets possession of it, that he will not imitate it, would certainly be a legal novelty. The real history and fact of copyright law are very different. As to the absolute and perpetual right, not only has it never been recognised as a matter of fact, but analogies are against it. Words, thoughts, and actions when uttered or done, pass, as a general rule, into the common domain, and it is thus that human life is carried on. In those productions of the

human mind which are most essentially original, and which are at the same time the most useful to mankind, in such things as the moral doctrine of the sermon on the mount, the intellectual theory of gravitation, of evolution, or of the conservation of energy, there is and can be no exclusive right. Nor, again, is there, as a matter of practice, any exclusive right in more ephemeral matters, *e.g.*, in the news, information, or articles of a newspaper, or in a political speech. It is only when put into the particular form of a book, or a lecture, or a picture, that an exclusive right over the productions of the human mind has been recognised, and that with certain limitations and for a certain specified purpose."*

13. The policy, then, of copyright laws must be sought in another order of ideas, and be made to rest on some other ground than that which is the foundation of rights of property in whatever is subject to a natural limitation of supply.

14. I suppose that the presumption of a copyright law is that it is only by conferring a monopoly for a term of years on an author that sufficient inducement can be afforded to literary effort, and that without such form of protection the literature of a country would suffer, either from a diminished supply or a deterioration in quality.

15. From this point of view the question becomes a purely practical one, viz., whether any special interference by law is required to ensure for a community the best possible literature at the cheapest possible price.

16. The general prevalence of copyright laws in civilised countries appears, no doubt, to afford primâ facie evidence that they have been found desirable in the interests of literature, but experience has so often shown that legislation of a kindred kind has been due rather to the influence of the producing than to that of the consuming classes that this evidence cannot be accepted as conclusive.

17. Under existing circumstances there can be of course, as yet, little experimental proof to adduce as to the effect of giving free play to the laws of supply and demand with respect to the published works of an author; but it cannot, I think, be questioned that even if the effect of the present copyright law of this country has been less injurious than I believe it to have been to the interests of authors, it has entirely failed in securing for the public an adequate supply of literature.

18. It may indeed be said without exaggeration that new books are a luxury, the possession of which is confined to the wealthy class, and that they are placed by their price altogether beyond the reach of the great bulk of the people.

19. It may no doubt be argued that this result is due to the inefficiency of demand, and not to the existing restrictions of supply; but there seems to me to be no reason for assuming that literature forms an exception to the rule, which experience has shown to be generally applicable to whatever possesses exchangeable value, viz., that under a system of unrestricted competition the interests of the producer, as well as those of the consumer, are best secured.

20. I believe that the present state of public opinion on this subject is to be attributed to a totally inadequate conception of the literary requirements of an educated community; and I think that it might be found that if the supply of literature could be largely increased, so as to bring the price within the reach of the masses of the people, it would react upon the demand to an extent which would afford possibilities of literary profit far exceeding anything which has hitherto been attained or imagined.

21. The exchangeable value of a published work depends, not on its cost of production, but on the relation of supply and demand, and I believe that it will always be in the power of the first publisher of a work so to control the value by a skilful adaptation of the supply to the demand as to avoid the risk of ruinous competition, and secure ample remuneration both to the author and to himself.

22. It is doubtless true that this would not be possible in the case of unknown authors, unless their works were of a nature which possessed wide and immediate interest, but however great the intrinsic value of the productions of the class of literary men who might thus suffer, there appears to be nothing in which their position

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* [Foot note by Mr. Farrer to the above paragraph.] "It is to such views as the above concerning the absolute and indefensible rights of authors and artists that we may trace some of the proposals which have been actually made to this Commission, *e.g.*, the proposal that an architect who has given a design for a house or a cottage shall have the power to prevent anybody from ever building a similar house or cottage; or the still more extravagant proposal that an artist shall without special stipulation retain a right to prevent each and every subsequent owner of his pictures from copying, engraving, or photographing them, and shall have the power to seize any copies of them without warrant, and to treat the holder of such copies as a criminal unless he can explain where he got them. It is the insistance by English authors on these views of their own rights which has embittered the discussion of the subject of copyright with Canada and with the United States."

This subject is treated at length in a further MS. paper by Mr. Farrer, which as a member of the Commission, I have had the advantage of seeing.

would differ from that of those in other professions and occupations in the early stages of their career, and who have not succeeded in establishing a public reputation.

Questions 1280–1283, 1298–1307, 1379, 1380, 2664–2671.

23. I have been much impressed by the evidence received by the Commission on the operation of the system which prevails in the United States of America. In that important market for English books, although there exists no law which protects a foreign work from republication, it has been found in practice that it is the interest of publishers to make arrangements with British authors of eminence, by which they receive a remuneration which, if not equal by way of a per-centage on profits to that which they receive from the publishers of this country under the copyright law, is, nevertheless, of a substantial kind, and sometimes, in consequence of the larger circulation of their works at a cheaper price, larger even in amount than that which they derive from their copyright editions at home.

24. Mr. Herbert Spencer in his answer to question 5269 states that his American publisher pays him as well as American authors are paid, in spite of the protection afforded them by a copyright law, and that there is no danger of the issue of rival editions.

See Appendix, pp. 377–405.

25. I further gather from the price lists of English and American books, given in to the Commission by Mr. Farrer, in connexion with his reply to question 5870, the following facts :—

1. That where there is copyright the editions are far fewer and less varied than where there is none.
2. That where there is no copyright, the earlier editions are, as we know, cheaper than where there is copyright.
3. That where there is no copyright, not only are there cheaper editions than where there is copyright, but there are also much dearer editions, thus showing that natural demand, without monoply, will produce *editions de luxe;* and that the demand for such editions is stimulated, rather than checked, by simultaneous cheap editions.
4. That where good books are free from copyright, *e.g.* Wordsworth's Poems, the English editions are still more numerous and cheap than the American editions, in spite of duty.

26. This is, however, a question of the future, and for a time when education shall have been so widely and generally diffused as to have brought within the reading classes the great body of the people. Under any circumstances in a matter which affects so large and valuable a property, and so many vested interests as have been created under copyright laws, it would be both unjust and inexpedient to proceed towards such a change as has been foreshadowed, except in the most gradual and tentative manner.

27. In venturing, therefore, to submit the foregoing remarks to Your Majesty, I have done so, not with the view of founding upon them any practical recommendation, but because I have felt it to be of great importance that the claims which have been advanced by some of the witnesses as to the abstract rights of authors should, on the occasion of a formal inquiry by a Royal Commission into the operation of laws which closely affect the highest interest of Your Majesty's subjects, not be allowed to pass unnoticed.

28. But setting aside this larger question, some of the witnesses who have been examined have given evidence on a proposal which has been frequently a subject of public discussion, viz., the expediency in the interests of literature of substituting a royalty system for the present form of copyright.

29. This proposal is described in paragraphs 16–22 of the Report of the Commission, but it is not recommended for adoption.

30. I concur in this conclusion, because I do not think that so great a change in the existing form of copyright as the adoption of this proposal would involve, can be safely attempted in the present state of public opinion on this subject, but I am, nevertheless, of opinion that the royalty system possesses so many advantages, that it should be kept in view as the object of future reforms.

31. On the assumption that some special legislative machinery is necessary to secure to authors an adequate remuneration for their labours (an object which is on all hands admitted to be essential in the interests of literature, and therefore in those of the community at large), it seems possible that this result may be better attained by a system of royalties than by the present form of copyright law, which gives to the author the exclusive right of publication for a term of years.

32. A monopoly should never be created with the view of remunerating a person or a class, if that object can be effected without it; the profits of authorship are one thing, and

the profits of publication another; and even if some form of monopoly is necessary to protect the first, it is equally desirable, in the interest of the author and in that of the public, that the profits of publication, which are purely of a commercial character, should be regulated and controlled by the ordinary laws of trade.

33. The only method which has been suggested by which the interest of the author can be effectually disengaged from that of the publisher is the royalty system, and it is contended that under the operation of free competition between publishers, the author and the public would alike be benefited,—the first by an extended circulation of his works, and the second by a reduction in their cost. Question 2714.

34. The royalty system has the further advantage of affording, as it seems to me, the best means by which international copyright can be systematically and usefully extended.

35. In the two great markets for English literature, the United Kingdom and the United States of America, the existing system has been described as one of "monopoly tempered by piracy." The British law only extends the protection of copyright to an American author, on the condition that the first publication of his work takes place in the United Kingdom, while unless he is resident in the United States, a British author, even on a corresponding condition as to publication, can secure no copyright at all.

36. The people of the two countries, therefore, obtain between them an international supply of literature, partly contributed by English and partly by American authors, under the operation of laws which afford to them a partial and unequal international protection, apparently devised on the part of England with an especial regard to the interests of publishers, and on the side of the United States rather with the view of securing a supply of cheap and abundant literature to the public.

37. But whatever the cause, it is doubtful under these circumstances, whether, so long as the parasitic growth of the publishing interest is so inextricably intertwined, as it is, with that of the authors, it would be right to create an international monopoly, which, however advantageous to a particular class, could hardly fail to enhance unduly the cost of literature to the people of the two countries.

38. It would therefore follow that the adoption of the royalty system would greatly simplify and facilitate agreements with foreign states, by enabling governments to reconcile the just claims of authors to international protection with the legitimate interests of the public at large.

39. The most serious objection which I have heard against the royalty system, is that which has been urged by several of the witnesses, viz., that if power were given to a second publisher to issue a reprint on payment of a fixed royalty, it would effectually prevent the undertaking of expensive works by a first publisher. Questions 4447, 4730–4731.

40. But it seems to me that the remarkable instance, quoted by Mr. Spencer, of King's International Series, the publisher of which can afford to give 20 per cent. of the retail price to the authors without fear of being undersold in the American market by rival editions, furnishes strong evidence against the validity of this objection. Question 5257.

41. It is difficult to admit that a publisher, who can afford to give 20 per cent. to an author without fear of being undersold by a rival publisher, who is not obliged to pay anything, could be deterred from his undertaking by a system which compelled his rival equally to pay 20 per cent. to the author.

42. On the subject of King's International Series, I find the following observations in the paper by Mr. Farrer, to which I have already referred :—

"This seems to be a most praiseworthy undertaking. The books are published in a most convenient form, with good but not extravagant print and paper; they are written by very eminent men on very interesting subjects, and they are well illustrated. The price is moderate, and the remuneration to the authors, viz., 20 per cent. of the retail price, is said to be liberal as compared with the ordinary custom of the trade. These books are all published in precisely the same form, in fact from the same stereotyped plates; both in England and in America. Some of them have, I presume, copyright in America, being written by American authors; most of them, being written by European authors, have not. The price seems to vary only with the size and character of the book; that is, according to the cost of production. None of these books even come back from America to this country, at least I believe not. And what is the reason? Not simply the law which prevents their so doing, but the fact that they actually cost more in America than they do in England, by amounts varying from one half to one third. I will subjoin a list giving the prices in America and in England respectively.

"The inference I draw from this is, that that if books are published at a reasonable price, even though authors be well remunerated, it needs no law against the importation of foreign reprints to secure their sale.

"Compare this with the case of 'Macaulay's Life.' There a volume which costs much less than 4*s*. to produce is sold in England at 16*s*. The same book is sold in America at 9*s*. No wonder that in the case of such books as this a law is wanted to keep out foreign reprints.

"List of Books in King's International Series, as published in England and by Appleton of New York, with the prices in both countries.

—	Price in England.	Price in United States.
		$ cts. s.
*Mind and Body. Bain - - - -	3/4 published at 4/-	1.50=6
*Sociology. Herbert Spencer - - -	4/2 „ 5/-	1.50=6
Chemistry. Cooke, of Harvard University -	4/2 „ 5/-	2.0 =8
*Conservation of Energy. Balfour Stewart -	4/2 „ 5/-	1.50=6
Animal Locomotion. Pettigrew - - -	4/2 „ 5/-	1.75=7
Responsibility in Mental Disease. Maudsley -	4/2 „ 5/-	1.50=6
*Science of Law. Amos - - - -	4/2 „ 5/-	1.75=7
Animal Mechanics. Marey - - -	4/2 „ 5/-	1 75=7
*Descent and Darwinism. Schmidt, Strasburg -	4/2 „ 5/-	1.50=6
*Chemistry of Light. Vogel, Berlin - -	4/2 „ 5/-	2.0 =8
Fungi. Cooke - - - - -	4/2 „ 5/-	1.50=6
Life and growth of Language. Whitney - -	4/2 „ 5/-	1.50=6

"The dollar is taken as equivalent to four shillings.
"The United States books are from one third to one half dearer than the English books.
"* Those by foreigners have no copyright."

43. I now proceed to refer to recommendations of the Commission, in which I am unable to concur, under the three separate heads of Home, Colonial, and International Copyright, and to state my reasons for dissenting from them.

Home Copyright.

44. First as regards the term of copyright:—

45. The proposal in the Report is, that copyright shall last for the life of the author of the subject of the copyright, and for 30 years after his death; and that, except in certain cases, where it would be impossible or inconvenient to measure the term by the author's life, copyright shall be of equal duration whether the subject be a book, a play, a picture, or any other species of work for which copyright is given by law.

46. I shall in the first place endeavour to show that the reasons assigned for the proposed term are not so solid as at first sight they appear to be; then I shall point out some objections to the term to which sufficient weight has not in my opinion been attached; and lastly, I shall suggest another term in lieu of that proposed in the Report.

47. The reasons assigned for the term recommended are four in number:—1. That better provision may be provided after the death of an author for his family;—2. That all the copyrights of the same author may expire at the same time;—3. That the termination of copyright may be certain and easy to ascertain;—4. That nearly all other countries have adopted the author's life and a fixed number of years after his death as the measure of copyright.

48. I do not think that these reasons possess the importance which has been attached to them.

49. As regards the first reason, I would observe that in all cases in which an author sells his copyright no benefit from the change will accrue either to the author or his family. We have been told by witnesses that publishers will not give more for a copyright if it has longer than 28 years to run than if it were limited to that time. If therefore the proposed change should have the effect of lengthening a copyright, the publisher who purchases it will get the benefit and not the author who sells it.

Questions 310, 975.

50. Assuming however that a copyright is not sold, will the family have better provision after the author's death? In few cases only; for it is an admitted fact that the effect of the change will be to decrease the term in the case of all books written near the end of the author's life—that is, in the case of all books written at the time when authors often write their best works; that the length of copyright will be nearly the same in the case of all books written about the middle of life; and that the term will only be extended in the case of books written early in life. These copyrights, moreover, are those which are more often sold, for authors, we have been told, who have established their reputation rarely sell; but assuming that these copyrights are not sold, they alone are the copyrights from which authors and their families could derive any benefit from the change proposed.

Questions 2882–2884.

51. As to the second reason, there can be no doubt that if the proposed term be adopted all copyrights of the same author will expire at the same time. I, however, fail to see any great advantage that will arise from that circumstance. The objection

on this head to the present term is, that as the copyrights in different works by the same author generally terminate at different times, his earlier works can be reproduced by publishers generally before his later works are out of copyright; and thus the market may be stocked with the non-copyright works while it may be impossible, or at all events difficult, to buy an edition of his works complete. This certainly may occur, but in the case of works of value the event is rarely likely to happen; for if there is a demand for the books, the owners of the existing copyrights, who can republish the whole, will rarely fail to supply the market with the editions required.

52. As to the third reason, I think it very doubtful if the termination of copyright will be any more certain or easy to ascertain than it is under the present law. In the case of an author or artist of celebrity it will no doubt be generally well known if he is living or dead, and, if he is dead, it will not be difficult to ascertain the date of his death; but among the multitude of writers, musicians, painters, engravers, and others upon whose lives copyright will depend, how many will live and die unknown,—except to their immediate friends, who will be the very persons to sue anyone who may infringe their copyrights,—and how many will go abroad, so that their lives and deaths will become matters of uncertainty. If to this it be replied, that should anyone wish to copy a work it will be his business to find out if the author has died and if the copyright has expired, it may be answered that the change in the term will in that respect produce him no benefit, for it is his business now to find out if the copyright has expired; and though the date of publication may be somewhat uncertain it may generally be ascertained approximately.

53. As to the fourth reason, even though it is the fact that most other nations have adopted the life of the author and a fixed number of years after his death as the measure for copyright, I think that slight benefit, if any, will arise on that account from our adopting a similar term. It seems to be thought that the adoption by us of a similar term will facilitate the making of treaties with other powers; but I do not see why it should. If all other countries had a uniform term it might be desirable for us to adopt the same;—but they have not. The variation in the number of years after death, in the terms adopted by continental states, is almost as great as the number of the nations which have a copyright law. Germany alone has adopted the term proposed for this country, viz., life and 30 years; and it is to be remarked particularly, that in the United States the term is only 28 years, and that that period commences from the date of recording the title of a work.

See the general Report, paragraph 39.

54. I now wish to point out some objections to the proposed term, to which I think sufficient weight has not been given.

55. The first objection is that which was made by Lord Macaulay, that if the term for copyright should be the life of the author and a fixed period after his death, his earlier and possibly inferior works will be protected for a longer period than his later and more mature works.

Question 2897.

56. The second objection is that if an author should publish his work—a work, it may be, of great value, which has occupied many years in writing—shortly before the close of his life, it will be endued with less copyright than it would under the present law (that is, 42 years from the date of publication), and his family will be less well provided for than they are at present.

57. The third objection is that the term will in many cases be unnecessarily long. Thus, if a book be published when the author is 25 years of age, and he should live to be 70, the copyright will last for 75 years. Under the present law the copyright would last for 52 years only.

58. The fourth objection is that copyrights under the proposed law will be extremely uncertain and variable in duration, and much longer protection will attach to the works of one author than to those of another. If, for instance, two men, aged 25, write books, and one dies at 30 years of age while the other lives to 70, the copyright of the former will last for 35 years only, while that of the latter will last for 75 years.

59. The fifth objection is that the life of the author, or artist, and a term of years is so unsuitable for copyright in some cases, that important exceptions to the system are absolutely necessary. I refer to anonymous works, works published after the author's death, encyclopædias, and photographs, for all of which separate provision is proposed in the Report of the Commission.

See the general Report, paragraphs 41 and 119.

60. Independently of this consideration, the proposal is, in my opinion, objectionable, because it suggests that in the case of photographs the copyright is to start from the date of publication, a date which we have been told it is frequently difficult to fix in the case of a book, but which, it seems to me, will be far more difficult, if not impossible, to fix in the case of a photograph. It is also, in my opinion, objectionable

on the ground that it creates a difference between photographs and anonymous books; that is to say, that while it is proposed that copyright in anonymous books shall be for 30 years from deposit at the British Museum, copyright in photographs is to date from publication.

61. I cannot but think that the proposed term of life and 30 years is as unsuitable for copyright in the case of engravings, lithographs, prints, and similar works as for photographs, and that further exceptions must be made for them. In either case the work may be executed, not by the reputed artist, but by his assistant or workman, or by several assistants or workmen; or it may be brought out by a firm or a limited company. In such cases whose is the life upon which the copyright is to depend?

Paragraph 119.

62. Another proposal is, moreover, that if a photograph is originally published as part of a book, the term of copyright in it should be identical with the term of copyright in the book,—that is the life of the author, not of the photograph, but of the book, and 30 years.

63. I cannot think that a rule which requires so many exceptions to adapt it to practical purposes is likely to prove satisfactory in operation, and I cannot concur in recommending it.

64. These objections might, in my opinion, be obviated by the following arrangement. Instead of the existing terms of copyright, or that which is proposed in substitution for them, I would suggest as the term a fixed number of years to be reckoned from the date of registration.

65. As it is proposed to establish a system of compulsory registration, the act of registration, which will almost invariably take place as soon as a work is published, or as soon as protection is needed, seems an appropriate commencement for the right, and there can in my opinion be no better way of ensuring the registration of copyright works than by making the copyright originate from and depend upon registration.

66. In the case of books, 50 years appears to me, under present circumstances, to be a suitable time for a work to be protected, but I am not disposed to recommend any extension of the terms of protection afforded by the existing laws to other works which are the subject of copyright, as I think that the tendency of legislation should be rather toward sgreater freedom than towards greater restrictions; and I concur with Sir James Stephen in dissenting from the suggestion of the Report, that the right of dramatising novels should be confined to the authors, and from all the suggestions made for extending copyright in works of art, and rendering the remedies against persons who infringe existing rights more efficacious.

67. It will doubtless be objected to the proposed term for books that authors may outlive their copyrights, but that is merely a sentimental objection, and will happen in few cases; I do not see, moreover, that there can be any greater hardship in an author living to see his copyright expire than for a patentee to see the end of his patent. If the law secures for an author an opportunity of gaining the remuneration which may be necessary to ensure his best efforts, its end will have been, in my opinion, attained. And if a work should not prove so remunerative that in 50 years the author is still without a due reward for his toil, I think it may generally be assumed that the fault is in the work itself and not in the law.

68. If our recommendation that registration be made compulsory should be adopted, all assignments either for the whole or part of the term should be made in the register, and thus a complete history of every copyright would be preserved. To meet the case of anonymous works, they might be registered in the name of the publisher, who should, for the purpose of the register and assignments of copyright, be regarded as the owner of the copyright.

69. The advantages of these proposals may be summed up as follows:—

1. The term may be of sufficient length to give an author or artist a prospect of adequate remuneration, whether he happens to live long or to die early.
2. The greatest certainty will exist as to the facts, whether a work is copyright, when the copyright began, in whom it is vested, and when it will terminate, and the information will be obtainable with the greatest ease and at nominal cost.
3. The earlier and presumably inferior works of an author will not be protected for a longer period than his later and presumably superior works.
4. An author will obtain an equal length of copyright at whatever period of his life publication takes place; so that if he should spend a considerable part of his life in compiling a work he will not, through the accident of death soon after publication, obtain less copyright than he would under the present law, or than he would if he had a longer life.

5. The term can in no case be unreasonably long or be greatly in excess of the present term allowed for books.
6. The term of copyright will not be uncertain or variable in duration, and longer protection will not be afforded to the works of one man than to those of another. The excessive difference in the case of the works of different authors which will spring from the adoption of the proposed term of life and 30 years will be avoided.
7. No exceptional terms will be required, either for anonymus works or works published after the author's death, or for encyclopædias, or for photographs, engravings, or similar works, or for works produced by firms or companies.

70. Secondly, as to the place of publication:—

71. I see no reason, unless it be that of affording protection to British publishers, for withholding the privilege which it is proposed to confer upon the proprietors of works first published in any one of Your Majesty's Possessions, by paragraph 58 of the Report, from the subjects of Your Majesty who may be the proprietors of works first published out of the British Dominions; and I would therefore venture to recommend that the conditions under which alone it is proposed, in paragraph 61, that such copyright should be obtainable should be suppressed, and that the works of a British author, wherever they are first published, should be entitled to the same copyrights and to the same benefits, remedies, and privileges as they would be entitled to under the existing Imperial Act if they had been first published in the United Kingdom.

Colonial Copyright.

72. The only paragraphs in this division of the Report to which I think it necessary to advert, are those which relate to the admission of Colonial reprints into the United Kingdom, but this is a question, in my opinion, of such serious importance, that I feel it my duty to call special attention to it.

73. A correspondence is given in the Appendix to the Evidence, between the Colonial Office and the Board of Trade, which took place when the Canada Copyright Act, 1875, was under consideration, from which I am glad to find that although not ultimately adopted by Her Majesty's Government, the views of the Board of Trade, which is the department of that government especially conversant with copyright questions, were strongly in favour of the conclusion at which I have arrived, opposed as it is, I regret to say, to that of my colleagues. Appendix to Evidence, p. 373. Paper H. Question 5810.

74. I have carefully considered the evidence of those who are adverse to the introduction of these reprints into the United Kingdom, but I am wholly unable to concur in the recommendation of the Report that this restriction should be maintained.

75. It is stated in paragraph 184 of the Report that it must be admitted to be desirable that the literature of this country should be placed within easy reach of colonial readers, and that the Imperial Act should be modified to meet the requirements of colonial readers.

76. In this country the effects of the custom of publishing books in the first instance at a high price are no doubt mitigated as regards the upper classes by the facilities afforded by book clubs and circulating libraries; but it is, nevertheless, true that large classes of readers are at present debarred by the high price of books, from the use of modern English literature. If it is desirable that English literature should be placed within easy reach of colonial readers, it must be equally so in the case of the readers of the United Kingdom. Question 53.

77. The grounds of objection taken to the introduction of colonial reprints are, that their cheaper price would cause great pecuniary loss to the owners of copyright, disarrange the present system of trade, and prevent publishers from offering as much to authors for their works as they do now. But it seems to me, that as owners of copyright are not compelled to give their consent to republication in a colony, on which condition alone it is proposed that colonial reprints should be admissible into the United Kingdom, such persons will receive as favourable treatment as before the passing of the Canadian Copyright Act of 1875; and that it is impossible therefore to speak of a great pecuniary loss being thrown upon them; that, on the other hand, if their consent be given, it will be from the prospect of pecuniary gain, the effect of such publication in a reduction of price being more than counterbalanced by an extended sale of their works, both in the home and in the colonial markets. Report, para. 219.

78. To say that republication in a colony can only become profitable by the exclusion of colonial reprints from the United Kingdom, is to say that it is only by the sale of dear books in England that cheap books can be sold in a colony—in other words that

colonial readers can only be supplied with cheap literature if English readers are compelled to pay for it.

79. It appears to me impossible to recommend the retention of a prohibition which directly favours one portion of Your Majesty's subjects at the expense of another, which renders exile a condition of easy access by Englishmen to the contemporary literature of their own language, and causes England to be the only country in which English books are scarce and dear.

80. Much as I desire every legitimate extension of the profits of authors, I cannot disregard the claim of the public of this country, to derive some benefit from the extended area of protection afforded to authors by international and colonial copyright.

81. All measures which tend to increase the profits of the literary class ought to tend also to a corresponding reduction in the price of books. Such a reduction can only be brought about by throwing open the publishing trade to the greatest possible amount of competition, and I believe that the effects of this competition could hardly fail in the long run to reduce the price of books, and ultimately greatly to increase the profits of literary labour.

82. It has been stated that if this prohibition on the importation of colonial reprints into the United Kingdom were removed, authors would not avail themselves of the power of republishing their works in the colonies, and that the relief to the colonial reader, which it was the object of the Canadian Copyright Act to give, would not be obtained. I do not believe that this would be the case; on the contrary I think that if it were necessary for their protection, English publishers would make arrangements with colonial publishers, by which the wants of the public, both at home and in the colonies, might be reasonably met; but it is better that a law should be inoperative than that it should be unjust, and I cannot think that the existing prohibition can be maintained without great injustice to the public of the United Kingdom.

International Copyright.

83. On this branch of the question, I so far differ from my colleagues as to think it doubtful whether the interests of literature have hitherto suffered from the absence of a copyright treaty with the United States of America.

84. I am certainly of opinion that no such treaty is desirable, unless some substantial advantage can be secured by it, not only for British authors but also for the public at large, in both countries.

85. Such an object could only, as it seems to me, be attained by a considerable extension of the conditions which have hitherto been thought sufficient in concluding copyright treaties with foreign powers.

86. The following are among the main provisions which I venture to think should be considered essential in any treaty on this subject with the United States of America :—

1. That copyright should not be confined to works printed and published in the country where the copyright is given, but that printing and publishing should be as free as authorship.
2. That an author should not be allowed, as he is under existing Copyright Treaty Acts, to exclude from his own country editions which are published with his consent in the other country.
3. That, as is proposed in the foregoing Report in the case of the British colonies, a licensing system should be introduced, under which a work published in one country may be republished in the other subject to a royalty in favour of the copyright owner, due provision being made for its collection and transmission.
4. That no import duties on the importation of books into either country should be retained or imposed.
5. That the term of copyright should be assimilated in the two countries and considering the extended area of protection which such a treaty would grant for authors, that such assimilation should be made by a reduction of the term of copyright in the United Kingdom.

Question 1582.

87. There is one other question to which reference was made by Mr. Farrer in his evidence, and which appears to me to deserve consideration. I refer to the employment of the machinery of the Custom House for the purpose of enforcing the provisions of a copyright law.

88. It appears to me to be a hardship that every passenger landing in the United Kingdom should be liable to be searched, and his luggage to be examined, not with a view of protecting Your Majesty's revenue, which is a public object, but simply to prevent a possible infringement of the right of a private person, and that it would

be right that the copyright owner should be left to the same protection against foreign piracies as is afforded him against English piracies, by the ordinary process of law.

89. In conclusion I have only to state, that except as regards the questions to which I have referred in the foregoing remarks, I concur in the recommendations contained in the Report of the Commission.

All which is humbly submitted for Your Majesty's gracious consideration.

LOUIS MALLET. (L.S.)

Sir John Rose's Note.

I concur in the 45th to the 69th paragraphs inclusive of Sir Louis Mallet's Report in reference to the period during which copyright should last, believing the balance of advantage and convenience to be in favour of a specified term from the date of registration rather than for the author's lifetime, and a certain number of years after his death.

JOHN ROSE. (L.S.)

*** See also the Note appended to the signature of Sir Charles Young, and the Separate Report of Mr. Edward Jenkins.

Note appended to his Signature, by Sir James Stephen, Q.C., K.C.S.I.

I dissent from the recommendation as to abridgments. I think the law upon that subject should be left unaltered. The question whether any given abridgment is substantially an original work or not is capable of being determined by a court of law in a more or less satisfactory way, but I think that any statutory rule on the subject is likely to lead to great practical difficulties, and would be liable to evasion.

I also dissent from the suggestion that the right of dramatising novels should be confined to the authors, and from all the suggestions made for extending copyright in works of art, and rendering the remedies against persons who infringe existing rights more efficacious. All these proposals appear to me to be founded upon a mistaken view of the principle on which the law of copyright ought to be based. They assume that the author of a work of art ought to be considered to have a right to every advantage which can possibly be derived from that work of art, even indirectly and by the exercise of independent ability. A dramatic author is not to use a novel as material for a drama, a painter is not to copy the painting of another painter, although in the one case the adaptation and in the other the copy may require great labour and skill. Casts are not to be made of statuary, nor is a statue to be photographed, drawn, or engraved without the leave of the owner of the copyright. It is admitted that in many instances these acts inflict no money loss on the author of the work of art, but it is said that they may hurt his reputation, and it is assumed that he is entitled to appropriate to himself every indirect advantage which may be obtained from his work.

I think artistic reputation is too delicate a matter to be made the subject of legal protection. The law of copyright ought, in my opinion, to protect money interests only; and I think that the only money interests which it should protect are those which it creates; that is to say, the money interest of the author of a work of literature or art capable of being reproduced by mechanical means in such a manner that every copy is as valuable as the original. I approve of copyright in books, because the MS. has no money value till it is printed, and because when it has been printed, every copy is of equal value, so that unless a copyright law existed the author of the most valuable book would have no money reward for writing it. For the same reason I approve of copyright in engravings, photographs, and other works of art capable of being mechanically reproduced in large numbers, each copy being of the same or nearly the same value as the original.

I do not approve of copyright in pictures and statues because a picture or statue has a value of its own, which is not affected by its being copied, and copies of it are themselves works of art of various degrees of merit. I think that such productions are sufficiently protected by the ordinary law of property. No copy or cast of a picture or statue can be made without the consent of the owner both of the picture and of the

place in which it is kept, and I cannot see why, if the owner consents, the artist should have a right to object. The Commission reject the proposal that architects should have copyright in their buildings, and it seems to me that in consistency they ought to recommend the repeal of the Act which gives copyright in works of art. I cannot understand why an artist should have a right to prevent a statue from being photographed, while an architect has no right to prevent the building in which it is exhibited from being photographed.

J. F. STEPHEN. (L.S.)

Separate Report by Mr. Edward Jenkins, M.P.

1. Concurring generally with my fellow Commissioners in this Report, I regret that I am obliged to define some differences with their views in matters of detail.

2. In paragraph 151 three methods of making compulsory registration effective are discussed. The one recommended is the third; viz., "that a copyright owner should not "be entitled to take or maintain any proceedings, or to recover any penalty in respect "of his copyright until he has registered, and that he should in no case be able to "proceed after registration for preceding acts of piracy."

3. This is a very cumbersome method of enforcing compulsory registration. It would give rise to endless questions of law. It is simply a device to bolster up the theory that copyright is what is called a natural proprietary right. I should prefer that the statutory law conformed with the real position of the case. The statute law *creates*, it does not *recognise*, copyright. There is no such thing as an inalienable natural right to the form in which a man has embodied his ideas. The copyright law is, like the patent law for invention, a creation of a temporary monopoly, for the encouragement of learning. It is the outcome of expediency and not of principle.

4. I suggest that the law which creates the right ought to lay down the conditions on which it confers it; that these conditions should be as simple and trenchant as possible. And therefore I am of opinion that registration on the date of publication should be a condition of copyright, as it is of patent right.

5. With regard to the duration of home copyright, I agree rather with the conclusions of Sir Louis Mallet, as expressed in paragraphs 44 to 71, inclusive, of his Report, than with the recommendations of the Royal Commissioners, and on the grounds stated by him.

6. In paragraph 62 of the Report there is the following passage: "As to aliens, "although we would give them the same rights as British subjects if they first publish "their works in the British dominions, it is obvious that the same reason does not exist "for giving them copyright if they do not bring their books first to our market: and "we therefore, recommend that aliens, unless domiciled in your Majesty's dominions "should only be entitled to copyrights for works first published in these dominions." There appears to be no reason in principle for making first publication in your Majesty's dominions a condition of copyright. When it is granted that publication by an alien author in Australia or Fiji shall secure copyright for Great Britain, it is impossible to see why first publication in France should debar the alien author from the same privilege.

7. It is implied that there is policy in encouraging "first publication" of a book in your Majesty's dominions. What practical benefit arises to your Majesty's subjects from the privilege of a first perusal of an author's ideas is not stated by the Commissioners, and I find myself unable to imagine it. Certainly there is a *dictum* of an ingenious judge in a notable case to the effect that it is the policy of the English copyright law to encourage first publication *in Great Britain*. But the statement is more fanciful than judicial; besides the Commission proposes now to enlarge the area of first publication to the whole empire. This extension reduces the proposition to a practical absurdity.

8. Moreover, when it is considered that wherever a copyright treaty has been entered into with a foreign nation, its authors are protected in your Majesty's dominions, although, and indeed because, they may have first published their books elsewhere, it would appear that the principle, if such it may be called, of first publication dwindles in importance to the smallest dimensions.

9. I submit that the more correct proposition to lay down would be this: That it is policy as well as justice, if copyrights are recognised at all, to recognise them from whatever quarter they come. I would humbly suggest that Your Majesty should acknowledge and protect the rights of authors irrespectively of nationality, and without

regard to the question of previous publication. The only condition should be that the author should register his book or other work in England before any English publisher has issued it.

10. It may be said that this would be to throw away a forcible argument and a valuable consideration in negotiating treaties with other nations, since, were my proposition to be adopted, their authors would be able to acquire in Great Britain all the rights belonging to British authors, although the governments of the nations of which they were citizens might not have incurred reciprocal obligations with Your Majesty. But the objection is equally valid against the proposal of the Commissioners that copyright shall be granted to an alien on first publication in Your Majesty's dominions.

11. The empire may with honour and advantage take the lead in extending the benefits of copyright to all authors, without regard to nation, or to place and time of first publication. This would encourage the flow of the best literature of every people to our shores. And the influence of a policy, so generous and just, could not fail to be effective upon the public opinion and the legislative enactments of nations in which as yet international copyrights are either wholly or partially unprotected.

12. I wish, lastly, to record my opinion that in no circumstances should registration be continued in the hands of any private company, even if placed under Government supervision It is true that there are a few anomalous cases, like that of the Goldsmiths' Company, in which Government business is transacted by private associations. But the Stationers' Company has hitherto done its work so badly; it is so manifest an injustice that the advantage of fees imposed by Act of Parliament should accrue to the nominee of a small association representing, not the authors, but the trade, of bookmaking; compulsory registration will require so much more efficient a staff, and will insure so much larger a revenue; that I cannot concur even in a suggestion that it is right or expedient to continue the registration of copyrights with the Stationers' Company.

EDWARD JENKINS. (L.S.)

Dissent from the Report of the Commissioners as to Paragraphs 153 and 154, respecting the Registration of Books, by Mr. Anthony Trollope.

THE object of these clauses is to enforce compulsory registration by a penalty; and the penalty proposed is that the owner of the copyright neglecting to register shall be punished by the continued sale of copies printed piratically before registration. I will endeavour to point out, 1st, that the penalty proposed would not secure, or even hardly assist in securing, compulsory registration; 2nd, that compulsory registration may be otherwise secured, and is otherwise secured; and 3rd, that the system proposed in the paragraph above named would in some cases inflict a penalty so severe that the law should not sanction it.

First. If registration be made compulsory, this must be effected by some penalty which shall touch the great majority of those who produce works of literature. The law would do nothing towards producing compulsory registration if it affected only those who have to deal with copyrights of value. In the larger majority of cases the producer of the work fears no piracy. He would probably find in such piracy a valuable advertisement. In these very numerous cases neither will the author or publisher be compelled to register by fear of piracy. Some other penalty must touch them, or registration of books cannot be made compulsory. The penalty proposed, of allowing the continued sale of piratical works, would affect only those few who would naturally register books presumed to be of value, but who through accident might fail to do so.

Secondly. That compulsory registration of books may be effected without the mutilation of copyright which is proposed in the Report, is proved by the fact that registration is made compulsory in other countries without such mutilation, notably in France. As the presentation of books at the British Museum is compelled by ultimate, though happily by rare, resource to a fine, so may it be effected by fines to be levied if necessary as the British Museum now levies them. If, as the Commissioners propose, the act of presentation to the British Museum and of registration is to be one and the same, the same course as at present may be followed. Doubtless there may possibly be delay in registration, and while that delay exists the sale of pirated works may be left open. It is not proposed here that the owner of a copyright should have remedy for any injury done to him before registration, but only that he should be secured from the lasting evil which a continued sale would inflict.

Thirdly. The punishment proposed to be inflicted might in certain cases be so heavy, —and that upon simply an inadvertence,—that the law would hardly sanction it. In the case of non-registration of a valuable work the laches would arise probably from the negligence of the agent employed. The punishment should of course be the same, whether the fault was committed by the principal or another; but the work of registering would almost of necessity fall into the hands of publishers. As a rule they would be careful as to works of value,—though probably very careless as to works of small notice under such a penalty as has been proposed. But should a work of great value escape—a poem, we may say, of Tennyson's—50,000 copies of it might be printed at once without any acknowledgment to the author, and sold through any term of years, to the utter destruction of the copyright. Such a penalty as this can hardly be intended for such a fault. Nor can it be well to encourage such a trade as would fall into the hands of those who might look out for these irregularities.

ANTHONY TROLLOPE. (L.S.)

Notes appended to the signature of Mr. F. R. Daldy.

1. I DISSENT from the recommendation in paragraph 154, that non-delivery of a copy at the British Museum should affect the copyright of a book. The principle seems unsound and the weight of the penalty very unequal; besides it would generally fall on the author, although the default was made by the publisher.

It is not proposed that the right to reprint should belong to the Crown, or the benefit thereof go to the Crown, but that it should be allowed to any private person for his own profit.

Neither France nor Germany, nor any other country, as far as I know, except the United States, has resorted to this expedient to ensure delivery of copies for national use, and as this Report recommends (paragraph 16) that copyright should continue to be regarded as a proprietary right, I think its title should not be weakened even thus indirectly.

At present the publisher is fined for non-delivery of the book. It is recommended in paragraph 152 that this system be continued; and I think it quite unnecessary that the kind of penalty suggested in paragraph 154 should be added.

2. I cannot agree to the recommendation in paragraph 147 that a charge should be made for *original* registration.

Registration is not sought for or required by the copyright owner, but is imposed on him for the benefit of the public.

The modification of the form of receipt now given, as suggested in this Report, would not add to the labour at present incurred on receipt of a book by the British Museum.

The fees for searchings and certificates of registration should, I think, be high enough to cover the expense of obtaining them, but they are not often required in practice.

If the fee of one shilling for *original* registration be imposed, it will become a heavy tax on copyright owners, especially on proprietors of newspapers. There are now published in Great Britain more than

	£	s.	d.
140 daily papers, each of which would have to pay annually	15	13	0
1,400 weekly ditto - - - - -	2	12	0
800 monthly magazines - - - - -	0	12	0

And besides this a considerable revenue would arise from new books and new editions.

As the chief object of registration (see paragraph 66), is to secure a national collection of every literary work, I think it sufficient to insist on a copy being given as at present, without compelling the copyright owner to pay one shilling in addition every time he makes the donation.

FREDERICK RICHARD DALDY. (L.S.)

DIGEST OF THE LAW OF COPYRIGHT.

By SIR JAMES STEPHEN, Q.C., K.C.S.I.

(*See Report, paragraphs* 6 *and* 14).

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