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# MINUTES OF EVIDENCE.

TAKEN BEFORE THE

## ROYAL COMMISSION ON COPYRIGHT.

Monday, 8th May 1876.

PRESENT :

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

The Right Honourable the EARL OF DEVON.  
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.  
SIR LOUIS MALLET, C.B.  
SIR JULIUS BENEDICT.  
J. FITZJAMES STEPHEN, Esq., Q.C.

FARRER HERSCHELL, Esq., Q.C., M.P.  
DR. WILLIAM SMITH.  
JAMES ANTHONY FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.  
F. R. DALDY, Esq.  
J. LEYBOURN GODDARD, Esq., Secretary.

Sir CHARLES E. TREVELLYAN, Bart., K.C.B., examined.

1. (*Chairman.*) You have taken, as we know, a considerable interest in the copyright question; will you be kind enough to state to the Commission how and when you first began to interest yourself in it?—My interest in the subject commenced when I was a young man in India. I took part in the great controversy which preceded the resolution of the Government of India of the 7th of March 1835, which declared that the great object of the British Government ought to be the promotion of European literature and science among the natives of India, and it became at once obvious that a cheap literature was a necessary complement to a system of national education. But as regards the admission of books from abroad there was nothing to complain of, because they were even then on the free list. As regards the republication of English copyright works in India there is much to be said, but with the leave of the Commission I will defer what I have to say on that point until I can consider it in connexion with the case of the colonies. After that I was appointed to the Treasury; and after some years I became aware of an accumulation of annual accounts rendered to the Treasury from the different colonies under the Act and Order in Council of 1847, which directed that, when certain conditions were complied with, foreign reprints of English copyright works might be admitted into the colonies, and that the rate of 12½ per cent. paid upon them should be paid over to the authors through the colonial governments and the Treasury. When I had made myself acquainted with the nature of these accounts I gave them in charge to a clerk and had them carefully digested. We raised a very large number of personal accounts to the credit of authors and other owners of copyright whose works had been sold in the different colonies under this Act, and it soon became apparent that the arrangement was a ridiculous failure. The sum received on account of the sale of Macaulay's

copyrights in all the colonies, Canada included, may have been 30*l.* for the three years, it was something of that sort. After that the accounts were made up year by year, and the sums were perfectly ridiculous. For several years I received 5*l.* or thereabouts for the sale of Macaulay's works in the colonies. Then, upon Lord Macaulay's death, I became the owner of his copyrights, and had to manage them for myself and my family; and in the year 1870 I was informed of an offer made by the Government of Canada to pay a real 12½ per cent. in the shape of an excise duty upon the actual sale of the works in Canada; an offer that they should be permitted to reprint English copyright works in Canada, and that they should pay to the copyright owners a real 12½ per cent. on the actual sale of the works, instead of the nominal customs duty of 12½ per cent. I at once saw the advantage of the offer, and strongly urged its acceptance, and thereupon a correspondence ensued between me and Mr. Longman which will show all that took place.

2. Do you propose to put in that correspondence?—Yes; it was published at the time. (*The witness delivered in the same, vide Appendix, paper A.*) I also wrote a letter to the "Athenæum" in which my view of the subject was summed up, and I sent to the "Athenæum" letters to me from Mr. Carlyle, Mr. Froude, and Mr. Kinglake, in support of that view. I beg leave to put them all in. (*The witness delivered in the same, vide Appendix, paper B.*) After that we had Mr. Lovell's *reductio ad absurdum*, showing that he could do in exile what, as a Canadian, he was not permitted to do at home. What he did was to stereotype English copyright works at Toronto and send them across the St. Lawrence to Rouse's Point, and there he printed them *ad libitum*, and sold them either in the United States or in Canada, as he pleased, very honourably paying upon those which he imported into Canada the 12½ per cent. duty. Of the two works

Sir C. E.  
Trevellian,  
Bart., K.C.B.  
8 May 1876.

Sir C. E.  
Trevelyan,  
Bart., K.C.B.  
8 May 1876.

originally selected by him to try the experiment, the copyright of one was my property, namely, the "Lays of Ancient Rome," but, nevertheless, I entirely approved of Mr. Lovell's proceedings, because I hoped that, by availing himself of the side of the law which was in his favour, he might show the absurdity of it, and blow it up altogether. The course the thing took was that Mr. Daldy visited Canada in 1870, and, after conferring with Sir John Rose, came back to England with proposals for the settlement of the Canadian copyright question on the footing that persons in Canada should be at liberty, at their discretion, to reprint English copyright works, paying 10 per cent., as Mr. Daldy proposed, to the copyright owners. Those proposals were embodied in a Bill passed by the Dominion Parliament in 1872, which was disallowed. They were afterwards more fully and perfectly worked out in a Bill prepared under Lord Kimberley's directions in 1873, and the principle of these proposals appears in the Canadian Bill, which has been actually passed since, though in an imperfect form. I am clearly of opinion that these Canadian proposals contain the true principle of the settlement of this question of intercolonial and Indian copyright. I also think that it is the only principle which furnishes a practicable basis for a convention with the United States, and that it is equally applicable to other foreign countries. Of course we are all agreed that authors should receive the largest possible remuneration, but the problem is to reconcile their just reward with the interests of the public, that is to say, with the diffusion of literature. It appears to me, without entering upon the question as regards the mother country, the United Kingdom, where a solidly-based system has been established on the principle of a monopoly of multiplying copies given to the authors, that that principle of monopoly is totally inapplicable to these new countries where the English language is spoken and read by multitudes. The difference between the position of authors and that of publishers underlies the whole subject, and it is better to have it out at once. It is for the interest of the author that his works should be sold anywhere and by anybody. It matters not to him who the publishers are, or whether there is one or are a hundred; in fact for him the more the better; the greater the competition among publishers, the better for the author.

3. (*Sir H. Holland.*) Provided he gets paid?—Certainly.

4. You are not speaking merely of his reputation, but of his remuneration?—Yes.

5. You say that as regards the author, he is glad to have his work published anywhere and by anybody, but you mean of course provided the payment is secured to him for that publication?—Certainly. The object of the author is that his works should be sold, and that he should get a fair remuneration.

6. (*Mr. Fitzjames Stephen.*) At present you are speaking exclusively of the business interests of the author, as distinguished from any other interests?—I am speaking of the subject entirely in a pecuniary point of view, and I say that the interest of the author consists simply in the remunerative sale of his works anywhere and everywhere, by anybody, it matters not by whom, provided he gets his fair remuneration. But the interest of the publisher is quite different, it is local; heretofore it has been confined entirely to England and to London. The interest of our London publishers required that the books should be sold in London, and so, of course, the monopoly of multiplying copies which was secured to England under the old law was greatly for their benefit. Now under the recent Canadian Act the interest of publishers has been extended with certain qualifications to Canada. I think that is a mistake. I think it would be far better that the interest of the authors in their works should, as far as the law is concerned, be entirely separated from that of the publishers. It would be more for the advantage of our authors that, instead of appointing their own special publishers in Canada or India, or elsewhere,

there should be a general permission to reprint their works in all the British possessions, and that they should have a fair proportion of the proceeds secured to them by the administrative machinery of the respective governments, all which is provided for by Lord Kimberley's Bill. I am now arguing for the principle and practice of Lord Kimberley's Bill. Another consideration which also underlies the whole subject, is the difference between the circumstances of England and those of America and India. In England we have a monopoly, our system of copyright is based upon monopoly, and what is the consequence? The consequence is that three sets of editions of new works are gradually brought out. I am now speaking of the highest class of works, works likely to endure for at any rate a considerable time. First of all, there is a very expensive library edition intended for the rich, and it is not all, even of the rich, who usually buy it.

7. (*Mr. Herschell.*) When you use the term "library edition" you allude to private libraries?—Yes. I believe that the name has reference to private libraries; it means, I believe, such an edition as is usually bought to be deposited in private libraries; but wealthy as our upper middle class is, even they cannot afford to buy these expensive works freely; they have to arrange through circulating libraries and book clubs so as to get them in turn; in fact they have to establish joint stock companies in order to have the free use of our current literature.

8. (*Mr. Trollope.*) You are now speaking of what is the case in England?—Yes; I wish to compare the state of things in England with the state of things in the colonies and in India. Then after a time, and after that first luxurious demand of the very rich has been exhausted, a more moderately priced edition is brought out, a sort of middle-class edition, generally under some special name, "students' edition," or something of that kind, and generally very much condensed in point of printing, being in a smaller type, and one which is difficult to be read by people whose eyes are not good. After some years, when the demand of the middle classes also has been satisfied, comes the "people's edition," and then, but only after great delay, after it has been filtered in dribbles through the upper and middle classes, the masses are at last supplied. Now even in England this is a monstrous evil. We have established the suffrage on the household basis, and it is of quite as much importance, perhaps of more importance, that the body of the people should receive sound instruction on political and economical subjects, and be able to appreciate our general literature, as that it should be appreciated by the upper classes. We have also provided a very expensive system of national education, and yet the necessary supplement of a cheap popular literature is entirely wanting. No doubt the people get it at last, but they get it after great delay, they get it after the first interest has evaporated, and after it has become stale. To take as an example the three or four works which are at present circulating among the richer classes in England, which have come out in the last few weeks, "Lord Palmerston's Life," "Lord Albemarle's Reflections," and my son's "Life of Lord Macaulay," I contend that it is of great consequence that these books should reach the body of the people fresh and fresh, and that our lower middle class and working class should take the same lively interest in these and similar books as the upper class do. But that cannot be under our present system. This system, such as it is, is mitigated and rendered possible in the way to which I have alluded, on the joint stock principle, by circulating libraries and book clubs, and so forth. We will now turn to America. I will take both the United States and Canada, because the social conditions are similar. The state of society there is totally different from what it is in England. In the first place, their wealthy class is very small indeed, so small as not to constitute any considerable element in the demand for books. The vast mass of the people are working for their living, and they cannot

afford dear books. It is mere mockery to say to the Canadians, "You must wait our leisure, and until we are prepared to provide you with cheap editions you must be content with these more expensive editions." They cannot afford it. Then the people of those countries are not concentrated in towns as they are here, but are spread over the face of the country. There are vast regions half settled and half wild, and the only way in which they can be supplied with literature is, first by being supplied with the books very cheaply, and next by having them for their own. They cannot combine in circulating libraries and book clubs as our people do. Everybody admits that authors are entitled to a large reward. The only question is in what shape they are to get it. The manner in which it happens to have been arranged in England is by giving them a monopoly. I maintain that this principle of a monopoly, while it does great harm in England, is simply impossible in America; some other principle must be adopted, and the obvious principle is the one which has been worked out by the Canadians with the help of Sir John Rose and Mr. Daldy, and has been embodied in a very satisfactory manner in Lord Kimberley's Bill, namely a royalty or per-centage upon the sale, so that authors would, in a manner, be in partnership with the public for the sale of their works, instead of holding a monopoly against them.

9. (*Mr. Trollope.*) Has not the American author in America the same copyright in America that the Englishman has in England?—Yes; but they do not really depend upon their own authors, they depend upon you.

10. But the Americans have the same privilege of copyright?—Yes.

11. It has not been found necessary in the States to pass any law of copyright differing essentially from that passed here?—The experiment has not really been tried, because the American authors are nowhere. There are, of course, far-famed American authors, but they have depended more upon the European circulation of their books than upon their own, and so far as they print for America they print cheap editions.

12. Are you aware that Longfellow and Washington Irving have been as well paid for their works in America as any authors have in England?—I am very glad to hear it. No doubt there is a select circle in America who go in for expensive editions, even more than the English, and certain editions may be printed for their benefit; but in truth neither Motley nor any other American author, who wishes to have a really national circulation, can confine himself to dear editions; he must do as everybody does in America, sell very cheap editions. Being convinced that this was the only principle upon which we had a chance of prevailing upon the United States to form an arrangement with us of international copyright, I wrote to General Badeau, who was Consul General of the United States, a letter which I will put in, and also his reply enclosing a letter from the Assistant Secretary of State, and after that a further communication from General Badeau containing the extract to which he referred in his answer to me (*the witness delivered in the same, vide Appendix, paper C.*) I will now speak briefly about India. Although India is a very old country, yet, strange to say, its position in reference to this question is very similar to that of North America. Since the year 1835, when through Macaulay's help, and Lord William Bentinck's statesmanlike courage, the resolution was come to to make English literature and science the basis of Indian education, English education has been spreading in India in a wonderful manner, and at this moment it is no exaggeration to say that English is the language of education for the upper and middle classes in India. I do not mean to say that they are all so educated at this moment, but tens of thousands of them are, and it is rapidly spreading among high and low; English is also the principal language of official proceedings; and it is the language of business to a very great extent; and

our English classical writers, not merely those whose copyrights have expired, but living writers, or those recently dead, are read in India to a greater extent than they are in England. In England our boys and girls who receive a superior education read Latin and Greek, and French, and German, and mathematics, and all sorts of things, whereas the entire staple of Indian high education is our English classical authors—Johnson, Addison, Macaulay, Milton, Shakspeare, and so forth—so that it is of the most essential importance that our English classics should be provided in a cheap form for the use of the people of India. Then the art of printing has gone ahead greatly in India. I was quite surprised at the progress which it had made during the twenty years and more that I was absent. There are large and flourishing printing establishments at Madras, Calcutta, and Bombay; and others, not quite so large, at Allahabad, Agra, Lahore, and all the principal places in India. There are also large bookselling, and, as far as they have the means, publishing establishments; and during the time Macaulay's copyrights belonged to me one of the most frequent matters that came before me, through Mr. Longman, was applications from persons of all sorts in India—inspectors of education, heads of collèges, printers, publishers, chaplains, civilians and military men—who were interested in the education of the natives, asking to be allowed to reprint in some form or other Macaulay's works. They did not venture to ask for permission to reprint them complete, because they thought that was out of the question; but they asked for large extracts of all kinds. It is plain to me that if the principle of Lord Kimberley's Bill was extended to India our English copyright works would be reprinted there to a great extent, equally to the benefit of the people of India and of the copyright owners. The copyright owners now look to their gains from large profits on a small sale, whereas, under the plan proposed, they would get small profits on a large sale, and on the whole I feel certain that they would get more from the colonies and from India on that principle than they do from the present principle of a monopoly. Exactly the same circumstances and reasons apply to the Cape of Good Hope, to the Australian colonies, and New Zealand, and more or less to some other colonies. I have said all that I think it is essential for me to say.

13. (*Mr. Fitzjames Stephen.*) If I understand you correctly, your main proposal is that copyright in England should be left to stand as it is, but that what you have described as the principle of Lord Kimberley's Bill should be introduced with regard to India and the British colonies, more particularly Canada, and that something of the same sort should in some way form the basis of an arrangement with the United States?—Yes; and I think it also equally applicable to other foreign countries, to the European continental countries for instance.

14. If, therefore, your view were carried out, the net result would be this, that England would stay as it is, and in every other part of the world except England there would be liberty to publish English copyright works paying 12½ per cent. to the author?—Yes. I by no means desire that England should stay as it is, but I consider that the only part of the subject which is in a state of unsettlement and confusion is that relating to the colonies and India, and that this is the only principle at all applicable, and I look to a settlement on this principle being thus gradually brought about in England likewise.

15. Then in point of fact your view for both, so as to make it complete, would be that the present state of things in England should be brought to this, that when a man wrote a book anybody should have a right to publish it, paying him 12½ per cent., in any part of the world?—Yes, that is what I should like to see; I formed that opinion some years ago. May I read a paragraph from a letter which I wrote to Sir Francis Hincks on the 10th of May 1872:—  
"You are correct in supposing that the whole difficulty has arisen from the special interests of the

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Trevelyan,  
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“ English publishers. No doubt you have seen the protest of Huxley, Lubbock, Carlyle, and other authors on this subject. Owing to this difficulty I much prefer the plan of Canadian publishers reprinting English copyright works at their discretion, and giving the copyright owners a royalty, to that of each copyright owner having to arrange with Canadian publishers. *Free printing subject to a royalty* also appears to me better suited to the character of the transatlantic book market than any plan based upon a monopoly, so much so that if this arrangement is made with Canada, I expect that it will go the round of the United States, Australia, India, and other English speaking and reading countries. It is a principle singularly applicable to the case of a mother country which provides the bulk of the literature used by vast colonies and dependencies. Each of the parties to the arrangement (England included) would continue to have such copyright laws *within its own limits* as it thinks proper; but when the books produced in it reach the other confederated countries, they would be liable to be reprinted upon paying to the author, or his representative, say an uniform 10 per cent. on the retail sales. Your suggestion that the people's edition should be published first is not likely to be acted upon here while we remunerate authors by giving them a monopoly. But this is a domestic affair which does not concern transatlantic countries, if we arrange with them that they are to be at liberty to reprint English copyright works upon payment of a royalty. Nevertheless, I cannot help looking forward to a time when cheap literature will be the rule on this as well as on your side of the Atlantic; and perhaps this may be arrived at by establishing a sound principle first in our intercolonial and international relations.”

16. If I correctly apprehend the effect of what you propose, it would in short be, so to speak, the thin edge of the wedge inserted?—Yes.

17. That being so you would drive in your wedge a good way, would you not. Because when you print your cheap editions in Canada and other places, what do you propose to do with regard to importing them into England. Do you suggest that they should be able to be imported into England?—No. As long as the present law remains in England, cheap foreign and colonial editions of English copyright works ought not to be imported into England.

18. But if you have a legal right to publish cheap editions of that kind in various parts of the world, the practical difficulty of excluding them from England would become very considerable, would it not?—Very cheap editions are published by Tauchnitz just over the Channel, and we do not find them coming into England. A very cheap edition has been published of my son's book, and we have not been in the least alarmed that it will come into circulation here.

19. You said just now in answer to Mr. Trollope that, as far as you are aware, there is no country now in the world where that system prevails. Take America for instance. If Mr. Motley writes a history in America he publishes it; he has a monopoly in America, has he not?—Yes. Copyright is a modern development of the principle of property, which happened first to be applied, in this case, by granting a monopoly. It was the fashion of the day. Monopolies were then in vogue.

20. It is in point of fact a monopoly exercised in every part of the world?—From the example of England monopolies of copyright works were generally established. It seemed a simple and obvious way of remunerating authors by means of a monopoly, but it does not suit the present time.

21. How can you exactly say that it does not suit America to have a monopoly, when all the works written by American authors are a monopoly of those authors in America according to American law?—In the first place the literature of America is not chiefly or largely supplied by America; it is supplied by the

old country; but so far as it is supplied by America, I believe the fact to be this, that a few small editions are got up expensively for the benefit of the rich people in America, but the main profits of American authors are derived from extremely cheap editions.

22. Quite so, but then they are a monopoly?—Yes, they are a monopoly, but the bulk of the literature which circulates in America is not a monopoly, and so the minority is obliged to yield to the law of the majority.

23. Mr. Motley, if I rightly understand the matter, finds it to his convenience to publish we will say a very large and very cheap edition in New York or elsewhere, and he has the exclusive right of selling that edition in America?—Yes.

24. How does that differ from your own position, or the position of the owner of any other copyright work in England. He sells at a cheap rate because he finds a cheap rate pay him; you sell at a dearer rate because you find a dearer rate pay you. Where is the difference between the two things, each is a monopoly equally, is it not?—The habits of America and of England are totally different; the habits of America have been conformed to the circumstances of America, and in order to obtain an extensive sale the publication of large and cheap editions is indispensable.

25. Quite so, but my point is that the author has still the same monopoly in the large and cheap edition in America which the English author has in the comparatively small and more expensive edition in England?—Yes, but the circumstances differ in *u. s.* respect, that the people of the United States belong to an independent country, who are under no legal obligation to admit the rights of the authors of other countries; they will admit those rights only on terms which they consider consistent with the interests of their people; they do not consider it consistent with the interests of their people to allow to any English copyright owner the power of imposing a prohibitory price, limiting the circulation of his books in America at his pleasure.

26. Can you tell me whether the American editions of Mr. Motley's works in America are materially dearer than Lord Macaulay's works in America?—No, I suppose not; Mr. Motley of course conforms to the practice of the country.

27. And yet Mr. Motley gets a large profit out of his works, as Mr. Washington Irving, we understand, has got a large profit out of his works?—The field of American circulation is mainly supplied by books originally written and published in England, so that the much smaller number of works published in America have to conform to the practice so established.

28. With respect to India, if I understand rightly, there is an Act, I think of 1844, or some such date, which gives power to the Secretary of State to issue a proclamation or notification of some kind, after which foreign copies can be imported into a colony on the payment of a customs duty of 10 per cent. to the author?—That is the Act of 1847.

29. Has that Act been extended to India?—I think not.

30. So that in India there would be the English copyright laws moderated by an Indian Act. There is an Indian Act, which probably you may remember?—Yes.

31. Therefore the question as to importing cheap editions into India has not practically arisen?—No, because it is entirely free. The demand of India is supplied to a great extent from America.

32. Do you happen to know whether cheap editions of English classics have been published in India to any very great extent. You have spoken of the influence of the English classical works; have any considerable number of cheap editions been published there of books of which there is no copyright?—A number of school books have been published; “Readers” have been published in vast numbers, based upon our English classics.

33. (*Mr. Trollope.*) I understand you to recommend that England should adopt a system by which any publisher would be enabled to publish any author's works on paying a certain royalty, say of 10 or 12 per cent.—I recommend that for the colonies.

34. You do not recommend it for England?—I have stated what I believe to be the actual position of affairs in England. I consider that the working of the present law of monopoly in England is a great public evil, and that its remedy is deserving of serious consideration. I believe the principle of monopoly to be quite as objectionable as regards books as it is with regard to other things. I believe that the great economical objections to monopolies which led our ancestors to abolish them generally, are more applicable to books than to other things, inasmuch as the moral and intellectual influence of books is so much greater than of anything else.

35. But has it occurred to you, in proposing a royalty of 10 or 12 per cent., that an author not as yet known would, if that were a necessity of publication, find it almost impossible to get a publisher to undertake his work for him?—It would depend upon the character of the book. If it was a book likely to sell he would get plenty of publishers.

36. With regard to new books and new authors, do you not know that it would be impossible for a publisher to form an opinion whether a book would sell or would not, and that therefore the publisher could not undertake to pay any royalty?—The arrangement would be subject to any adjustment between the publisher and the author.

37. (*Mr. Fitzjames Stephen.*) Of course he might take less than 10 per cent.—Yes.

38. (*Mr. Trollope.*) Then any other publisher who published would have to pay 10 per cent.—Yes; but I disclaim altogether proposing a matured plan for England. I confine myself as regards England to pointing out the great public evil of the monopoly principle as applied to books. I conceive that the objections which have been made, generation after generation, against monopolies, till at last they were finally abolished in our time in the case of the old East India Company, apply in a greater degree to literature than to other things, inasmuch as literature is more important in influencing the character of the nation, and of the individuals of whom it is composed, than anything else.

39. With regard to the law which was prepared by Lord Kimberley, and which never passed, in reference to intercolonial copyright, I think that it was asked for specially in regard to Canada?—Yes.

40. You have not heard that it was asked for in reference to any of the other colonies?—It was submitted to all the colonies. I think that the colonies have had the subject twice before them, and they generally agreed to it and approved of it.

41. Was not the request made from Canada?—Yes, it originated in Canada. The principle was invented and worked out in Canada.

42. Have you heard what was the sale to which the Canadian publishers looked in order to reimburse themselves for the proposed expense of republishing English books?—Partly Canadian, but principally in the United States.

43. Therefore it was proposed that a law should be passed giving the Canadian publisher the right to use any English author's work, in order that he might obtain a sale in the United States of copies of such work, which could only be sold there in defiance of the laws of the country?—There is a frontier of 2,000 or 3,000 miles between the United States and Canada, of a very wild description, but crossed at various points by railways and steamers, often running many times in the same day, upon which it is impossible to maintain an effective preventive system. Heretofore Canada has been flooded with reprints from the United States. Of late years, owing to the war, and to the system of protection in the United States, the prices of printing and paper, and everything connected with the publication of books, have

gone up in America, and the Canadians now would be able to carry on an effectual competition with the United States. Their proposal is to return the compliment, and to flood the United States with their publications.

44. In point of fact to retaliate?—To retaliate.

45. And to flood the United States in that way with editions, the sale of which in the United States would be the sale of a contraband and smuggled article?—It is smuggling altogether on both sides of the frontier. From the first it has always been a system of smuggling; but there is this great difference in favour of Canada, that, whereas the reprints of English copyright works in the United States yield no profit to the author, the reprints in Canada under this system would yield a profit.

46. Undoubtedly. But the request, I think, for this law did not in any shape come from English authors, but came from Canadian publishers, and came from them with the object of retaliating upon America, and flooding America with Canadian editions, which would have to be smuggled into the States before they could be sold there?—Certainly the most active advocates of the question of both sides, in England and in Canada, were the publishers, and it is a misfortune that the authors have not come more to the front and taken up the question as an author's question. The really important matter is, not whether the publishers of England or of America are most employed and get the greatest profits, but according to what system the largest reward can be obtained for authors. Now I am perfectly convinced that if we confined our attention to the author's question, and secured him a reasonable per-centage upon the sale of his works, and made the governments of the different colonies responsible for levying that per-centage, which they could easily do, he would get a great deal more than he can according to the present system; and instead of having one publisher or two publishers, one English and one Canadian, he would have hundreds of publishers, who would all be publishing for him and competing for him in all these colonies, which are continually increasing. Large and highly intelligent as these populations are, they read in far greater proportion than our poor English people do, and are far more intelligent and make more use of books, and they are increasing far more rapidly than our English people. It is a question which essentially concerns authors.

47. (*Mr. Froude.*) It sometimes happens that a man writes a copyright book which has a large circulation, and which the public would like to see, but which he wishes to alter; it almost always happens that even with a very excellent book the author is not satisfied with the first edition and corrects it: it would be a very great injustice to him that the public should be placed in possession of a book which he himself thinks he could make better, or which he himself does not think is fit to be circulated in the form in which it is published, and he does not wish to allow any publisher to take possession of it and circulate it; I do not see how that would be provided for unless you had a system which would enable the author to keep the control over his own works?—This is provided for in Lord Kimberley's Bill, one of the provisions of which is that only the last edition of each work shall be reprinted; that is a detail which is quite within the power of the different Governments.

48. It seems that if the author has the control in his own hands he will be able to make what guards he pleases, he must have his own publisher. If you allow a man to take any book and reprint it, whether the author likes it or not, you certainly take that power out of his hands?—This is a matter of legislative detail. It would be in the power of the author to send out copies of the last edition to be registered.

49. Suppose that he wishes to recall it, as very often happens, a man changes his religion?—I do not know about that. Even that might be provided for by law, because all this would be regulated primarily by an Act of the Imperial Parliament.

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50. (*Sir H. Holland.*) With reference to that matter, is it not the case that in Lord Kimberley's Bill, to which you have alluded, it was provided by the 11th section that "Where a second or subsequent edition of any book has been published, a license in pursuance of this Act shall not be granted for and shall not authorise the reprint of any edition of such book, except the last edition published at the time of the grant of the license, save so far as the proprietor of the copyright assents to the publication of any other edition." That would answer part of the question which has been put to you, although the case of the recall of the whole book is not covered?—Even that might be provided for by law, but I think permission to entirely recall a book is of very questionable expediency.

51. (*Sir H. D. Wolff.*) Does not the system of circulating libraries produce a very superficial mode of reading books, which would not be the case if the public could buy the works at a cheap price and keep them?—Yes, and of writing books also. The old practice in England was that people who could afford it provided their own libraries. I do not know whether other personal expenses have increased, or what is the cause, but the habit of becoming possessed of books as private property seems to be going out, which I think is a misfortune. It is a far more wholesome thing that persons should, as far as possible, have books of their own; they are much more likely to take an interest in them and appreciate them, and refer to them again and again, and induce their children and servants to read them. It is especially desirable that young persons should form small libraries of books which have interested them.

52. Does not the system of circulating libraries produce a superficial mode of reading a book, the beneficial influence of which must pass away in a short time?—No doubt of it; I believe that the circulating library system has exercised a pernicious influence over our intellectual habits in that respect. I also think that if books were cheaper, and people could buy them for themselves, there would be a tendency towards the production of a better class of books.

53. If there were cheap editions published at once, and if the public could buy them at once, do you not think that the larger sale of the cheap edition would secure to the author the same remuneration as he now gets from the dear edition?—I feel sure that it would. I am so perfectly convinced of the public injury of the present monopoly system, even in England, that I believe that if the matter was seriously considered, an improved arrangement might be made, not only without loss, but with great advantage to the author. For example, as to the "Life of Lord Macaulay" which has been just published, the desire to obtain it is very strong and very widely diffused; but owing to the pernicious system of beginning with a dear library edition, comparatively few persons are able to acquire it for their own, and people have to wait from week to week for it. They say, "I must wait until I can get it from the circulating library." The number of applications my son receives from persons who suppose they have some private or public claim upon him for presentation copies is extraordinary; it is extremely painful. I feel perfectly sure that if our English copyright system had been so recast that it would have been possible for my son to have begun by publishing a cheap edition, the profits would have been larger and the national benefit vastly superior. For a valuable book like that to percolate through the upper and middle classes during long years, and for all the current lively interest of it to evaporate and be lost, and for it to reach the body of the people in the shape of a popular edition only when its freshness is entirely gone, and the subject has ceased to be discussed by the upper and middle classes, is a great misfortune. The influence of our literature would be far greater if it was so arranged that books could be presented at once, as a whole, to the entire people, and if all classes, upper,

middle, and lower, could participate in one common interest and discuss them together.

54. (*Sir H. Holland.*) They could be presented now in that way if it was thought that it would answer. You would not take away the copyright altogether of a book, would you, and allow anyone to publish it. A person now who has a copyright can publish a cheap edition at once; there is nothing binding him to publish an expensive edition, although, as a matter of fact, a more expensive edition is published at first. But the law does not interfere in any way to require a more expensive edition to be published at first?—I have a mature opinion that the monopoly system in literature is a great evil, even in England, and that if the matter was seriously taken in hand a modified plan might be devised which, without any loss to the authors, would enable our new books to be made accessible to the whole people from the first, as they are in America, and it would have a great national influence. We have established a system of national education; we teach the children to read; we endeavour to give them habits of reading and an interest in reading, but where are the books? They are nowhere, for by far the most interesting class of books are the new books. After all it will always be the new books which will be read in greater proportion to the old books, but the new books are rendered inaccessible by our monopoly.

55. (*Sir H. D. Wolff.*) Is not the monopoly principally kept up for the benefit of the circulating libraries?—No doubt if the monopoly were abolished the circulating libraries would collapse. The extremely high price of new books has resulted in a monster joint-stock circulating library which has the command of the market, and there is a perpetual succession of trashy three-volume novels and other ephemeral productions of authors who are content to receive a low rate of remuneration. All this would be remedied if free trade were established by remunerating authors in proportion to the sale of their books, instead of by a monopoly.

56. Do you know anything about the book trade and about the price of the production of the printing and the paper?—Yes.

57. Are you aware that the price of the production of a book is in very great disproportion to the price of sale, and in very great disproportion to what is given to the author?—Yes; I know that perfectly as a general proposition, but as to the detailed prices I am not prepared to speak.

58. (*Sir H. Holland.*) With reference to the questions put to you a few minutes ago, was not the object of Canada fairly stated at page 33 of the paper presented to Parliament in July 1872 in the following document, headed:—"The Senate, Friday, 15th May 1868. Resolved, That an humble address be presented to His Excellency the Governor General," and after reciting the provisions of the Imperial Foreign Reprints Act, the Senate desire "to impress upon Her Majesty's Government the justice and expediency of extending the privileges granted by the above-recited Act, so that whenever reasonable provision and protection shall, in Her Majesty's opinion, be secured to the authors, colonial reprints of British copyright works shall be placed on the same footing as foreign reprints in Canada, by which means British authors will be more effectually protected in their rights, and a material benefit will be conferred on the printing industry of this Dominion." Does not that in your opinion fairly embody the object of the Canadian senate?—I think so.

59. That was a fair statement of the views of the Canadian Government?—Yes, and it is a fair arrangement, because the Canadian reprints would really pay the 12½ per cent., which those imported from the States never did.

60. Was not it a manifest injustice that a colonist should not be able to reprint, and have such reprint on the same footing as a foreign reprint in his own colony?—No doubt about it.

61. Then turning to the Canada Copyright Act,

scheduled in the Imperial Act of the 38th and 39th of Victoria, chapter 53, was not the effect of the Act simply this: not to do away with the imperial copyright in Canada of a book first published in the United Kingdom, but to enable a British author who had copyright here also to get copyright under the Canadian Act in Canada, and thereby to keep out foreign reprints?—Yes, no doubt, but still the principle of free publication is recognised in the Act. Clause 22 of the Canada Copyright Act is, “Should a work copyrighted in Canada become out of print, a complaint may be lodged by any person with the Minister of Agriculture, who, on the fact being ascertained to his satisfaction, shall notify the copyright owner of the complaint and of the fact, and if within a reasonable time no remedy is applied by such owner, the Minister of Agriculture may grant a license to any person to publish a new edition, or to import the work, specifying the number of copies, and the royalty to be paid on each to the copyright owner.” There the absolute monopoly of the copyright owner is modified.

62. That is the 22nd section, and it only applies to works copyrighted in Canada under that Canadian Act. It is not therefore necessary to works which have an imperial copyright, unless the author also has a copyright under the Canadian Act?—But still the principle that other people may, under certain circumstances, be allowed to reprint them, besides the original copyright owner, is acknowledged, and I think that it is also acknowledged in the 15th clause, which says that “works of which the copyright has been granted, and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada under any Canadian or provincial Act, shall, upon being printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act.”

63. I think that that is a different point. The 15th section is only to guard the author who has a copyright in England against being prevented from importing into Canada copies of such works printed in the United Kingdom. You have said, I think, that you would be inclined to give a general permission to reprint in India and all the colonies. So far as regards India and the colonies, would not that be a repeal of the Imperial Copyright Act of 1842?—Yes, to that extent.

64. Would it not be necessary then to go on and to repeal the Foreign Reprints Act, by which certain colonies upon complying with certain conditions were allowed to introduce foreign reprints?—Certainly.

65. And for this reason, that if you did not, the colonists in many cases could not guard against the foreign reprints?—Certainly; and it is especially just in reference to the United States. At present the great manufactory for the supply of reprints of English works abroad is the United States, where our authors do not get a sixpence: whereas, under the arrangement proposed, the manufacture would be transferred to Canada, the Cape, India, Australia, and so forth. Therefore clearly it is only the confederated countries which have acquiesced in these provisions for the security of authors, which should be allowed to reprint and import. There should be a reciprocal circulation among the British colonies.

66. Have you considered the difference in position in different colonies with respect to this copyright question. Take the case of a distant colony and a very small colony. If the Foreign Reprints Act was repealed, would they not be placed at a great disadvantage?—I think not. The West Indies is the case most in point. They now get most of their cheap literature from the United States. Under the arrangements proposed they would have to get it from Canada, or they might reprint themselves. Printing presses would no doubt be so employed in Jamaica and Barbadoes.

67. You are aware that in Jamaica, Barbadoes, the Bahamas, and some other colonies, there is a very strong feeling that they would very materially suffer

if the Foreign Reprints Act was repealed, that they could not afford to reprint themselves, and that owing to the high price of conveyance to the colonies and other causes they must rely upon foreign reprints, or some very cheap reprint from England?—Exceptions might be made if the circumstances required it; but my belief is that if the power of reprinting English copyright works, subject to the payment of a royalty to the authors, was extended to all our colonies, they would be amply and satisfactorily supplied, although American reprints might be shut out, which ought to be shut out at any rate, because America does not recognise or satisfy the claims of our authors, whereas by the proposed arrangement those claims would be satisfied.

68. But would you not be prepared to make such an exception as was made in Lord Kimberley's Bill by the 8th section. Do you not think that there might still be an importation of foreign reprints into certain British possessions?—I should be very loth indeed to do it. My belief is that Canada is so much on the same footing as the United States, and so coterminal, and, as I believe, able to print so much cheaper than the United States, that there will be no difficulty.

69. I am not speaking of Canada but of the small colonies?—I am misunderstood. I mean that, supposing that the reprinting trade was transferred under this arrangement from the United States to Canada, the circumstances of Canada are so similar to those of the United States, both in geographical position and cheapness—and in fact more favourable than those of the United States, for in Canada printing is cheaper than in the United States—that under such an arrangement the neighbouring West India colonies would be equally well supplied from Canada. The bearing of this question upon India is important. I consider that a great benefit would be conferred upon our authors by shutting United States reprints out of India, and permitting free printing of English copyright works there subject to a royalty.

70. (*Mr. Daldy.*) Do you find anything in the existing law which prevents an author from taking any course he likes with reference to the publication of his work. Is there anything to prevent your son from issuing a notice that any person may reprint the “Life of Lord Macaulay” on condition that he pays him a royalty for so doing; is there anything in the law to forbid it?—There may be nothing in the law to forbid it, but there is no existing machinery by means of which such a course could be advantageously adopted. The establishment of a registry office for reprints similar to that contemplated by Lord Kimberley's Bill would be indispensable.

71. Is any machinery required?—In this, as in many other matters, the law moulds the general habits, and all our arrangements under the monopoly tend to a limitation of printing and to dearness.

72. But as a matter of fact are not authors free to take any course they like with reference to the publication of their books. Is there anything in the law itself to prevent it?—No, there is nothing to prevent it; but so long as authors and their representatives have a monopoly, the temptation to use it in order to sell their books at the highest possible price will be irresistible. They will first skim the cream, and get as much as they can from the rich, before they provide for the poor.

73. Is there any monopoly existing except what is provided by the law in securing them a right to that copyright property. If I understand correctly, they merely have the property secured to them, and they are left free to deal with it?—All property whatever, even the most solid of all, namely landed property, is the creature of the law, and is modified by considerations of public expediency. Copyright is the last born of property, and is subject in a special manner to limitations having reference to the public interest. In the year 1842 the conditions under which copyrights were held were entirely changed, and they are liable

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to be again changed in accordance with the interests, not only of the authors, but of the public.

74. Do you consider that the conditions were changed by the Act of 1842, or merely that the rights of authors were extended, and were thoroughly secured to them?—Modifications took place, showing that the right of authors in their works is not an absolute right, but is conditional on public expediency.

75. With reference to what I believe you would describe as a royalty system of publication, has it occurred to you that it would necessitate the multiplication of setting the type; that is to say, that if a publisher undertook to publish a work he must set his type, and that if another publisher undertook it he would have to set that type again. In that way the cost of the original production would be very much greater, and more than the large majority of books would bear. Has that ever occurred to you? Do you think that there are many books which would bear the initial cost of publishing them borne by half a dozen different publishers who were going to compete with each other in their distribution?—I do not see that the conditions in that respect would be altered.

76. You now would only have to set up the type once, but then every person who published must set up the type?—Persons would not set up the type at all unless they expected to benefit by it. It is only in the expectation of profit that they would do it.

77. That is very true; but would you regard the fact that there would be this great initial cost?—I think not.

78. If so much money was to be spent in this initial cost less would come as the profits of the authors, because they must produce half a dozen different editions, and must go to all the expense half a dozen times, must they not?—Different publishers would dish up the work in different forms suited to the public taste, and, on the whole, more would be printed, and in forms better suited to the public demand, and the result would be an increased sale and an increased profit to the author. It is the difference between the monopoly of one person and the competition of many. Competition in the long run always produces improvement both in quality and cheapness.

79. Is it not being done at the expense of the author? You do not, I believe, propose to leave the author free to deal with his copyright as his own property, but that the State should step in and say, "We think that you ought to allow anybody to publish your works on paying you a given honorarium?"—Yes.

80. That honorarium may flow from half a dozen or a dozen different publishers?—Yes.

81. And the author is to have no control whatever?—That is the principle of Lord Kimberley's Bill, and it certainly is applicable to the colonies and to India, and I believe that, with some modification, it would be equally applicable to England. An author's property in his work is already limited in point of time, and this would be another form of limitation. The time copyright has to run might be extended, provided the public were admitted from the first to the privilege of free reprinting subject to a royalty. Instead of giving authors an entire monopoly for a term of years and then leaving them without any interest in their books, I would give them a proportion of the profits for a longer term, so that their books might be indefinitely multiplied with mutual benefit to the authors and the public.

82. Have you examined the Colonial Act which has been passed. I daresay that you have noticed that there an author has the complete control over his work?—Yes; I think that it is a mistake.

83. And the essential principle of that Act seems to me to be that local publication confers local copyright, that if any author likes to issue an edition there, he thereby acquires a local copyright?—Yes; I think that the establishment of the monopoly principle in Canada on that footing is a mistake, and that it would be more for the benefit even of authors, that all Canadian publishers should be left to print and publish

as many editions as they pleased, subject to a royalty. I beg leave to put in certain paragraphs of a paper by Mr. Lovell of Montreal, and Mr. Mercer Adam of Toronto, which contain some of the reasons for which I think that it would be more for the advantage of authors that there should be free printing in Canada instead of monopoly printing. (*The witness delivered in the same, vide Appendix, Paper D.*)

84. Are you aware of the object of Mr. Lovell's printing scheme?—The object, I suppose, is now accomplished. My belief is that the monopoly is an untenable artificial arrangement, and that if the basis of settlement was changed to a per-centage it would be for the benefit of all parties; it would allow of a much more free multiplication of books; it would lead to a vast increase in their sale; and although the author would get less on each copy, yet the copies would be so multiplied that he would get more on the whole. And I must recur to England. I believe that the illiterate, semi-stolid character of our agricultural labourers, and of the lower class of our work-people in towns, is in a considerable degree owing to the dearness and inaccessibility of books. I believe that if books were as cheap in England as they are in America the character of our people would undergo a change; and now that curiosity is awakened and readers multiplied by the establishment of a national system of education, the time has come for considering the subject.

85. Are you prepared to say that books are cheaper in America than in England, comparing American copyright books published in America with English copyright books published in England. Take, for instance, Washington Irving's works in America?—That is not a fair comparison.

86. In what way is it an unfair comparison?—The fair comparison I conceive to be between the price of all the books in the hands of the people in America and Canada and of all the books in the hands of the people of England, by far the most influential portion of which are the new books. That is a consideration which is too much lost sight of. As one grows older one sees that the old books are left behind, and that the new books are the books which are really read. Now the new books are, under our monopoly system, kept out of the hands of the mass of the people in England until they become old and stale, so that our people are not brought under the real vivid influence of current literature.

87. You think that it would be to the interest of authors that such a system should be pursued?—Indeed I think so. Of course it would require a great deal of maturing and elaboration, and no change at all should be made until it was seen clearly that it was for the interest of authors.

88. You would not leave them free to look after their own interests, having secured the property to them by a copyright law?—I consider that, in common with all other kinds of property, it must be subject to the conditions required by the public interest, and this kind of property more than all, because, as I said before, it is the latest born and the most artificial of all, and most requiring special regulation and adjustment.

89. (*Dr. Smith.*) Are you aware that the cost of producing a book from manuscript and the cost of producing a book from printed type, that is to say, reprinting a book, are very different?—Yes.

90. Then if the cost of producing a book from a manuscript is very much greater than the cost of reprinting it, what inducement would a publisher have to bring out an author's book originally, at a much larger price in producing it, if it could be reprinted immediately at a much cheaper rate?—He would have the great inducement of being the first in the market. He would have the benefit of advance sheets, for which large sums are now paid in America. I think that would be a sufficient inducement to the first publisher of a book to incur the moderate additional cost of printing from a manuscript.

91. You think that it would be only a moderate

additional cost. With the cost of corrections do you not think that it would be about double the price of printing it from type?—I am not competent to say, but the cost differs according to the state of the manuscript. There is not much difference between printing from type and from a fairly written, fully corrected, manuscript.

92. Are you aware that in large printing offices, such as those of Messrs. Spottiswoode and Messrs. Clowes, they can reprint an octavo volume in a week if necessary?—Yes, I am quite aware of it.

93. Then if they can do it in a week, the original start which the first publisher would have would be very little. Do you think that it would be worth while for a publisher to publish a book for an author if it could be in a week subsequently reprinted by another publisher?—I feel confident that it would. Our large publishing establishments have agencies in all parts of the country, and it would be a great advantage to a particular publisher to be able to

advertise, and place his first edition of a new book all over the country, in anticipation of others; and the circumstance of the extreme facility of reprinting is a strong argument in favour of the plan of free reprinting subject to a royalty for the author.

94. How is the author to be secured that the publisher who reprints his books will pay him?—At present an author chooses his own publisher. You are well aware that some publishers are impecunious?—That is entirely a matter of administrative arrangement. Lord Kimberley was of opinion that that object could be secured all through the British colonies; and if it can be secured in Canada and Australia and New Zealand, how much more in England. For instance, prepayment might be insisted upon, or security. But all that is a matter of detailed administrative manipulation; it is perfectly practicable; it would be a very simple form of excise, and would not be nearly as complex as many of the excise checks upon distilleries, and so forth.

The witness withdrew.

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

Friday, 12th May 1876.

PRESENT :

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

The Right Honourable the EARL OF DEVON.  
SIR HENRY DRUMMOND WOLFF, K.C.M.G., M.P.  
SIR LOUIS MALLET, C.B.  
EDWARD JENKINS, Esq., M.P.

DR. WILLIAM SMITH.  
JAMES ANTHONY FROUDE, Esq.  
ANTHONY TROLLOPE, Esq.  
F. R. DALDY, Esq.

J. I. EYBOURN GODDARD, Esq., Secretary.

EDWARD MARSTON, Esq., examined.

95. (*Chairman.*) You have, I know, bestowed great attention on the subject of copyright generally?—I have.

96. I believe that upon this occasion you wish, among other subjects, to bring before us your views on the position of a foreign author first publishing in the United Kingdom?—Yes.

97. Will you kindly give us your views upon that point?—A foreign author resident on the day of publication in any part of the British dominions, and first publishing his work in the United Kingdom, obtains copyright throughout the British dominions. It has been assumed, on the highest legal authority, that priority of publication in the United Kingdom without residence within the British dominions is alone sufficient to guarantee such copyright; this, however, is not clearly defined in the International Copyright Act, and I think that it is a point about which no possible doubt should be allowed to exist. That has occurred to me as a very important point. We have ourselves frequently published books, and have assumed that we have purchased copyright from American authors on the strength of their first publishing in England, without residence, but it is a matter which has never been quite clearly defined.

98. Is that all you wish to say upon that particular branch of the inquiry?—Yes; I merely wish to draw attention to the point; it strikes me as an important point for consideration on the part of the Commissioners.

99. Then we will go to the position of an English author first publishing in a foreign country?—An English author first publishing abroad loses his copyright in the United Kingdom, and is thereby, I think, placed in a worse position than a foreigner, who, under the International Convention, gains copyright in England, after his first publication in his own country. I think that an Englishman should have an inalienable copyright in his own country wherever he publishes first, whether at home, in foreign countries,

or in the colonies; but his copyright should date from the time of the first publication, wherever that may be, and the same should be registered at Stationers' Hall or the British Museum.

100. Taking a third branch of the question, namely, the case of a colonial author publishing first in the colony, what is his position *qua* copyright in England?—My impression is that he loses his copyright altogether. First publication in the United Kingdom being apparently absolutely essential, equally as regards Englishmen, colonists, and foreigners outside of international treaties, then a colonist in New South Wales first publishing there loses his copyright in the United Kingdom. That, I believe, is the case according to the present Act.

101. Are you aware of any legal decisions upon that point?—There has been no legal decision upon that point that I know of so far as colonists are concerned, but the Act has been so interpreted by Lord Cairns and Lord Westbury.

102. Can you quote it to the Commission?—It will be found in "Copinger on Copyright." At page 236 of his book he says:—"In the late case of *Routledge v. Low*, Lords Cairns, Cranworth, Chelmsford, Westbury, and Colonsay unanimously held that to acquire a copyright under the 5th & 6th Victoria c. 45, the work must be first published in the United Kingdom. The law now, therefore, is that if a literary or musical work be first published in the United Kingdom, it may be protected from infringement in any part of the British dominions; but if, on the other hand, any such work be first published in India, Canada, Jamaica, or any other British possession, not included in the United Kingdom, no copyright can be acquired in that work, excepting only such (if any) as the local laws of the colony, &c. where it is first published may afford. This opinion has caused great and general dissatisfaction in the colonies and India," and so on.

Sir C. E. Trevelyan, Bart., K.C.B.  
8 May 1876.

E. Marston, Esq.  
12 May 1876.

E. Marston,  
Esq.  
12 May 1876.

103. (*Mr. Trollope.*) What was the work with respect to which that decision was given?—It was a work published by my firm, written by an American lady, Miss Cummings, called "Haunted Hearts."

104. Was copyright in that work ever obtained in Great Britain?—It was obtained.

105. By the author?—By the author, because the book was published first in England. In order for any author, whether a colonist or a foreigner, or an Englishman, to secure his copyright in England he must publish in the United Kingdom first. This book was published in England first, but I may also add that the author was resident in Canada on the day of publication in England.

106. Whence did the lawsuit arise?—The lawsuit arose from the fact of the book having been reprinted by another house. That book having been written by an American, the other house, Messrs. Routledge, thought that they had a right to reprint it, but we contested the point with them, and it was decided in our favour.

107. I thought that the point upon which you were speaking was whether an Englishman or a colonist did by publishing a book in the colonies first thereby lose his right to copyright in England?—Yes.

108. This is not a case of that kind?—No.

109. You do not know any case of that sort?—I do not know any case of that sort.

110. The case which you are quoting now, of *Routledge v. Low*, has no bearing upon it, has it?—It has a bearing in this way that it is there stated that it is absolutely necessary in order for any one to gain a copyright in the United Kingdom to publish in the United Kingdom first.

111. (*Mr. Froude.*) That was Lord Westbury's decision?—It was.

112. (*Earl of Devon.*) It was not precisely the point raised in that case, but it was rather an *obiter dictum* of the judge?—Yes. The point decided was copyright by residence and first publication; the *obiter dictum* was that copyright might equally have been obtained without residence, *vide* Lords Cairns and Westbury. With reference to this very point of a colonist getting copyright in England, a colonial clergyman called upon me only yesterday and brought me his book, already published in the colony; he wanted to publish an edition in England. I said, "Are you aware that you have no copyright here?" He said, "No, certainly not. On the contrary, I feel certain that I have a copyright here. I registered the book at Stationers' Hall in the proper way." But according to this decision I say that he has no copyright here, although there are on the book the words "Registered in accordance with the Copyright Act of 1869."

113. (*Mr. Daldy.*) Is that the Canadian Copyright Act of 1869?—This book is published in Melbourne, where, I believe, there is no Copyright Act at all. I can give the Commissioners the exact words of Lord Cairns and Lord Westbury in the case of *Routledge v. Low*. Lord Cairns said:—"The intention of the Act is to obtain a benefit for the people of this country by the publication to them of works of learning, of utility, of amusement. This benefit is obtained, in the opinion of the Legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his works here. This is or may be a benefit to the author, but it is a benefit given, not for the sake of the author of the work, but for the sake of those to whom the work is communicated. The aim of the Legislature is to increase the common stock of the literature of the country, and if that stock can be increased by the publication for the first time here of a new and valuable work composed by an alien who has never been in the country, I see nothing in the wording of the Act which prevents, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the protection of the Act in return and compensation

"for the addition he has made to the literature of the country."

114. (*Chairman.*) How does that substantiate the position that a colonist publishing first in the colony has no copyright in England?—I do not think that it does quite establish that point, because the point at issue was that of an alien, and I observe that his lordship uses the word *alien*, which a colonist is not, but Lord Westbury went further, he said: "But although, for the creation of copyright, it is necessary that the work be first published within the United Kingdom, yet by the express words of the statute the copyright when created, extends to every part of the British dominions. This is the benefit which by the words of the Act is offered to authors who shall first publish their works within the United Kingdom. The question then arises, *who are included in the term authors? The word is used in the statute without limitation or restriction. It must therefore include every person who shall be an author, unless from the rest of the statute sufficient ground can be found for giving the term a limited signification.* The Act appears to have been dictated by a wise and liberal spirit, and in the same spirit it should be interpreted, adhering of course to the settled rules of legal construction. The preamble is, in my opinion, quite inconsistent with the conclusion that the protection given by the statute was intended to be confined to the works of British authors. On the contrary, it seems to contain an invitation to men of learning in every country to make the United Kingdom the place of first publication of their works." If that is a correct interpretation of the law, an author whether Englishman, colonist, or alien, gets no exclusive copyright in the British dominions unless he publishes first in the United Kingdom.

115. Have you now finished what you wish to say upon the third head of your examination?—I should like to say a few more words upon that point. It seems to me that the following anomalies arise out of it, first, a foreigner publishing first abroad can gain copyright in England and her colonies; secondly, an Englishman publishing first abroad loses his copyright at home; thirdly, a colonist publishing first in his own colony cannot obtain copyright in the United Kingdom. Thus it seems that the international convention gives a foreigner rights and privileges (both as regards original language and translations) superior to those enjoyed by Englishmen under their own Imperial Act. I see not the slightest objection to the rights thus conferred upon foreigners; on the contrary, so far as regards translations I should be glad to see them considerably extended; but I do think that an Englishman should have an inalienable right in the property created by himself, whether he chooses to publish first at home or abroad. It also seems hard upon a colonist whose government is expected to make due provision "for protecting the rights of British authors there," (I believe that that is included in the Copyright Act.) that he should have no protection in the mother country if he publishes in his own colony first. It has been most clearly laid down as I think I have already shown, that to acquire copyright under the Act of the 5th and 6th Victoria, chapter 45, the work must first be published in the United Kingdom, but notwithstanding this interpretation of the Act by the highest legal tribunal it seems somewhat remarkable that this same Act which thus refuses copyright to the colonist, requires him to deliver, without demand, a copy of his work at the British Museum within 12 months of first publication, and also on demand within a year of first publication, to deliver within a month a copy each to the four great public libraries, or be subject to a penalty of 5*l.* and a copy of the work to each. I know that colonists frequently do perform all these requirements, including registration, and they do so under the impression that thereby they gain copyright here which they certainly do not. From a publisher's point of view the gift of five copies of every work he publishes to these wealthy libraries is a

sufficiently heavy tax, but it is additionally so when, as in the case of the colonial publisher, he gets no *quid pro quo* in the shape of copyright in exchange therefor.

116. You have alluded to international conventions, have you any views which you wish to bring before the Commission with respect to those conventions?—An author under this Act gets a copyright in his original work in such foreign countries, of the same duration as that which foreign authors obtain in their own country. Thus, for example, Baron Tauchnitz gets a German copyright in his English reprints for thirty years after the death of the author, which is even longer than an author himself gets here: but if he wished to have his original work translated into the language of any country under the convention, his right over that translation is limited to five years. I cannot help thinking that an author of an original work is just as much the author after it has undergone the mechanical process of conversion into another tongue as he was before, and therefore if he is entitled to any privilege at all, it should be the same in both cases. At all events I regard the short term of five years as a very small boon indeed. In fact, when taken in connexion with the requirements of registration within three months, and publication or partial publication within a year of the first publication of the original work, it becomes probably in nine cases out of ten quite useless and inoperative, for the simple reason that no publisher in any country will venture to incur the risk of translating a work until it has become tolerably evident that such a translation would pay, which in the case of many authors does not become in the least degree evident, it may be, for two or three years after the first appearance in the foreign country, long before which time the author will have lost his copyright. If a limit for publication of translation is required at all, it should be extended at least to five years; that is for the publication of the translation, and as regards the duration of copyright in such translation, the right, to be of any value to all authors alike, should extend to at least ten years; I cannot see why, as I have said, the right should not be the same for translations as for original works. England, under the Copyright Act, gives home copyright, under certain conditions, to every foreigner of every nationality, why then should she not endeavour to arrange with countries under international conventions, for equal mutual advantages to authors on account of their translated works? Or if it were found impracticable to extend the right through the opposition of any foreign country, then why may not England set the noble and liberal example to other countries of granting to translations of foreign works the same privilege as she does to all original works, and taking in return what she can get by way of reciprocity for her own authors in foreign countries under international conventions? As regards the registration of works in foreign countries, and of foreign works here, the present arrangement seems to be needlessly troublesome, expensive, and unnecessary. For example, a publisher may register and deposit a dozen works in foreign countries, at great expense, not one of which may ever bear fruit in the way of being translated, or, as not unfrequently happens, it is not translated and published until after the year has expired, and the copyright has been lost. It seems to me that these difficulties would be overcome by registration of a work by an author in his own country being accepted in all other countries under convention, as sufficient proof of copyright; a properly authorised certificate of the same being held as sufficient evidence on which to take action for infringement of rights. The term of three months from the date of original publication of original work for registration seems to me to be an unnecessary limit. Why should not such registration be valid any time within the five years? Perhaps a transcript of such registration might be forwarded to each country under convention, not as a necessity to secure copyright, but as evidence of publication.

117. With respect to the compulsory bestowal of copies upon the British Museum and the Universities, have you any observations to make?—None other than this, that it seems to me sometimes an extremely heavy tax upon publishers. For example, one publishes a work at say 25*l.* or 25 guineas, which we did two years ago; we had to give a copy to the British Museum. Certainly we were not in that case called upon by the libraries to give copies, and therefore we only gave one copy, but we were liable to be called upon to give the whole five copies; and that occurred to me to be a very heavy tax upon a work of which only about 100 copies are sold in the whole. It is about equivalent to the whole amount of profit likely to be derived from it.

118. I suppose that that would be a very exceptional case, would it not?—It is an exceptional case, but still one constantly publishes books at a very high price, 3 guineas, 5 guineas, and even 10 guineas.

119 (*Earl of Devon.*) Should you be prepared to recommend the entire abolition of that practice, or a qualification of it in any way?—I should advise a qualification of it to this extent; I think that one copy given to the British Museum should be sufficient.

120. What are the five places for which copies are liable to be required, the University of Oxford is one?—The Universities of Oxford, Cambridge, Edinburgh, and Dublin, and the British Museum.

121. (*Sir H. D. Wolff.*) Is not a copy required to be given to Stationers' Hall?—No, no copies are given there; they are sent to Stationers' Hall, and they are sent from there to the libraries.

122. Do you think that one copy would be enough?—I think that one copy to the British Museum should be sufficient.

123. Do you think that a system might be established of a registration of books similar to that which was introduced in an Act last year for the registration of trade marks; do you think that that would be satisfactory, namely, a simple registration of one copy?—I think that a registration of books is absolutely necessary, and I know practically that nine books out of ten are never registered at all, simply because there is a tax of 5*s.* for registration, and there is no particular object in registering, because you are not required to register unless you want to bring an action for infringement of copyright in some way.

124. (*Dr. Smith.*) Who receives that 5*s.*?—I do not know to what fund it goes; it is received at Stationers' Hall.

125. We may assume that the Stationers' Company receive the 5*s.*?—I presume so.

126. (*Sir H. D. Wolff.*) Last year an Act was passed for the registration of trade marks, by which the registration in England of a trade mark would be valid in any other country, and everybody was allowed to come and register in England in the first instance?—Yes.

127. I suppose that you would not allow a foreign author to register a book in England unless reciprocity was given in his country?—Yes, we do so now; that is done under the present Act.

128. Do you think that that is fair on English authors?—I think that it is a good example set to the world at large.

129. You would allow, for instance, an American author to register his book in England, where he gets a very large sale, and on the other hand an English author cannot register in America, where he also might get a large sale if he chose?—It is so. I do not see any objection to it myself.

130. (*Mr. Froude.*) You would not wish to make reciprocity a condition?—I do not know that I should make it a condition, because the fact of registering does not apply to Americans only, it applies to all the world. Every foreigner of every nationality has a right to secure a copyright here, and it would be hard upon all other parts of the world to be excluded from the right to register in England because we wanted to obtain reciprocity from America.

131. (*Sir H. D. Wolff.*) But it might be made a

*E. Marston,*  
*Esq.*

12 May 1876.

E. Marston,  
Esq.  
12 May 1876.

law of general application, saying that no country should be allowed to register here unless we were allowed to register there; and then America would merely come in as the other countries did; and if the other countries chose to give us these reasonable facilities they might register here, and if America did not choose to do it she could not come in?—I am not prepared to advocate that course.

132. (*Mr. Froude.*) We have an international copyright with France, and Spain, and Germany, and Italy, and in those countries we should give the same privileges as we receive from them. Do you not think that the same principle should be extended to America, which has heretofore refused to come into any international arrangement with us. Or do you think that it is better to set them a generous example in the hope that they will be affected by it?—The latter is my view of the matter, and for this reason. I regard this question wholly as an author's question; I believe that all American authors are heartily in favour of an international convention, and I would not inflict injury upon them by retaliation because their views and ours are opposed by an interested section of the American people.

133. (*Sir H. D. Wolff.*) Are there many American authors who avail themselves of the right of publishing in England in the first instance?—There are.

134. And who prefer coming and obtaining an English copyright to obtaining it in America?—But they do not sacrifice their copyright in America by getting it here.

135. They would first publish in England and get their copyright here, and then go to America and get their copyright there?—Yes. I think that in America all they have to do is to register their title page, by which they secure their copyright there, and they publish first here in order to secure a copyright here.

136. They there register the title page, I suppose, only after the book is printed; they cannot register the title page and then write a book on that title page?—I think that they can; I do not know that it is necessary to state that the book has already been written.

137. You know I suppose a good deal about the American book trade. Can you tell me anything of the prices of printing there, and the labour in the production of a book. Is it cheaper or dearer than the production of a book in England?—I can only speak generally. I should say that on the whole it is dearer.

138. Would it answer the purpose of an English publisher to bring out an edition in England and send it out to America, by which he could undersell any piratical edition in America. For instance, supposing that he brought out a book and published it at a very cheap rate, do you not think that he could send it out to America, and could undersell any piratical edition of the same book?—He would always have the difficulty of a duty of 25 per cent. to pay.

139. With that duty you think that he could not undersell?—I should doubt it. I should not think that there would be that difference in the cost of production on both sides.

140. (*Mr. Trollope.*) Supposing that we refused to the Americans the power of registration here because they refused to us any copyright there, should we gain anything. For instance, would such refusal at all help us to gain the right of international copyright with the States, which we are very desirous of gaining?—I am hardly prepared to say.

141. I only ask you for an opinion, of course?—My impression is that it hardly would.

142. Would it assist us in any other way to establish future copyright with the States. Should we gain any point by refusing this right to America?—I cannot myself see what point would be gained by refusing it.

143. Then by refusing it we should be merely retaliating upon them?—I think so.

144. (*Mr. Dalry.*) Do you consider that registration in England, with reference to an English book, con-

fers copyright?—I am not quite clear about that, because although it is not necessary to register when a book is published, you cannot bring an action against anyone for infringement of your right until you have registered, that is a necessity, therefore I presume that registration really is so.

145. It protects copyright?—It does.

146. Does registration, or does first publication, confer copyright; or how is copyright actually obtained in England under the Copyright Acts?—I have never considered the question, but I should have supposed that after all registration is the act of obtaining copyright, inasmuch as you cannot take any action against anyone until you have registered.

147. With reference to registration in the United States, do you consider that registration alone confers copyright, or that it is necessary as an integral part of obtaining copyright there to deposit a copy of the book in the library at Washington, which implies that it must be produced before it is registered?—I really cannot say. As far as I understand the question at all, I understand that simply registering the title page of the work is sufficient without the deposit of a copy of the work itself. Otherwise I do not see how an American could secure copyright in both countries.

148. I wish to take you back to the case of an English author first publishing abroad. Does he lose his copyright if he first publishes abroad?—I presume so, from the decision to which I have alluded.

149. Does that hold good in countries with which we have an international copyright law. If an Englishman first publishes his work in France does he lose the copyright of that work in England, or is it only in countries with which we have not an international convention?—No; he does not lose the copyright if he publishes in a country with which there is an international convention, unless he fails to register in that country within three months of his first publication.

150. (*Mr. Trollope.*) But we have an international convention or an intercolonial convention with the colonies?—No, I think that we have not; I think that there is nothing whatever. The Imperial Act protects authors first publishing in the United Kingdom throughout the British dominions, but in many colonies there is no Act protecting authors in the colonies publishing there first, as far as I am aware.

151. An English author is protected in the colonies at any rate, is he not?—Not if he publishes in the colonies first.

152. If he publishes here first he is?—Yes.

153. (*Mr. Dalry.*) Is he not protected in the colony in which he publishes?—I doubt even that. I mean of course in colonies in which there is no *lex loci*.

154. (*Mr. Trollope.*) You say that you think that not nine out of ten works published in England are registered?—That is my impression.

155. Does it follow that the publishers or owners of nine out of ten works have no copyright?—Not at all.

156. Is there no time within which a copyright must be registered in order to give it property?—I believe not; I think that the Act distinctly says that before you take action for an infringement of your right you must register; that may be at any time.

157. Then registration could take place 40 years after the publication?—Yes. Notwithstanding that, I think that compulsory registration would be a very good feature. For instance, you may publish a book now and not register it; if it bore no date on the title page you would have some difficulty in 20 or 30 years time in knowing when it was first published; and when the copyright was running out it would be rather difficult to trace the date of the origin of the copyright.

158. In all instances in which action is to be taken with reference to any book that has been written, the copyright has to be registered as a preliminary to that action?—Yes, you cannot take action without it.

159. (*Dr. Smith.*) Is it the fact that a foreigner cannot obtain copyright in the United States under any circumstances?—I believe that a foreigner can only obtain copyright in the United States by becoming an American citizen.

160. By ceasing to be a foreigner?—By ceasing to be a foreigner.

161. Then if I rightly understand you, the law is this, that a foreigner, say an American, by publishing first in this country can obtain copyright in the United Kingdom, and can subsequently obtain, or at the same time can obtain, copyright in the United States by virtue of being an American citizen; is that the law?—I believe that it is.

162. But on the contrary, if an Englishman first publishes his work in a foreign country with which there is no international convention, he loses his copyright in the United Kingdom?—He does.

163. That is the law?—That I believe is the law at present; that is a point to which I wish to draw the attention of the Commission.

164. (*Sir H. D. Wolff.*) May I direct your attention to the third clause in a paper from the Foreign Office with reference to America, headed "Directions for securing copyrights under the revised Act of Congress which took effect August 1st, 1874." In that clause of the paper it is stated that the book must necessarily be deposited within 10 days of publication, showing that registration and the deposit of the book are quite necessary, or otherwise you could register a book and never publish it?—Yes; it says that the deposit must be made 10 days after publication, but it is not necessary that the publication should take place immediately after the registration.

165. Do you consider that the deposit of a copy is necessary to insure copyright in the United States, or does it depend simply upon registration?—I should say from that clause that it would be necessary to deposit a copy.

166. (*Chairman.*) Is the copy to be deposited with the librarian of the Congress, or with whom is it to be deposited?—With the librarian.

167. (*Mr. Jenkins.*) Do you know that the American publishers now, when they make an arrangement with an English author, are in the habit of registering the books for which they get advance sheets?—I do not see what object there could be in registering them.

168. Are you aware of the fact that the books of English authors published in America are now registered at Washington, and called copyright works?—I believe that that is done in some cases, when a work is written partly by an American and partly by an Englishman; but when the work is written wholly by an Englishman there can be no possible object in doing it.

169. One of my own books was published recently in America, and it has been sent home to me, and I find on it, "Registered according to the Act of Congress at Washington, copyright edition." Do you know under what plea, or custom, or law that is done?—I do not believe that there is any law at all which would justify its being done. As an Englishman you could not register a book there, and therefore no publisher there could register it for you.

170. You have said that you think that an Englishman should have an inalienable right, whether he published first at home or abroad. Have you considered what the effect of that would be, supposing that an Englishman published in America, and did not care to publish here for two or three years. Do you think that that would be a good thing?—I do not see any reason why he should be compelled to publish here if he did not wish to do so.

171. Precisely; but looking at the policy of the law as laid down in the case of *Routledge v. Low* by Lord Westbury, supposing that that was the policy of the law, namely, that it was advisable to encourage the publication of books in England first, do you think that it would be well to make an exception in the case

of the first publication by Englishmen in foreign countries?—I think that an Englishman should have the copyright in his own country under any circumstances. If he publishes a book first in America, and does not choose himself to publish it here, and if there is a want of the book in this country, I think that those objections should somehow or other be overcome, either by some one else being permitted to publish it, giving him some interest in it, or else making it necessary, perhaps, for him to publish within a certain time or lose his copyright altogether.

172. Do you approve of the policy of the copyright law enunciated by Lord Westbury, namely, that its object is to secure to the public of the United Kingdom the benefit of the first publication by its authors?—I cannot say that I do altogether. I should at all events have preferred that the law should not have been confined to the United Kingdom, but should have been at least extended to the whole of the British dominions.

173. That opens a very wide question, and I should like to obtain from you an opinion upon it, namely, the question whether the copyright law is in the interest of the public or in the interest of the author, or in the interest of both together, or in the interest of both in conjunction with the trade of publishers. I simply want you to adopt some position from which one can judge of the value of the answers which you are giving with regard to that point. I am speaking of the policy of the law. You have laid down a proposition that an English author should have an inalienable right to his copyright in England, whether he publishes first in a foreign country or in England. I answer that by pointing your attention to what Lord Westbury has laid down as the policy of the law of copyright in England, namely, to secure to the public of England the first publication. You say that you do not approve of that principle so broadly as it is laid down; then I ask you what is the principle which you approve of, and I suggest to you the alternative, namely, is the copyright law in the interest of the public or in the interest of the author?—I presume that it is in the interest of the public.

174. Then I want to know how you can say that it would be in the interest of the public that an author should be allowed to publish a book first in America, and to reserve the right of publication in England, and yet for years perhaps not use it. Do you think that that would be advisable?—I can hardly conceive a case where an English author would publish a book entirely in America and never think of publishing it here. I should have thought that if the book was worth publishing at all it would necessarily be published in England at some time or other, at all events, whether it was published in the United States first, and published here immediately afterwards, or not, and that it would never be held back altogether. I never contemplated such a case as that.

175. Then *cadit questio*. What then would be the nature of your original proposition, namely, that an inalienable right should be reserved to authors in England wherever they published first?—In saying that, I assume that the English author is going to publish immediately afterwards in England. I do not contemplate his never publishing at all in England.

176. Do you think that it would do to put a limitation upon the time within which that qualified copyright should exist in the case of first publication?—As I suggested just now, I think that that would be a good feature.

177. Do you know the late Canadian copyright law?—Yes.

178. Do you know that by its publication in Canada is requisite within a certain time after registration?—Yes.

179. Then coming back to the question of registration, do you not think that it would be advisable to oblige every author to register either his title page or his book in England, in order to secure copyright. I do not wish you to complicate it with the question of

*E. Marston,  
Esq.*  
12 May 1876.

international legislation, but I will take the general principle first?—My impression is that as regards an English author, registration should not be necessary in order to convey a copyright to him. I should say that his copyright would be natural, just as much as an estate would descend to him.

180. But suppose that we admit that it is now statutory as it is?—It does not now depend upon registration at any rate.

181. Do you not think that it would facilitate the working out and the solution of some of these problems which you have raised to-day, if the first thing upon which we insisted was that of necessity a copyright should be registered?—I do decidedly. I have no difficulty in that respect whatever.

182. Do you know anything about the system of registration at Stationers' Hall?—There is an ordinary form to be filled up there, and a fee of 5s. has to be paid for every registration, which I regard as a very heavy tax.

183. Do you think that you could conveniently make it less?—I do not see any necessity for a tax at all. I think that a copy of the work itself should be given in exchange for registration.

184. But in all registries of deeds do they not charge fees for registration?—I suppose that they do.

185. Then when under the law you acquire a certain right of property by registration do you think that 5s. is an onerous sum to pay for it?—No; I think that if registration were an absolute necessity in order to obtain copyright, 5s. would not be a heavy fee.

186. Do you know anything about the method of registration at Stationers' Hall; do you know whether it is easy to find out whether a certain title has been previously registered, whether their books are kept in good order, and so on?—I have not had much experience in examining their books; but as far as I have had occasion to examine them, I have always found very great facility in discovering any title that I wanted.

187. Have you ever tried to find whether a pamphlet has been registered?—No.

188. Have you ever tried to see whether certain engravings were registered there?—No; but one difficulty would arise from the fact that an immense number of books are never registered there at all.

189. There was a point in your evidence which struck me as quite new, namely, with regard to the length of time during which you think that a translation might be copyrighted; you said that you would extend that time from five years to ten?—Yes.

190. Do you not think that there is a distinction between translations and productions in original languages?—I do not see that there is a sufficient distinction to make it desirable to give an author the entire copyright in his original work for a certain period, and to give him only five years in the translation of his original work, because he has the same interest in both.

191. If he is not able himself to translate it he does not contribute to the translation, he only contributes the original matter to the translator, and is there not something else added to it?—Yes, there is the fact of translating.

192. And that may be an artistic work?—Yes, it may be; I think that five years is too short, simply because authors do not become in that time sufficiently known in each other's country to enable them to take advantage of the copyright law.

193. That raises another question with reference to the rights of publishers at home in copyrights which they buy, for instance, in England. If you purchase an English copyright without anything being said between you and the author, but simply purchase the book, what do you consider that you purchase, do you purchase the copyright only within the United Kingdom, or do you imagine that you purchase all the rights which there are in that book throughout the world, or which may arise out of it?—I should

say that if I purchased a copyright without any stipulation being made by the author, I purchased the whole copyright, all that he had to sell.

194. Would you not put it the other way, that if you purchased without making a stipulation that you were to have all the rights, you only purchased the right within the United Kingdom. Supposing that you purchased from an author a work without specifying that you purchased from him the rights or the benefits which might be obtained from the United States, or the rights which might exist in France or in Germany, do you think that your contract would extend beyond the transfer of the ordinary English copyright?—I should hardly think that it would, I would not assume it myself; that is, I would not take advantage of what I should regard as an obvious oversight on the part of an author.

195. What is your custom in that respect?—The custom is to stipulate generally upon different points. They are generally brought out. I do not imagine that I should think of buying a copyright, or that an author would sell me a copyright, without stating these points, as to whether he reserved to himself any particular rights. At all events I think that the question would arise on one side or the other.

196. In the case of new authors, nothing being said, and you publishing on the usual terms of half profits, supposing that Tauchnitz offered you 100*l.* for a German copyright, what would you do with it?—If it was a case of sharing profits, half should go to the author and half to the publisher, because that would be a part of the profits of the work.

197. If you had purchased a copyright say, for 50*l.*, would you do so?—Yes, if I had purchased the copyright without any such reservation on the part of the author; assuming, as I have said before, that the reservation was omitted from an obvious oversight on the author's part, otherwise I should consider that I had purchased all rights for 50*l.*

198. (*Mr. Trollope.*) Have you been accustomed in your agreements to the terms, "all copyrights at home and abroad"?—Yes, the agreements generally state so; but it is all subject to arrangement. My impression is that it is not the custom of the trade at all to make an arrangement for copyrights so indefinitely.

199. (*Earl of Devon.*) What is the position, as regards copyright, of an English author publishing a book in England who omits or abstains from registration?—I do not think that his copyright is affected at all.

200. He retains the right for the statutory period of publishing that book?—Yes.

201. Has he any means of enforcing that right against those who infringe it?—Before he can enforce it he must register.

202. There is no other remedy?—No.

203. The exclusive right of publication may be made matter of bequest, or of assignment?—Certainly; and one advantage of registration is, that you can assign a copyright very simply. There is a very simple mode of assigning copyright.

204. Then how do you account for the fact that, as I have gathered from you, there are a considerable number of cases in which authors have failed to register. It would seem that registration would confer a very important advantage?—Whenever an advantage is to be derived from registration, then authors or publishers register; but they do not register, I think, now because they feel that there is no necessity for it. No one who does not think that his rights will be or have been infringed, ever thinks of doing it; but if he does think so, then he registers, and only then.

205. As a preliminary to taking any proceedings by way of defence?—Yes. I think that if the fee were reduced from 5s. to 1s., probably all books would be registered. In England I should like to see it made compulsory.

206. You would think it desirable to make registration compulsory?—I should.

207. When an author brings to you a book for publication, have you any rules regulating you as to the size and mode of publication of that book; whether you shall publish it in a handsome edition for a library, or whether you shall publish it in a cheap edition, calculated for more extended circulation?—It depends entirely upon the nature of the work. If we think that there will be a demand for it in an expensive form we publish it in an expensive form.

208. Have any instances occurred to you in which authors have been subjected to interference by an unauthorised production of copies of their works printed upon a reduced scale in other countries, arising from the fact that they have been published in the first instance upon an expensive scale here?—No; I am not at all acquainted with such a case.

209. (*Mr. Trollope.*) With respect to registration, you have recommended that it should be made compulsory. Have you ever thought of what should be the penalty for disobedience?—The only penalty which occurs to me is that already existing under the international convention, viz., loss of copyright, thus registration would be made an act of copyright, but I am far from advocating such a course.

210. Would you be prepared to recommend that from the fact of registration having been omitted for a certain period, which period would have to be defined by the law, so vast a penalty as the loss of copyright should be incurred?—No; I am hardly prepared to say that that should be so. I think that there should be some penalty at all events, something to make it compulsory. I do not see how you could make registration compulsory unless some penalty was attached to the omission of it; but certainly on the whole the loss of copyright would be too great a penalty.

211. Can you imagine any other penalty which you could attach to such an obligation?—I can only suggest a penalty similar to that which the British Museum now claims for non-delivery of copies within a certain time. If you do not deliver a copy of your book to the British Museum within, I think, 12 months, you are subject to a penalty of 5*l.* I think that it might be made compulsory on a publisher or author to register his books, say, at the British Museum by delivering a copy there; and if he does not do so within 12 months, let him be subject to a penalty of 5*l.*

212. So that the registration and the delivery of the book at the British Museum could be one and the same thing?—Yes.

213. In which case the registration would be effected, not at Stationers' Hall, but at the British Museum?—Yes.

214. Would that be a task which you think the Legislature would like to impose upon the British Museum?—That I cannot say at all. I do not know that registration at the British Museum is necessary. I do not see why Stationers' Hall itself may not be the place for registration, as it is now.

215. (*Mr. Jenkins.*) As a fact, in the United States and in Canada the penalty for non-registration is now loss of copyright, is it not?—I cannot say with regard to the United States, but I believe that it is so in Canada, and it certainly is so here as regards translated works. If you do not register here within a certain time you lose your copyright.

216. You have a good deal to do with the foreign trade, have you not?—Yes.

217. You have made a very important suggestion with reference to the registration in one country being good for all. Do you, as a publisher, see any practical difficulties in carrying out that suggestion?—No; I

think that it would be a very simple thing to carry out.

218. How, practically, would you work it out?—I think that it might be carried out somewhat in this way, that if an author registered his book here at the customary place, whether at Stationers' Hall or at the British Museum, or wherever it might be, the registrar might be requested to send a copy of that registration to each country with which there was a convention, and it might be entered there. This I believe was the system practised by the old German Bund. Registration in one state was simply notified to all the other states; this involved about 30 different notifications.

219. Do you think that it would assist it to add to that the requirement that on every copy of a book published there should be a statement that it was registered, and of the place at which it was registered?—Yes, I think that would be desirable.

220. Do you think that would be sufficient as regards foreign countries, without any transmission of the registration. If you publish a work in France, for instance, you say, "Registered on such a date at the Registry Office in London." Do not you think that would be sufficient without transmitting a copy of the registration to the Registry Office in France, at Paris?—I think it would, although I think that the fact of the registration being made in Paris would be an assistance to parties there wishing to translate the book; they would go to the Bureau in Paris to discover whether the book was really registered; they might be disposed to dispute the assertion on the title page.

221. Would it not lead to a very large correspondence on the part of the registrar, supposing, first, that there was compulsory registration in England, and, secondly, that a copy of every registration was to be sent to each country with which we had an international copyright?—It would certainly be less expensive than the present mode, which involves the necessity of sending copies of books to every country, and the expense charged for depositing the book, and of course agents' expenses for doing the work. The simple sending of a copy of the registration by a clerk to the different countries would certainly be infinitely less, and more convenient. Of course it would be quite useless to register abroad every book published; the form of entry might have a column headed "*If required to be registered abroad,*" and an extra fee of 1*s.* may be charged for it.

222. (*Mr. Froude.*) With reference to translations, do you mean that if, for instance, I made a translation of a foreign book, at the end of five years anybody would be at liberty to take my translation and republish it?—No.

223. He could take that book and re-translate it?—Yes.

224. (*Chairman.*) You have stated that, in your opinion, the present English fee of 5*s.* on registration is too high. Can you tell us what the present registration fee in the United States is?—One dollar for registration, and one dollar for an assignment of the registration; here it is 5*s.* for registration and 5*s.* for an assignment of the copyright.

225. Are you aware whether in the United States that fee is regarded as too high?—I am not at all aware; I do not say that it is too high here, but I say that I presume that is a reason why books are not registered to a great extent. If every book published were registered at a fee of 1*s.* the revenue derived therefrom would be infinitely more than that now derived from 5*s.* fees.

The witness withdrew.

A. Macmillan,  
Esq.

12 May 1876.

ALEXANDER MACMILLAN, Esq., examined.

226. (*Chairman.*) You have paid, as we know, considerable attention to the question of copyright. Will you kindly give the Commission the benefit of your views upon that subject?—I have thought over it for more than 30 years, and the result is the conviction that there is only one sort of copyright which is reasonable or practicable, and that is putting property in books upon the same footing as all other property.

227. Will you explain to the Commission a little more in detail what you mean by that proposal?—Yes. I had the honour and pleasure of once meeting Mr. Wordsworth when he was an old man, in 1845; he had been the writer of books, as most of us know, for half a century, and he told me at that time that he had only just begun to make any considerable sum of money by his books; I think that in the last year he had made 300*l.*, and in previous years smaller sums. I have no hesitation whatever in saying that at the present moment the copyright of Wordsworth's works in England alone is worth a good deal more than 1,000*l.* a year; that is a small calculation. It would be perfectly easy for Wordsworth's family to be making money out of their works at present. I am about to use a phrase which is not admitted now, but I think that it would be just to the family that they should be getting the result of their father's labours, and I do not think that the public would lose. I think that the public is injured by the present inequitable state of the law, because Mr. Wordsworth's poems are, except the *Prelude*, all out of copyright, and you will see on book-stalls volumes called "*Wordsworth's Poetical Works*," and people buy those things as Wordsworth's works. I do not know who are now the proprietors of the copyright portion of his works; but whoever they are, Wordsworth's works are published by them in one volume in a cheap form, including the *Prelude*, but other editions are called "*Wordsworth's Works*," and the public are misled. This will probably be the case when all the works are out of copyright, for anyone will be able to publish them in any form he likes; and I think that you have not the same security for well-edited editions of authors that you would have if their works were one man's property. What is everybody's business is nobody's business. With regard to our standard authors, there are very few editions of many of them, as to which one is quite sure that they are such editions as in the interests of culture we ought to care to be in the hands of the buyers of books.

228. Are we to understand that you would wish the copyright to be rendered perpetual?—Yes, and I should be inclined to give it to authors of other countries. I would allow an American author or a French author, if he could prove the work to be his by any reasonable and not very perplexed mode, to have a copyright in our dominion.

229. In the event of perpetual copyright being granted, may you not conceive a case in which there would be no legal proprietorship at the end of a term of years, and how then would the book be made available for the public?—If it was desirable that any book should be published, I see no reason why the State should not make money out of it, or why some enterprising publisher, who thought the book worth publishing, should not go to the Government and say, "If you give me a legal right to this thing I will publish it," paying a rent or a royalty for a term of years. If we had in the country (which I think we might have) a Minister of Instruction who would look after such matters, things of this kind would be referred to him, and he could see after the condition of the published works of our great authors.

230. Would you then make the State the residuary legatee as it were of the authors of the country?—I think so. That would be one way of setting that matter right.

231. (*Mr. Froude.*) With reference to perpetual copyright, it sometimes happens that a man, particularly an inexperienced author, may write a book which turns out to be a very valuable property and very popular, of the value of which he was ignorant, and which he may have sold to a publisher for a very small sum; would you give the publisher the perpetual copyright?—No; I think that you might make such a transaction between the author and the publisher, subject to limitation, giving the publisher the right for a term of years, and that then the copyright should revert to the author's family. I would suggest that when copyrights were held by publishers they should at the expiration of the present legal period revert to the families.

232. (*Mr. Trollope.*) With respect to this suggested return of the copyright to the author, or the author's family, after a certain period, would you recommend that such should be the case whatever might be the wording of the contract between the author and the publisher?—That is a legal question upon which I can hardly speak; I can only state broadly what I think ought to be the case.

233. We are speaking of a legal contract, and therefore we must speak of the properties of a legal contract?—No contract now would have any legal value beyond the legal period.

234. That is because one and the same period is now fixed for the rights of the publisher and of the author, and the author can sell for the whole of that term. I am asking you with regard to perpetual copyright. You have recommended that copyright should be perpetual, but that the author should only be able to sell it for a certain term?—Yes.

235. Do you think that it would be possible for any legal arrangement to be made by which the publisher could not acquire, and the author could not part with, the whole of that copyright?—I have thought that matter over a good deal, and I confess that I do not see that that kind of thing could be wholly done; but if the general principle were found workable at all, it might be carried out to some extent. As the law now stands even in that case the author would lose nothing by this new arrangement. Because upon the plea that a publisher may take possession of an author's property, the State now throws it open to be squatted upon by anybody. The present condition of the property in England is that it belongs to nobody at all; it is a common. My complaint is that this is inequitable, as no other property is so treated.

236. If it be so, there would be no possibility of enacting that the arrangement between the publisher and the author should only endure for a time?—If that is the law there would be none, and then I have no answer to the question.

237. Then the property would become permanently, and for ever, that of the publisher?—The like happens with all other property now.

238. Are you not aware that authors very often part with their books before they are at all aware of what their ultimate value may be?—Certainly, I am fully aware of it, and that is the reason why I suggest that in these cases exceptional legislation might be desirable. If you say that it is impossible, then of course the desirability of it goes for nothing.

239. I do not say that it is impossible—I am no lawyer?—I think that it might be done.

240. If that were the case, then a publisher might become the owner for ever of the most valuable copyrights in the land?—Yes.

241. And a publisher in that way might have become the owner of the plays of Shakespeare?—I do not see any great harm in that.

242. (*Dr. Smith.*) Would there be any difficulty in preventing an author by law from assigning his rights beyond 42 years?—That is a question which Mr.

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Trollope put, and which I am not lawyer enough to answer.

243. Supposing that your view was carried out, might there not be an Act in restraint that an author would not have the power of selling his copyright for more than 42 years?—I cannot tell at all, I do not know.

244. (*Mr. Dalry.*)—Do you know the United States' copyright law?—No, I do not.

245. Are you aware that under the United States' law a book is registered for a certain period, and after that it is necessary to renew the registration in order to secure additional copyright?—I was not aware of that, but something of that kind seems to me possible, and might meet the difficulty spoken of just now.

246. Would your view with reference to copyright in these books be such that you would think it wrong that the materials in those books should be made use of in the shape of abridgments, or that the subject matter should be used by other authors, would you confine it in perpetuity to one author?—I would not have any change from the present law with regard to the materials. If you take Tennyson's "Idylls of the King" the materials are in a common legend. Others have written poems from the same materials. But with regard to a dictionary, Johnson's Dictionary might be called "Johnson's Dictionary" for ever, and under that title be permanent property. But you would not prevent persons from making other dictionaries of the English language, which is common property. You would not allow another man to go and print "Johnson's Dictionary" and merely add a little to it. But the same field in which Johnson worked is open to a new worker.

247. Would you allow a writer on history to make use of materials which have been obtained by former historians?—If "materials" mean the facts, you cannot hinder that by any possibility.

248. But might he use the historian's book, or must he go back to the original source for information?—That is not a thing upon which any new information is required. The same law which enables historians to work side by side now would apply. Historians who write now use previous writers, referring to them as authorities and quoting them, saying, "I use So-and-So, and I have taken my facts from them." That goes on now, and I think that the same thing might go on hereafter. I was going to mention one other public disadvantage in the present condition of the law. Mr. Hallam, as is well known, wrote a Constitutional History of England. Many successive editions, with additions and improvements by the author, were published. The first edition of that book went out of copyright a few years ago, when a publisher reprinted the first edition, and it was sold in the trade as Hallam's Constitutional History, and the public were buying a book in a form which the author certainly would not have wished. That is one of the kind of anomalies which creep in from the present condition of the law. It is not materially different from the imperfect editions of nearly all our great authors which are constantly on the bookstalls. If you take any one of them you will probably find the book misprinted. Parts of poems are left out for the convenience of a certain number of sheets, and things of that kind occur, and you cannot prevent them, so that one has no confidence in the accuracy of the book. To recur to the case of Shakspeare; such a large and important work, no doubt, presents difficulty, but it does not appear to me that that is more difficult than a great many other things which happen with regard to other property.

249. (*Mr. Trollope.*) Of course I used the name of Shakspeare as being the strongest that I could use?—Yes. The question has often been put against those who argue in favour of perpetual copyright that the property, say in Bunyan's books, might fall into the hands of a very high churchman, who could stop it.

250. (*Mr. Froude.*) That was Macaulay's argument?—Yes. My answer to that is that you would deal with it precisely in the same way as you deal with

a bit of land through which you want to make a railway, and it seems to me quite possible to meet the case when it arises. The chances are very small that a man's prejudices would go so far as to lead him to deprive the public of what was pecuniarily valuable to himself.

251. (*Chairman.*) Cannot you conceive cases in which a man may have no prejudice, but may simply be indifferent, and may shut up a book which is in his possession, and so practically prohibit its republication?—He could not shut up all the copies of the book; the book would always be there in some form for somebody to print, and if the State thought it desirable, or if it was put before the State that this book ought to be published, application for permission to publish it might be allowed to be made by somebody who was willing to run that risk and pay for the right.

252. But that is a different question altogether from dealing with literary property in the same way as with any other property, in the sense in which I think you originally started your proposition?—It would then recur to the State.

253. You would bring in the State to cure the public inconvenience which might result from the general principle which you lay down?—Yes; it is exactly analogous to the action of the State in the case of railways or of any other large public property.

254. (*Mr. Froude.*) I look at it from a literary point of view in the interest of letters. Supposing that this perpetual copyright could not be obtained, can you suggest any other way by which the publication of an imperfect and inferior edition of an important book might be checked and prevented?—It might be done in the same way that an adulteration of articles of food is dealt with. You might bring in a law to forbid and punish the mutilation or deterioration of literary property.

255. (*Dr. Smith.*) Might it not be possible to prohibit the republication of earlier editions until the copyright of the last edition has run out?—That might be done. I think that a perpetual copyright is the best remedy for the evils which exist. I might add that when I was in America I had conversation with a good many authors upon the question of international copyright. They generally wished for international copyright. I saw men of considerable eminence there, including Mr. Richard Grant White, an eminent English philologist and an editor of Shakspeare, who said that the real cause of all the confusion in men's minds in America, and elsewhere, was the Act of Queen Anne, whereby literary property was treated differently from other property; and he then said that if we had the courage to repeal it, it would have a much larger influence upon the Americans than any other form of legislation which could be adopted. Anyone who has paid attention, or tried to pay attention, to the recent Canadian legislation can see that it is one continual perplexity.

256. (*Mr. Trollope.*) Do you not think that it is expedient that the laws of the different civilized countries should be brought as near together as possible?—I certainly think so.

257. If we adopted in England perpetual copyright, should not we make a greater distance than ever between our own laws and those of other countries?—I think that as they became convinced that we were right they would follow our example as they are doing in the case of free trade. We had the courage to act upon reasonable principles in free trade, and other countries are by degrees following us.

258. (*Chairman.*) Do you not see that there is a very essential difference between the two principles. The principle which you lay down would be called by Sir Charles Trevelyan, who gave us evidence here the other day, strict monopoly?—Yes; I have heard Sir Charles Trevelyan talk about the matter before, and I know that it was Lord Macaulay's view. It is no more monopoly than a man's right to his hands.

259. (*Dr. Smith.*) If your view could not prevail (and I must confess that it is very difficult to suppose that the Legislature of this country could be induced

278. That is an injury to the public as well as to the proprietors of the copyright?—Undoubtedly.

279. Would you make any suggestion to meet a case of that sort?—I do not know that I could, but I must say that that point has occurred to me, and especially to-day, when I was thinking the matter over; it certainly is a very great injustice both to the author and to the public, but it is very difficult to know what remedy could be applied; because, even supposing that you extended copyright, the same circumstances would arise when the copyright did expire.

280. If, for instance, the law was amended to this effect, that no publisher should be allowed to republish an early edition until the copyright in the later edition had expired, would not it meet the circumstances of the case; because when the copyright of the later edition had expired he would have no motive to reprint the earlier and imperfect edition?—There is no doubt that if Parliament would grant that, it would be a very great advantage both to the public and to the author, but the effect would undoubtedly be to give something like an almost perpetual copyright, because the author or his representatives would unquestionably in such a case take care that the book, if it were one capable of improvement, should always in every successive edition be brought up to the knowledge of the day; and so long as that was done, of course the copyright would continue to exist. I think that what you suggest would be a very fair thing, but I doubt whether Parliament would give its consent to it.

281. But supposing that the limitation was confined to alterations made by the author, if the present term of copyright lasted it could not extend beyond the life of the author, or the 42 years from the time of the alteration, could it?—Then supposing that an author left a very intelligent son who succeeded him in his line of thought in every way, and that he was the proprietor of his father's work, and devoted himself continually to its improvement, it would be hard not to put him in the same position.

282. Unless one is in favour of perpetual copyright, a limit must be drawn somewhere?—Yes.

283. And might not the limit be drawn in the way which is suggested, namely, that the author alone should have a right to improve upon his book so as to give copyright?—That undoubtedly would be a good step, and a very proper step. The author, however, would not personally be in a position to combat a pirate, because copyright exists at any rate as long as the author lives.

284. But the latest edition of the work would last for the term of copyright, namely 42 years, if the author died?—Undoubtedly, and consequently the suggestion that the limitation should be confined to alterations made by the author seems to me to be a very good one.

285. (*Mr. Trollope.*) Putting aside your opinion that Parliament would probably be unwilling materially to lengthen copyright, do you think that copyright should be materially lengthened?—I really think that it would be fair that it should be.

286. Are you aware of the length of a German copyright?—I forget what it is at this moment.

287. It is for life and 30 years after; and are you aware that a French copyright is for life and 50 years?—I was not aware of that.

288. Do you think that it would be for the advantage of literature that the English duration of copyright should in some measure be assimilated to the duration of those two copyrights, putting aside what the will of Parliament might be?—I do. The object of copyright is to encourage literature, and I believe that more copyright would increase the encouragement of literature.

289. And you think that the advantage so given would be given to the public as well as to the author?—I do, because both authors and publishers are now so well aware of the advantage of reducing prices, and of the possibility of obtaining a very largely increased circulation by diminishing prices, that I have not the smallest doubt that the public would not suffer.

290. Has it ever occurred to you (I think that it

must have done) that some British authors of great reputation have been almost altogether robbed of the profits of their work by the shortness of copyright?—I cannot say that on the spur of the moment I can recollect any such case.

291. We have had brought before us by one of the witnesses the case of Mr. Wordsworth. Are you aware that during his lifetime his poems hardly attained that celebrity which they at present obtain?—That certainly is true.

292. Then would not the position which I have named be true with regard to Mr. Wordsworth?—It would.

293. It would be true with regard to him and his family, that the great property which his intellect had created in literature could not, under the present law, be in any way enjoyed either by him or by his family?—Undoubtedly; there is a great deal of force in that argument.

294. And that therefore it would be fair and just that the present law should be altered and copyright prolonged so that the worker should get the real profit of his own work?—I think so.

295. (*Sir H. Holland.*) Is it not possible in Mr. Wordsworth's case, that the fact of the copyright having expired, enabled people to publish the works at a cheap price, and that they thus became known, and the character of the works appreciated?—I very much doubt whether increased reputation and popularity arose from that source. Of course I cannot speak without knowledge of the exact facts, but I should very much doubt whether in that or any other case, increased reputation and popularity arises from the publication of cheap editions; because no publisher would bring out those cheap editions unless that reputation existed already.

296. (*Dr. Smith.*) Are you aware of the principle which, I am told, underlies the German and the French copyright Act, which is, that an author should have the benefit of copyright for himself, and for the lifetime of his children; but as it is impossible to make a law in such an indefinite way, inasmuch as no one would know when children were alive or not, the law in Germany has laid down that there should be 30 years after the death of the author, and in France 50 years after the death of the author. Were you aware that that was the principle?—No, I was not.

297. (*Mr. Jenkins.*) From your experience, who would be the persons who would chiefly benefit from the prolongation of copyright?—I think that it would really be as much the author as the publisher, or jointly.

298. You have a very large experience in publishing, can you tell in how many cases, in dealing with new and young authors, you have purchased the copyright out and out?—In our case I must say that by far the majority of the works we publish, are published on the plan of sharing the profits equally with the author in all editions which may be published.

299. That is of course setting aside those works which are published on commission?—Of course.

300. Of those which are published on commission, the advantage would go entirely to the author?—Entirely.

301. And as respects those which are published not on commission, your experience is that the greater portion are published on half profits or on a share of the profits?—Yes; so far as my own firm is concerned, there is no question that by far the larger proportion of books brought out by us is published on the principle of the author perpetually participating in the profits.

302. Then in that case, of course it would work equally for the benefit of the author and of the publisher?—It would.

303. Coming to the third class of cases, namely, cases in which you are willing to take the entire responsibility of the purchase of the copyright, do you think that in purchasing the copyright it is really practically taken into consideration what the length of the copyright is?—I must say that I very much doubt whether it is.

304. As regards that third class of cases, I suppose

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you would not say anything?—I should say that—looking at the very great risks in publishing, with which I am sure every literary man must be well acquainted—I really think that if a publisher buys a copyright which happens to turn out well, he is quite as much entitled to the increased profit which prolongation of copyright would give him as anybody else.

305. But in that case the public would not be so much benefited as they would be by a short copyright, would they?—I think that they would, because publishers are now well aware of the advantage of reducing prices, and thereby extending circulation, and we continually bring out cheaper and cheaper editions of books in which copyright exists.

306. Looking at it from a public point of view, do you think that the publisher does not get in the copyright which he purchases a sufficient prospect of remuneration to remunerate him in the majority of cases?—That is a very difficult question to answer. All I can say is, that I am quite sure that if anyone were to look into our books, and see the proportion of unsuccessful works which we, and I believe all publishers bring out, he would be perfectly astonished. Books which according to the best judgment of publishers and their advisers ought to succeed, are continually complete failures, and the proportion of unsuccessful works would I am quite sure, astonish anyone who looked into a publisher's books.

307. (*Sir H. Holland.*) That would be no reason for prolonging the copyright. I do not understand you to put that forward as a reason for prolonging it?—No. I was asked whether publishers did not already obtain sufficient remuneration.

308. And, as I understand you, you put forward as a reason why they do not, that we should be astonished if we saw in their books the number of works which had failed?—Yes; and I say that therefore publishers are not unreasonably remunerated.

309. Do you propose, or do you desire, to see them further remunerated by a prolongation of copyright? Such prolongation would be of no advantage in cases of failure?—That is very true, but in reference to your question as to my proposal or desire that publishers should be further remunerated by a prolongation of copyright, I must repeat that there is a very large number of cases, and according to my own experience the largest number, in which the author participates with the publisher; and therefore the author would benefit to at least as great an extent as the publisher by the prolongation of copyright.

310. (*Mr. Jenkins.*) Before a parliamentary committee Mr. John Murray was asked whether it was likely that an author going to sell the copyright of his work to a publisher, would get more for a copyright of 60 years than for a copyright of 30. What would your opinion be on that point?—I do not think that he would.

311. That being admitted, can you conceive of any public benefit arising from a prolongation?—Yes, I believe that a prolongation of copyright would be a benefit to the author, and consequently also to the public.

312. You have admitted by your answer that the author would get no benefit?—I admit that the author would get no benefit if he sold his copyright. I believe that if the copyright lasted for a hundred years it would make no difference.

313. (*Mr. Trollope.*) Are you of opinion that those authors who have during your time been most successful in producing books have, after their name has risen in the world, been in the habit of selling their entire copyrights?—I should say that successful authors are not in the habit of selling their copyrights.

314. Going back over such names as you can remember, do you find that the authors who have been successful in your time have generally parted with their copyrights, or that they have retained them?—That is a very difficult question, and I do not know that I can answer it.

315. You must know the history of various copyrights, and of various successful authors with whom you yourself has been concerned?—I think that I could only speak from my own experience.

316. Speaking from your own experience, do you think that generally they have sold their copyrights?—I think certainly not.

317. If they do not sell their copyrights it would then, I presume, be a certainty that the prolongation of the copyright would be a pecuniary advantage to them and their families?—Undoubtedly.

318. (*Sir H. Holland.*) I understood you to begin your evidence by stating that you were upon the whole well satisfied with the working of the Copyright Act?—Yes, excepting that I said that I wished the time to be longer.

319. I do not think that you began by making that statement?—That is very true.

320. From your experience, can you tell the Commissioners that there is any strong feeling for prolongation; such a feeling for it as would justify an application to Parliament after all the discussion which took place there, and the settlement of the question?—I cannot say that I believe that there is any strong feeling; it is only a very limited number of authors, of course, who would benefit by it.

321. (*Mr. Froude.*) In the practice of the trade, in the case of a valuable copyright expiring, is there any very precipitate haste on the part of other publishers to take advantage of it; for instance, of Lord Macaulay's "Essays," I believe the copyright has expired?—Of one or two.

322. Do you find that the trade are breaking in upon them?—I do. In talking of the prolongation of copyright I had Lord Macaulay's works in my mind. The copyright of some of the essays has expired, and some others will expire in the course of a few years, and it appears to me to be unjust that Lord Macaulay's family, without, as far as I see, any benefit whatever to the public, should be deprived of a part of their present property.

323. (*Sir H. Holland.*) You say, "without any benefit to the public." Is it not the case that the moment that the copyright of those essays of which you have spoken expired, they were published in a very cheap form, and appeared at all the railway stations, whereas previously no one of the public could get them except as a collected set?—The whole of them are published at an extremely cheap rate, and the "railway editions" were published, at 1s. each, in the "Travellers' Library" long before the time at which the copyright would expire, and indeed in most of the essays thus published copyright still exists.

324. (*Dr. Smith.*) Have you not published many of them separately at a very cheap price?—Do you mean those of which the copyright has expired, or all of them?

325. Have not most of the essays been published separately?—Yes.

326. At a very cheap price?—At a very cheap price.

327. At a price as cheap as the price of those of which the copyright has expired?—I am not sure that they are published quite as cheaply. We published one or two, of which the copyright had expired, to compete with the rival publication of them, in a very condensed and disagreeable form of printing. Undoubtedly they were somewhat cheaper than those of which the copyright still subsisted, but still, of these latter, editions were already in existence and published at so cheap a rate that I think that the public is not injured by not being able to get them some few pence cheaper in consequence of the copyright still subsisting.

328. (*Sir H. Holland.*) But the exceedingly cheap edition of which you speak was only published to meet the rival publication?—It was.

329. (*Mr. Trollope.*) Have you ever considered whether the public is or is not entitled to extremely cheap editions of these works?—I do not think that the public are at all entitled to them.

330. I ask the question because it seems to be presumed that in the matter of literature a different law should be enforced than that which governs the sale of other goods?—I must confess that I see no reason for it. I do not see why literary property should differ from other property.

331. When we speak of an interest in the duration

of copyright, we speak of it with regard to the interest of the author?—Yes, partly.

332. I am speaking of it now with regard to the interest of the author, who is supposed by the present law to have a certain property in his production?—Yes.

333. Does it seem to you that there is any reason why that should be lessened in order that somebody else may as it were, walk in upon his property and enjoy that which belongs to him under the sanction of an Act of Parliament?—I see no reason whatever.

334. (*Mr. Jenkins.*) Taking your large expression, would you say candidly that the largest number of authors or of publishers receive the benefit of copyright; does it work more to the benefit of authors generally, or of publishers?—I should think that upon the whole it would work more for the benefit of authors.

335. (*Chairman.*) Have you any observations to make upon the section of the law, which compels the presentation of copies of new works to the Universities, and to the British Museum?—I must say that I have always felt that to be an extremely great hardship. I think that there might be something to be said, although I do not think anything conclusive, in favour of giving one copy to the British Museum; but as for giving any more than one copy, I think that it is a great hardship, and an unnecessary hardship, and I think I might say a mischievous hardship, on the proprietors of the copyright.

336. Are you at all aware from your own knowledge what the feeling in the Universities would be, if it was proposed to take away that privilege?—I am not, but I can easily conceive what it would be.

337. With respect to the registration at Stationers' Hall, have you any opinion as to the amount of the fee, which is fixed upon it?—No, I have never given it much consideration. I believe that is only a small proportion of books which are registered; it is unnecessary to register a book for legal purposes, until it is attacked, and, so far as we are concerned, I think that we hardly ever register a book. Supposing that we happen to buy the copyright of a book which has been published for some years, we do occasionally make use of the Stationers' Hall books for the transfer or registration of the copyright, but otherwise we register very few books.

338. If the fee was reduced to an almost nominal amount are you of opinion that more books would be registered than are registered now?—I do not think that it would influence my house.

339. (*Sir H. Holland.*) Does the fee vary now, or is it uniform?—I think that it is uniform.

340. (*Earl of Devon.*) Are you aware what proportion of the books published by your firm are registered?—No, but I should think that one or two per cent. of new books would be the utmost.

341. (*Mr. Jenkins.*) Do you think that it would be advisable to make registration compulsory, setting aside the question of the fee?—I do not know what advantage there would be in it.

342. Supposing that treaties were entered into with foreign powers, which made registration at certain places—offices in the various countries respectively—sufficient for all, and that in that case registration became compulsory, do you see any objection to it?—I do not quite see the working of the supposed system. Supposing, for instance, that we made a treaty with France, do you mean that in order to secure the copyright in France we should have to register in France?

343. No, that one registration here would secure copyright in France and *vice versa*?—There are really so very few books relative to which it is worth one's while to trouble one's self about foreign copyright, that I do not think that there would be any advantage in that compulsory registration.

344. Is not the number of books internationally exchanged increasing from year to year?—It may be increasing, but so far as my own experience is concerned it is a very small number. It so happens that we publish very few novels; and with reference to foreign republication novels are of more importance

than any other class of literature. Baron Tauchnitz, for instance, is quite certain to republish any good English novel, but there are very few other books which he publishes reprinted from the English, and there are very few books indeed which we publish of which editions or translations are printed abroad. In my opinion a great deal more is done in England in translating from foreign authors than there is in foreign countries in the translation of English books. For instance, we are continually in negotiation, with German publishers especially, for the right of translation of foreign books into English.

345. Looking at it from an international point of view, in the interest of say Germans and Frenchmen, whose interests might be considered under our laws, it would be a desirable thing to make registration in their respective countries good for this country, would it not?—Yes.

346. Then, of course, you would have a correlative privilege here?—Yes.

347. At present the law is that you must deposit copies at Paris or at Berlin?—Yes.

348. Do you think that we might remove that obligation by this simple plan of international registration?—I think that this is a matter which will require a great deal more careful consideration than one could give to it at the moment.

349. Will you be good enough to think of it, and to speak of it again?—I shall be very happy to do so.

350. Having a large acquaintance with book publishing, do you think that there would be any difficulty in arranging that registration in England should be sufficient for the colonies, and for foreign States. I will put a case to you. Supposing that you registered in London, would you recommend that there should be a notice sent by the registrar to various foreign States and colonies with which we have a sort of literary comity, or would you consider it to be sufficient that the books published in those States or colonies, should contain upon them a notice of the place where the book was registered, and an affirmation of the circumstance?—Your question is, I suppose, whether it would be of advantage, say to Canada or Australia, that notice of a book being registered in London should be immediately sent to those countries.

351. Yes. Assuming that we adopt the principle of registration here, I wish to ascertain what is the best way of carrying it out. One way is suggested, namely, that the registrar should immediately communicate to the foreign countries and to the colonies, the fact of registration, and that the book should then be registered in that foreign country. Do you see any practical difficulty about that?—The only practical difficulty that I can see is the difficulty of its being done with sufficient rapidity; it should be done immediately, because I know, for instance, that in the case of one work which we published, we felt sure that it would be reprinted in Canada and elsewhere, and we took a great deal of trouble to secure its early registration at the Custom House, so as to prevent the importation into Canada or elsewhere of American editions. Notwithstanding all the trouble that we took, the transmission of the Custom House entry was delayed for a very long time and, practically, it consequently became utterly useless. That book was Mr. Disraeli's "Lothair."

352. Supposing that you adopted the alternative which has been suggested, namely, that it should be sufficient to publish the book and state upon the title page, or somewhere in the front of the book on the fly leaf, that it was entered at such and such a place, and that that should be sufficient notice to all concerned that there was a copyright, do you see any practical difficulty in it?—No, because any publisher or bookseller in Canada directly he saw the book would know that there was copyright in it.

353. (*Sir H. Holland.*) By the convention between France and Bavaria, if a book has been written it is sufficient for the author or publisher to establish his copyright by showing a certificate granted by the competent authorities in either country to the effect

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that the work in question is the original one, enjoying the protection of the law in that country against piracy. If we followed up what Mr. Jenkins has suggested, namely, that the book should be registered here, and that notice should appear on the fly leaf, by adding some provision that the production of a certificate showing that the book was properly copyrighted here, should be sufficient *prima facie* evidence in the law court of another country, probably the author would be thoroughly protected without much difficulty or trouble?—Yes.

354. If you had to give notice to many countries, would there not be a danger of missing one place, besides the delay of which you have spoken?—Undoubtedly.

355. It would hardly be possible to secure the sending the notice to all countries?—Just so, no doubt if a statement printed in the book itself could be made sufficient, it is obvious that that would be the best course of all.

356. And if it were agreed by treaty that the production of a certificate granted by the competent authorities in one country to the effect that the work in question is a duly copyrighted work and enjoying the protection of the law there should be sufficient evidence in the other country, you think that it would be an advantage?—Yes.

357. (*Mr. Trollope.*) What is entering a book at Stationers' Hall?—The entering of its title in a certain book kept at Stationers' Hall for the purpose, and the simultaneous payment of 5s.

358. Is it the same as registration?—I believe so.

359. When you do that do you deposit a copy of the book?—No.

360. No deposit of a copy of the book at Stationers' Hall is necessary at any time?—No.

361. (*Earl of Devon.*) Are not the copies which are sent to the British Museum and to the Universities distributed through Stationers' Hall?—Sometimes they are, and sometimes they are not. I think that as to the British Museum, the London publishers generally send the book direct.

362. But what is the case with respect to the copies which go to the Universities, for instance, Trinity College, Dublin?—Those, I think, are occasionally sent to Stationers' Hall.

363. (*Mr. Trollope.*) Would it not be practicable to send them all through Stationers' Hall to the British Museum, and to the Universities?—It would, but the British Museum, and I think some of the Universities, prefer collecting the books themselves, because they can look after them better.

364. Putting that aside, it would be practicable to send them through Stationers' Hall?—I should say so, certainly.

365. And might not that deposit of the book at Stationers' Hall be made tantamount to registration?—Yes.

366. In that case would not the service of registration have been given in return for the expenditure which had been made in presenting those books?—You would save the 5s., that is all.

367. You would not only save 5s., but you would ensure the registration?—Yes, but by paying 5s. you ensure the registration now.

368. You have already said that registration is now very rarely made?—It is very rarely made.

369. But the books are always presented?—Yes, but it must not be overlooked that very few books are registered, because registration is practically of very little value.

370. I am putting aside the value of which it may be to the author or to the publisher, but presuming that the fact of registration of all books published in England would be of value to the country at large. Would it not follow that that registration might be effected at Stationers' Hall if the books were always presented through Stationers' Hall?—Certainly.

371. And without any additional trouble or expense either to the author or the publisher?—Yes. Supposing that it was enacted that only one copy should be given, and that to the British Museum, that that copy should

pass through Stationers' Hall, and that the proper officer of that body should be bound to register it, it would be a very simple and satisfactory affair.

372. You think that the service of registration so effected would not be too much to demand in return for the presentation of the book?—The presentation of the book would be no remuneration to the registering officer, because it would not be his property. The officer must be otherwise remunerated.

373. The officer, I presume, would be remunerated by the country, and the country would get the property in the book?—Then the country would have to give him a salary. At present there is an officer of the Stationers' Company who receives a certain amount of salary, but in fixing the amount given to him, no doubt it is taken into account that he receives a certain sum from this registration, and consequently, if the registration fee were abolished, either the Stationers' Company or the country would have to increase his salary.

374. (*Mr. Jenkins.*) You are a member of the Stationers' Company?—Yes, but I do not think that that has any influence upon me; practically I know very little about the Stationers' Company.

375. Do you not think that it would be better to remove from the Stationers' Company the registration and to put it into the hands of some public official?—I do not know that that would be any great advantage, it would merely be substituting Smith for Brown, or White for Green.

376. Do you know in what manner the duties of registration are performed at Stationers' Hall; are they efficiently or inefficiently performed?—I have no reason to believe them to be inefficiently performed.

377. Have you ever heard complaints from authors and publishers about the manner in which the registration is kept there?—No, I cannot say that I have. But I know that if it is necessary to ascertain whether a book is registered or not, there are considerable difficulties in making a search, but I really know so little about the work of the Stationers' Company and the efficiency of Stationers' Hall, that I do not think I can give you any information of any value upon that point.

378. (*Chairman.*) I suppose that we may take it for granted that as long as registration is not made compulsory, the register at Stationers' Hall must be imperfect for any general purposes of use?—No doubt of it.

379. (*Dr. Smith.*) With reference to the five copies, I am told that the copy to the British Museum is almost always given, but that the copies to the other four institutions are frequently not given. Do you know what is the fact with reference to that?—I believe that such is the fact; but so far as we are concerned, I believe that, without exception, we give five copies without their being demanded, because among other reasons, it is far less trouble to do it at once, than to be troubled by subsequent applications. I believe, however, that a very large number of books are not received by the Universities.

380. Do you know that the Universities in that case apply for them?—They do. Whenever they can find out that a book has been published without their having received a copy, they are, I am pretty certain, in the habit of applying.

381. And then the publisher gives it?—Yes.

382. (*Mr. Trollope.*) Have you heard that the Universities have in some cases tried to avoid having the reception of a book forced upon them?—I am not at all sure that I have not, and I should not be at all surprised to hear it, and I may add that the necessity for giving five copies of every edition of a book, if there is the slightest alteration, seems to me to be the greatest absurdity possible. An author may add three additional lines in his preface, and thus be compelled to give five copies of the new edition. If he prints the book without alteration, with no new edition on the title page, he is not bound to give any copies to the public libraries, but if he writes three additional lines he is obliged to do so.

383. (*Dr. Smith.*) That is the law?—It is.

384. (*Earl of Devon.*) Supposing that he does not do it, what is the process? who proceeds against him?—I do not know how the law would actually be put in force, supposing that he refused. I cannot tell what would happen.

385. (*Dr. Smith.*) Is it not the fact that publishers who do not send copies of their works to the British Museum are summoned to the police court by the Principal Librarian?—I believe that sometimes they are summoned to the police court.

386. The police magistrate has power in that respect?—I rather think that he has.

387. (*Sir H. Holland.*) I think that that is provided for by the 10th section of the 5th and 6th of Victoria, chapter 45, namely, the Act of 1842:—"That if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding 5*l.*, to be recovered by the librarian or other officer (properly authorised) of the library for the use whereof such copy should have been delivered in a summary way on conviction before two justices?"—Yes.

388. (*Earl of Devon.*) You mentioned that only one or two per cent. of the works published by you have been registered?—Yes.

389. Has that registration taken place immediately on publication, or subsequently, when it became necessary to adopt some defensive process?—I think, almost invariably, subsequently.

390. It was when you were threatened with piracy, and therefore found it necessary to put yourself in a defensive position?—Yes.

391. (*Mr. Froude.*) Is it necessary to register every edition?—No.

392. A single registration protects you?—Yes.

393. (*Mr. Herschell.*) Of course you would think it right that where there are substantial alterations, a new edition, for instance, bringing authorities down to the present time, and giving fresh information, a copy should be presented?—Undoubtedly, if the principle of giving five copies is adhered to, if there are substantial alterations and improvements, it follows that every improved edition ought to be given.

394. Would you leave it to the publisher to determine whether there was such a substantial alteration as to require a copy to be given?—You immediately get into difficulties when you attempt to draw the line between what is a substantial improvement and what is not; and that is an additional reason for at any rate limiting the presentation of copies to one to the British Museum.

395. (*Chairman.*) Would it be sufficient, in your opinion, to leave that decision to the authority of the library to which the book ought to be presented?—I think that would be impracticable.

396. (*Mr. Jenkins.*) I suppose that the author suffers as much as the publisher from the necessity of giving these copies?—Undoubtedly.

397. It is always charged in the account, is it not?—Yes, and the author often suffers very severely. I know many cases in which authors have published expensive books on their own account, large books of plates, and have been obliged to give away five copies at great cost.

398. (*Sir H. Holland.*) Have you at all considered the question of the colonial author?—Only to some extent; but I must say that it has always appeared to me that he ought to be placed in exactly the same position as a British author.

399. At the present time the Copyright Act extending to the colonies, if a colonial author publishes a book, that publication is only copyrighted in the colony, and does not extend to the United Kingdom, whereas if a book is published in England it, of course, has copyright throughout the colonies?—It has, nominally at any rate.

399*a.* Perhaps you are aware that in 1870 a Bill was introduced to remedy that grievance?—Yes.

400. That draft Bill of 1870 provided, taking it

shortly, that where a book has been first published in a British possession, and is entered in the registry book of the Stationers' Company in the manner provided by the principal Act, namely the Act of 1842, every person shall be entitled, in respect of such book, to the same right of copyright, and the same benefits, as he would have been entitled to, if the book had been published in the United Kingdom?—Yes.

401. Does that appear to you a just and reasonable provision?—Undoubtedly.

402. Is it not the case also that colonial publishers are practically now worse off than foreign publishers in this respect, that by the Foreign Reprints Act, foreign reprints of an English copyrighted book may, upon certain conditions, be brought into a colony, whereas the colonial publisher may not publish that book?—Yes. That undoubtedly is a great hardship.

403. To a certain extent that has been remedied in Canada by the Canadian Act, which was passed last year?—It has.

404. A Canadian publisher can now publish, with the consent of the English author, a book in Canada, and thereby keep out foreign reprints?—Undoubtedly.

405. Have you considered the question, whether it would be desirable to repeal the Foreign Reprints Act altogether, or whether it may not be necessary to retain it in order to provide for the case of certain smaller and more distant colonies?—Do you refer to the right of importation?

406. Yes, the importation of foreign reprints into a colony?—I have not the slightest doubt that that Act ought to be repealed entirely.

407. With reference to that repeal, have you considered the case of smaller and more distant colonies, which in truth, as we know in the West Indian Colonies, are solely supplied by these foreign reprints?—I do not know what right they have to demand that they should be supplied with what we call pirated editions.

408. It would be impossible for them, owing to the distance, and consequent price of conveyance, and their general condition, to buy the books in any other edition except the very cheap editions which are published in England?—There are plenty of cheap books published.

409. The first edition of a book in England it would be absolutely out of the power of the smaller colonies to get?—And it is out of the power of many persons in Great Britain to buy the original editions of many books, but they manage to get them by means of circulating libraries, or associations of some kind or another, and I do not know why the West Indians should be better off.

410. You think then that the wants of the smaller and more distant colonies in that case need not be considered?—I see no reason why they should be. I have always considered that Act as a most extraordinary piece of injustice.

411. Should you have considered it a piece of injustice, assuming (which unfortunately was not the case) that the authors had got their 12½ per cent. upon the foreign reprints which were introduced into the colonies?—I think that even then I should have considered it very unjust.

412. Taking into consideration that the colonies are not allowed to publish?—Yes.

413. (*Mr. Herschell.*) Was it not the scheme of the Act that it should only be applied to any colony which had taken efficient means for the protection of the author?—It was.

414. And that when any colony had taken such means then, by Order in Council, the Act might be applied to that colony?—Yes.

415. And has not the only defect been that it has been applied by Order in Council when no practicable means at all have been taken to secure that end?—Yes, that is one of the objections. The Act practically is not of the very smallest value.

416. Supposing that effectual means were taken by the colony for the protection of the interests of the author before the Act was applied there, would you

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see any objection to the application of the Act?—I should: I do not know why our colonies should not be considered an integral part of the dominions of Great Britain, and why they should be treated with exceptional favour, merely because over the border, owing to—to say the least of it—a very inconvenient state of the copyright law, books can be reprinted without any remuneration to the author or the proprietor.

417. But the colonies have been treated with exceptional disfavour as compared with this country, inasmuch as by gaining a copyright there, they did not gain it here, whereas by gaining it here it was gained everywhere?—I think that that was a very great hardship on colonists.

418. Do you not think it essential to bear in mind the difficulties which would arise where you have a long line of boundary, such as you have between the United States and Canada, owing to the ease with which books may be brought across the border if there is an absolute prohibition of their introduction?—I really very much doubt whether that need be taken into account, because I feel quite certain that under the new Canadian Copyright Act that difficulty will vanish totally and entirely. I am perfectly certain that if we made an arrangement with a Canadian publisher for a new work—say—of Mr. Froude's, that publisher with whom we made the arrangement would have no difficulty whatever in keeping out American editions of Mr. Froude's work.

419. (*Sir H. Holland.*) That would be because he would be able to publish it cheaper and keep out a foreign reprint?—Publishing it at whatever price he chose; it would be his interest to keep out the American edition, and there is no question that he would be able to do it.

420. (*Mr. Trollope.*) How would he do it?—The importation would be illegal under our present Acts, and there would be a person on the spot ready to defend himself against an illegal act. The difficulty has been hitherto that it has been the interest of no one in the colony to fight for the British proprietors.

421. Do you mean that if in any bookseller's shop in Canada a United States' edition of this English book were exposed for sale that bookseller would have action taken against him?—He would.

422. Have you known such to be done?—No; the Act has only so very recently come into force that I do not know that there has been any opportunity for putting the law in force.

423. This is merely your opinion of the way in which the Act will operate?—Undoubtedly.

424. (*Mr. Froude.*) Do you think it a desirable thing that a colonial publisher under any circumstances should be allowed to take an English author's book and publish it, whether the author consents or not?—That does certainly seem to be a very great hardship.

425. I want to look at it from a literary point of view?—Undoubtedly the new Act is a compromise, and I think that practically it will be found that such cases will rarely, if ever, occur, but, from a literary point of view, as well as from others, it would, I think, be a great hardship.

426. (*Mr. Trollope.*) Under the present Canadian Act a Canadian publisher cannot, I believe, publish without the author's permission?—Yes, under certain circumstances. I do not know exactly what they are. I think that if the British proprietor, whether author or publisher, or whoever he may be, refuses to make what a Canadian publisher may consider equitable arrangements, and to make them within a certain time, an American edition may be imported, or the Canadian publisher may reprint the book.

427. (*Sir H. Holland.*) I think that you have in your mind a provision somewhat to the same effect which did appear in Lord Kimberley's Bill of 1873 or 1874, which did not become law; but in the Canadian Act, which Her Majesty was enabled to sanction under the Act passed last session, there is no such provision. The consent of the English author has to be obtained for the publication in Canada; and the consideration for the English author's consenting to the publication

in Canada is that thereby he keeps out these foreign reprints. The section of the Canadian Act which bears upon what you were saying is the 22nd, namely, "Should a work copyrighted in Canada become out of print, a complaint may be lodged by any person with the Minister of Agriculture, who, on the fact being ascertained to his satisfaction, shall notify the copyright owner of the complaint and of the fact; and if within a reasonable time no remedy is applied by such owner, the Minister of Agriculture may grant a license to any person to publish a new edition or to import the work, specifying the number of copies, and the royalty to be paid on each to the copyright owner?"—Yes.

428. That applies therefore only to works copyrighted in Canada under this Act, and only applies to works out of print?—Yes.

429. I think that you must have had in your mind the provision which was in Lord Kimberley's Bill which did not become law?—Yes.

430. (*Chairman.*) That being so, do you see any objection to the actual provisions of that Act?—I should like to ask Mr. Turner if he can tell me how books not copyrighted in Canada are affected. Suppose that we publish a book of Mr. Trollope's or Mr. Froude's, and make no arrangement whatever with the Canadian publisher, what will then happen?

431. If you make no arrangement with the Canadian publisher, foreign reprints, as the law now stands, can be admitted?—Undoubtedly; but may not the Canadian publisher himself import?

432. No. Assuming that my construction of the Canadian Act is correct, you do not see any objection to that Act in itself?—I do not. I have always been of opinion that under all circumstances it was a very desirable Act.

433. But you would still desire to see the repeal of the Foreign Reprints Act?—Undoubtedly.

434. (*Mr. Jenkins.*) Supposing that we give to the colonists the advantage of imperial copyright, namely, to a colonist who writes a book in Canada copyright in England, do you not think that there should be reciprocal terms arranged between Canada and this country?—Undoubtedly that would be abstractedly quite just.

435. Taking the existing Copyright Act, namely, the original Copyright Act of 1842, supposing that the section suggested by Sir Henry Holland was to be adopted, granting colonists the benefit of our Copyright Act, should we then be precisely in the same position, should we be in a position of equality with the Canadians?—Legally we now have copyright in Canada and in every colony; but it has been found difficult to enforce it, and thence arose the necessity for such an Act as the recent Canadian Act; but we possess copyright in Canada just as much as we possess it in every part of England.

436. Precisely; but the Canadian Act introduced facilities for copyright in Canada, which has a sort of different character from a copyright here; you require another publisher, and so on?—Yes.

437. Supposing that a Canadian writes a book in Canada and first copyrights it there, and then comes here and enters it at Stationers' Hall, the Canadian publisher would have a right here which would be exclusive?—Quite so.

438. You would have in Canada, on the other hand, in similar cases a right which would be qualified?—By the Copyright Act of 1842 we have perfect rights in Canada.

439. I am only speaking as regards the facts, is not that so?—Practically we could only obtain the value of copyright by availing ourselves of the recent Canadian Act; but our Government, if they did surrender anything, surrendered a right which existed as clearly as any which England possesses.

440. Can you secure to yourselves the right practically of publishing your book in Canada. Is not either the author or the publisher who claims the copyright obliged to publish through a Canadian publisher in order to get the benefit of a registration in Canada?—

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He is. The Importation Act of 1839, which was most unjust, took away undoubted rights.

441. Working it out, supposing that Sir Henry Holland's suggestion was adopted, the Canadian author would be in a better position *qua* England than the English author would be in Canada?—Undoubtedly.

442. And the publisher also?—Undoubtedly; because the Canadian publisher would have to deal with a law-abiding people who support the law, and do not attempt to evade it in any way, whereas in Canada you could not rely upon anything of the sort.

443. Looking to the opinion which you have expressed with regard to those colonies which import foreign reprints, have you estimated the differences between their society and ours, and the difficulty of securing the more expensive works to those colonists?—I think that that is no concern of mine.

444. Looking at it from a public point of view, supposing that it could be demonstrated that only one copy of Macaulay, for instance, would go into Jamaica under the system which you support, whereas two or three hundred copies would go in under American reprints, do you not think that that would be an advantage to the people of Jamaica?—I daresay that it would. It would be an advantage to them if each of them had a leg of mutton given him for nothing.

445. With respect to the purchase of copyright, what do publishers conceive is the extent of the copyright which they purchase when nothing is said. Supposing that A. comes into your office and offers you a book, and you say, "We will give you 100*l.* for it," what do you suppose that you get?—The full term of 42 years, and seven years after, or all, whatever it is, that the law gives you; you buy everything.

446. As to French rights and German rights how is it?—I do not know.

447. How is it as to colonial rights?—They are certainly included in the purchase, unless otherwise agreed.

448. What in the custom of the trade is supposed to be transferred by the sale of the copyright?—Everything; I have not known any case in which there has been any dispute; but it so happens that very recently I knew a case in which we were buying the copyright, and the author wished to have the right of selling early sheets, or whatever they might be called, to Tauchnitz, and we said, "No; when we make you this offer we include everything." The author then agreed to our

proposal, and we had the right of selling to Tauchnitz. It is very difficult to say what would be the legal rights of the case, but I must say that in almost every case it would be a matter which would be specially mentioned. I think that both parties would take care that it was clearly understood. I suppose that the publisher could legally enforce his rights to all the benefits arising from his purchase. It is a difficult question. Mr. Turner, I think, could tell you more about it than I could.

449. (*Mr. Trollope.*) Do you never have the words "at home and abroad" in your contracts?—I do not think that I ever recollect those words being introduced.

450. (*Mr. Jenkins.*) There is a large business done, is there not, in advance sheets to America?—To America there is.

451. What is the custom of publishers with reference to moneys received for those advance sheets?—If there is a participation of profits, the moneys received are an asset which is carried to the credit of the general account.

452. In the case of the purchase of the copyright what would you do?—In the case of the purchase of the copyright, it being so generally understood that negotiations for any popular work are made with America, I cannot conceive either a publisher or an author leaving it out of consideration.

453. (*Dr. Smith.*) There would be a special agreement?—Yes, I am sure of it.

454. (*Mr. Trollope.*) Do you consider that half profits agreements give you the foreign rights?—We do.

455. Has that always been your practice?—I am not quite sure, but I know that we always consider, and it is quite my opinion, that we share every right which exists or which may arise.

456. Then you do not remember a case of that nature in which you had a half profits arrangement with an author, and had the question put to you by the author, and told the author that the foreign rights belonged to him?—I do not recollect the case.

457. That was the answer which you made to me, and in accordance with that answer I took the foreign rights?—I do not recollect it. That shows that practically we deal with greater liberality than we do theoretically; theoretically we consider that we have rights which practically we give up.

The witness withdrew.

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

Friday, 19th May 1876.

PRESENT:

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

The Right Honourable the EARL OF DEVON.  
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.  
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.  
SIR LOUIS MALLET, C.B.  
SIR JULIUS BENEDICT.

J. FITZJAMES STEPHEN, Esq., Q.C.  
FARRER HERSHELL, Esq., Q.C., M.P.  
EDWARD JENKINS, Esq., M.P.  
DR. WILLIAM SMITH.  
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

W. Longman,  
Esq.

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WILLIAM LONGMAN, Esq., further examined.

458. (*Chairman.*) I think that on your last examination some questions were put to you respecting registration, and you were good enough to say that at our meeting to-day you would give us your more mature views upon that point, will you kindly now do so?—Since I was here I have read the greater part of the "Correspondence between the Foreign Office and Her Majesty's representatives abroad and foreign representatives in England, on the subject of copyright," and I have considered the matter altogether, and have drawn up my views in the shape of a written memo-

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randum, which, if I have your permission, I shall be very happy to read.

459. Yes, if you please, that will be a convenient form?—I have considered the question of the registration of new books, both in this and in foreign countries. It is clear that the English system is considered cumbrous and burthensome by foreigners, and that in this country it is thought to be of so little value that very few new books are registered. The necessity of delivering copies in case of foreign registration of English copyright books, and of English registration of foreign

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books, is undoubtedly a hindrance to such registration, and appears also to be an unnecessary tax on proprietors of copyright. It seems to me that a simpler and cheaper mode of registration, somewhat such as has been adopted in some foreign countries, would be beneficial, and a particular system has occurred to me by which a much more general registration would be secured. In attempting to explain this system I must begin by dealing with the present necessity of giving five copies of every English book to public libraries, because an alteration in this practice is the very foundation of my plan. It seems to me that it would be right that the British Museum should have one copy of every new book presented to it, but that no other copies should be given to the other four public libraries. It would probably be considered equitable that some annual compensation should be made to those libraries for such deprivation, and I think that this might very properly be considered as a portion of national expenditure. I believe that the four libraries in question would gladly be relieved of the necessity of finding room for every new book, and would welcome the receipt of an annual grant which would enable them to purchase such books only as they may wish to possess. I would, therefore, propose that one copy of every new book should be presented to the British Museum only: that it should be delivered at Stationers' Hall; that on and at the time of such delivery the book should be registered at Stationers' Hall; that the fee for such registration should be half-a-crown, or less (in fact I have very little doubt that a shilling would be ample); and that the payment of such half-a-crown should entitle the registrar of such book to receive a certificated copy of such entry, which certificate should be a *prima facie* evidence of ownership. I would also propose that the said owner of copyright should be entitled to receive one or more certificated copies of such entry on payment of a shilling for each copy, and that the transmission of such certificated copy to any foreign country should be there received as evidence of ownership, and that the fee for such foreign registration should be fixed at a moderate amount. I would also propose that in England we should receive similar registrations, *i.e.*, certificated copies of foreign registrations, without the necessity of depositing copies as evidence of foreign copyright. I believe that this system would greatly increase the registration of foreign books in England and of English books in foreign countries, and that it would secure the registration in England of every new English book. This being the case, a very small registration fee would amply remunerate the registrar at Stationers' Hall for fulfilling the duties of registration and delivering the single copy of each new book to the British Museum. As evidence of the small number of books now registered, I may mention that we annually publish about 350 new books and pamphlets, and that our average number of books registered does not exceed half a dozen. It would also be important that there should be kept at Stationers' Hall a complete index of all books thus registered, and that any person wishing to examine the register should be allowed to do so, and to make a copy of any entry on payment of a moderate fee for such right of search, whether the object were to examine the register for one or for more books. This latter point I mention because there are now very considerable difficulties in examining the register and making a search; if you make a search you are not allowed yourself to make a copy of any entry, but the clerk of the Stationers' Company makes it for you, and you pay him a fee for so doing. Then there is one point which I may mention, which is a little at variance with what I have here stated. I have stated that in endeavouring to find a remedy I have considered this limitation of copies as a very essential feature of my scheme, and so unquestionably it is; but at the same time I think that it would be perfectly possible to carry out the scheme, still leaving the five copies. I think that it would be extremely desirable to obtain that limitation, because you would, as it were, almost compel every-

body to register, and I think that you ought to hold out some considerable boon to persons to induce them to register. In addition to those arguments I must say that the present requirement of five free copies to public libraries appears to me to be open to many objections; it is a very unfair tax upon proprietors of copyright to be obliged to give five copies of every book to the public libraries; I think that it should come out of the national expenditure; I do not know in what other way any grant of money could be made to them, and it appears to me that if it is for the advantage of the public that there should be these five public libraries, it would only be fair that the public should pay for that advantage.

460. (*Mr. Trollope.*) Were not copies given to other libraries at one time?—Formerly eleven copies were given, and Mr. James Silk Buckingham obtained a reduction of the number of copies from eleven to five.

461. No compensation was given to those universities?—I believe not.

462. (*Dr. Smith.*) Do you know the names of the six universities which were deprived of copies?—I do not.

463. (*Mr. Jenkins.*) Are you aware that evidence with regard to that matter was taken before a committee of the House of Commons?—I rather think that it was.

464. And we could refer to that evidence for the particulars?—Undoubtedly.

465. (*Mr. Trollope.*) You say that persons would be compelled to register, and that therefore the fee charged to them should be small?—Yes, that is one reason; I say that they would be compelled to register because they would be compelled to give one copy, and my plan is that the presentation of a copy and the act of registration should be one and the same act.

466. Therefore the compulsion to register would in fact be contained in the simple compulsion to deliver a copy?—It would.

467. No other registration would be required either from the author or from the publisher?—No, that is my plan.

468. Therefore no act of registration would be performed by either the author or the publisher?—No, excepting that he would pay a certain fee. He must make a statement somewhat to the following effect: "I am the proprietor of this book, which is published 'this day,' and so on. I think that it would follow as a matter of course that every book would be registered, and I think that considering the very large number of books which are published every year, a very moderate fee would amply remunerate the registering clerk.

469. (*Sir H. Holland.*) But there must be an actual entry in writing?—There must be.

470. You do not mean to dispense with an entry in writing?—Certainly not.

471. Because otherwise you could not have the certificate, which is to be a copy of the entry in writing?—Undoubtedly.

472. (*Mr. Trollope.*) But the transaction would be one?—The transaction would be one.

473. The transaction of delivering the book and of registration would be done at one and the same time, by one and the same person?—It would. I should take a book which I published, and should say, "I give you this copy for the British Museum; here is my statement as to the publication and ownership of the book, and I require you to register it and to give me a certificated copy thereof."

474. (*Mr. Jenkins.*) Supposing that the Commission were of opinion that they should advise that a man might register the title for a certain period before the book was published, that would interfere with your scheme, would it not?—I do not think that it would interfere with the scheme; it would be a kind of interim registration, for which an author ought to pay, and when the book was published the interim registration would be cancelled.

475. (*Sir H. Holland.*) And no further fee would be paid?—There would be two entries, and there-