possible that the English Government may also ask for it, although it appears to the French Government to be unnecessary. If it should be retained, the French Government would ask for the simplification of the method of registration as it has been simplified by the countries with which France has concluded conventions.

1766. In what way has it been simplified in the countries with which France has concluded these conventions?—At the present moment the registration is required to be made at Stationers' Hall in London. I do not take into account the question of the registration in France, because it is not required in that country; but I speak only of registration in London, where it is obligatory upon foreign authors. In the case of Belgium, with which France has concluded a treaty, French authors are authorised to register, without deposit, their works at the office of the Belgian Legation in Paris. If the registration were maintained by England, the French Government would ask for the same simple method, that is to say, that the work might be registered at Paris at some place named by the English Government. The French Government would ask also that the registration should be gratis, and that the formality should be considered as complied with from the date when the declaration was made. I ask that the date of the registration should be the date of the day on which the application is made at Paris, and not the date of the day on which acknowledgment is made of the receipt.

1767. Would it be sufficient that the Consul, or the person designated at Paris as the registrar, should give a certificate of the registration to the person making the application?—Yes.

1768. And that the rights should run from the date of the certificate?—Yes.——I conclude my evidence on this point by asking for the abolition of both these formalities of the deposit and registration.

1769. (*Sir H. Holland.*) It is the case, is it not, that 37 states have concluded copyright conventions with France?—Yes.

1770. All these 37 states, with only two exceptions, namely England and Spain, have recognised the inutility of depositing copies of the work?—Yes.

1771. And is it not the case that five countries still enforce registration at their legations in Paris, namely Russia, Saxony, Switzerland, Portugal, and Austria?—Yes, and Belgium also.

1772. With regard to all other states, French authors have no other formality to fulfil in order to ensure their rights abroad, than to deposit a copy of their works at Paris?—That is so.

1773. And by such deposit they establish their right of ownership in France?—Yes.

1774. In France if a French author does not deposit a copy of his work, what penalty is attached to the omission to deposit?—An action is brought against the publisher and the printer for non-fulfilment of the law.

1775. And what is the penalty attached to the infringement of the law; is it a pecuniary penalty or imprisonment, or what?—I believe that it is a fine.

1776. May we assume that the author does not lose his copyright?—Yes.

1777. Therefore if he subsequently makes a deposit, and then some other person publishes his book, he may sue for the infringement?—Certainly, although the case cannot occur in practice.

1778. Can he sue for an infringement of his copyright if the book is printed by some other person before a deposit is made?—No, he cannot do so without having previously made the deposit which is the sole means of securing his right.

1779. If there is to be, as you suggest, no registration, how do you propose to give notice to the public what books are protected, and what books therefore they are not to be allowed to print?—There is no notice to give; every book published in France should have a right to protection in England under the general law. What is asked for is that the protection shall not be the exception but the rule.

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1780. So that an Englishman would know that every French book was protected in England?—Yes, as well as that every English book was protected in France.

1781. But there may be a case in which a French book, owing to no deposit having been made in France, is not protected in France, and therefore that book might be printed in England, might it not?—In point of fact the case is impossible, because a person who publishes a book in France is immediately compelled to register it, otherwise he is at once prosecuted and punished.

1782. He is compelled to register whether he wishes to have protection for the book or not?—Yes, he is obliged to make the deposit in conformity with the law of 1793.

1783. You are probably aware that such is not the law in England?—Yes, I am.

1784. And that a man may publish a book without choosing to protect it. Should not a Frenchman be allowed to publish such a book in France as there is no protection for it in England?—Yes. If he has no protection in his own country he should have no protection in the other.

1785. The difficulty is this, that in England if I do not register my book at first, but register it, say, five months after publication, I can still sue for an infringement of the copyright committed before registration?—Yes, it is retrospective.

1786. And the question is whether I should be entitled in such a case as that to sue for an infringement in France?—That is a question of jurisprudence on which I am not able to give a formal opinion, but I do not think that it would be admitted in a French court of justice.

1787. I am only putting the question because it is necessary to see what difficulties might arise; but you think that that case would probably not be admitted in a French court?—No; the law is never retroactive in France.

1788. (*Chairman.*) Do you wish to suggest some changes in Articles 3 and 4 of the Convention, which relate to the exercise and the duration of the right of translation?—Yes; I will speak first about Article 3 as to the right of translation. The two points upon which the French Government insist are, first with respect to the period within which the work must be translated, and secondly, with regard to the period during which the right of translation is secured.

1789. (*Sir H. Holland.*) Sub-section 3 of Article 3 is "Provided always, that at least a part of the authorised translation shall have appeared within a year "after the registration and deposit of the original, "and that the whole shall have been published within "three years after the date of such deposit"?—Yes; we ask for the abolition of the first period of one year within which a portion of the translation must appear.

1790. As the law now stands a part of the translation must appear within a year, and the whole translation must appear within three years. Do you propose that it should be sufficient to publish a part of a translation within three years?—Of course I would prefer that the three years should be the period within which only a part of the translation should appear; but I do not desire to ask too much. Everybody knows the difficulty of publishing a translation within so short a period, for it is not yet known in the country of origin itself whether the work has had sufficient success for it to prove likely to be successful in a translation. I should wish that the author should not be obliged to make any part of the translation before the expiration of three years.

1791. Am I right in assuming that you would desire that an author should be obliged to publish a part of the translation within three years?—Yes.

1792. But that he should not be obliged to publish the whole of the translation within three years?—Just so.

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1793. Should you, then, desire to have some time fixed after the three years within which the whole of the translation must be published?—I am not prepared to answer that question; but it is natural that if one period is prolonged from one year to three years, the corresponding period should be proportionately lengthened.

1794. Would you propose to fix any term after the three years, or would you leave it to the translator?—I would fix it proportionately at nine years.

1795. (*Chairman.*) Then would the effect of that change be that any translator translating a small portion of a work would be able to prevent anybody else translating that work for the space of nine years?—It is a question of private law. The author preserves his right, and the permission which he has granted to anybody to translate his work he can grant to another; it depends upon the arrangement which he has made, and the arrangement which he has made with one person he can make with another.

1796. (*Sir H. Holland.*) That is quite true, but we must also look to the interests of the public. I will suppose that a French author publishes a very interesting book, and he employs some English person to translate it; the English person translates 40 or 50 pages of the book within three years, and according to your suggestion he would not be obliged to publish the translation of any other part for nine years, nor would anyone else be allowed to publish a translation of that interesting book within that period. Do you see the difficulty which we feel?—Yes, I understand the force of your objection, and for that reason I would prefer not to fix the periods for translation.

1797. You see that it might be a disadvantage to have so long a term as nine years during which no translation could be published?—Yes, I think that the question should be reserved for further examination.

1798. But probably you are of opinion that some term should be fixed in the interests of the public?—Yes, I think so.

1799. Some term within which the rest of the translation must be made?—Yes.——With reference to Article 3, I propose to extend the duration of the protection from five years to ten years.

1800. (*Chairman.*) Do you wish to assign any reasons for the proposed change?—It is in the interest of authors that this request is made, for the success of a work is hardly ensured within five years of its publication.

1801. (*Sir H. Holland.*) This proposal of yours, I think, was placed before the Mixed Commission which sat in 1873, was it not?—Certainly. The same proposals have been made for a long time past.

1802. But in 1873, I think, there were Commissioners, British and French, who sat in Paris to consider these questions?—Yes; in 1873, 1874, and 1875, these questions were the subject of communications between the two Governments.

1803. (*Chairman.*) We will now go to Article 4?—Article 4 concerns the representation or execution of dramatic works, and the performance of musical compositions. To simplify the question I leave on one side the question of publication. These works are submitted to general rule. There is no need to consider the nature of the work, whether it is musical or dramatic, or whether it is a novel or a historical work; all have the same right to protection against reproduction in print. I now come to the representation of the works on the stage. Take first the case of the representation of a piece in the original language, for instance, the case of "Les Danicheff." To protect a piece of this nature in England, it must be registered within three months of its publication.

1804. (*Sir H. Holland.*) The commencement of Article 4 is, "The stipulations of the precedin arti- "cles shall also be applicable to the representation of "dramatic works," therefore we look to Article 3?—For a dramatic piece the work must be registered in England within three months of its publication or representation in France, but I wish to draw attention to an obscure point in the Convention on this subject. I ask that the delay of three months within which the registration of the work published in France must be made in England should run either from the date of publication or of representation, if the work is represented without being first published.

1805. You understand the meaning of Article 4, which provides that "the stipulations of the preceding "articles shall be applicable to the representation of "dramatic works," as compelling the registration in England of the play within three months after its publication in France?—Yes; its publication, or, if the work is not printed, its representation.

1806. And without such registration you consider that the play might be represented here in the original language?—Yes, as the international engagement now stands.

1807. You would propose that the three months should be extended to three years?—Yes; but this proposition concerns only the representation of translations—not of original works.

1808. (*Sir H. D. Wolff.*) Do you propose that, if registration in England is abolished altogether?—If the registration is insisted on, then I would ask to be allowed to make some more suggestions with regard to the amendment of the law.

1809. But if it is not insisted upon you do not wish to have special registration for dramatic works apart from other works?—No.

1810. (*Sir H. Holland.*) And if there is no registration you would still protect the work for three years from the time of registration in France?—Yes, as far as concerns translations.

1811. (*Sir H. D. Wolff.*) Do you know at all how French dramatic authors are paid for the representation of their works in France?—They make their terms with the owners of the theatres.

1812. In England there is a society called the Dramatic Authors' Society, and when a play is once played in London, if it is played in any country town in England the manager of the theatre playing it is bound to send a certain sum up to the Dramatic Authors' Society to be given to the author. Does anything of that kind exist in France?—Yes.

1813. Then any manager may represent a play without any permission from the author, provided that he pays him?—I shall be able at another sitting to give the Commissioners all the information which they require on this question. I cannot do so to-day without further inquiry. I now come to the question of the representation of the translation of a foreign work. As regards that, the Convention says, "In order, how- "ever, to entitle the author to legal protection in "regard to the translation of a dramatic work such "translation must appear within three months after "the registration and deposit of the original." It is against this clause in particular that I most strongly protest. To require of a foreign author that a translation of his work should appear within three months after the registration and deposit of the original imposes a very severe and often a very useless burden upon him. In order to comply with this requirement it is necessary that he should come to some terms with a translator or an editor before he is assured of the success of the work, and even in that case it is very often difficult to publish a translation in so short a time; I would ask that the period should be extended from three months to three years.

1814. (*Sir H. Holland.*) As I understand, you would in this case also enlarge the three months to three years?—Yes; the same as for translations of books.

1815. With reference to a subsequent clause in Article 4 referring to the adaptations of dramatic works, no question now arises, I think, upon that clause, because of the Act of Parliament of last Session and the Order in Council upon it?—Yes, that is so.

1816. That clause of Article 4 is, "It is understood "that the protection stipulated by the present article "is not intended to prohibit fair imitations or adap- "tations of dramatic works to the stage in England

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"and France respectively, but is only meant to pre- "vent piratical translations." The French Government and the French authors are satisfied with what has been done?—Yes.

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The witness withdrew.

Adjourned to Tuesday next at half-past 12 o'clock.

Tuesday, 11th July 1876.

PRESENT:

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

The Right Hon. the EARL OF DEVON,
SIR HENRY T. HOLLAND, BART, C.M.G., M.P.
SIR JULIUS BENEDICT.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.
J. LEYBOURN GODDARD, Esq., Secretary.

GEORGE HAVEN PUTNAM, Esq., (of G. P. Putnam & Sons,) examined.

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1817. (*Earl of Devon.*) Your house is established in New York?—Yes.

1818. As large publishers?—As publishers; we have been established for some 50 years.

1819. I gather that the point upon which you would be disposed to give us the benefit of your opinion is the subject of the possible establishment of an international copyright between the States and this country?—As far as I know anything about it, I shall be very glad to do so.

1820. Will you oblige the Commission by giving us your opinion first as to what you believe would be the general feeling of authors upon the subject?—I think that there can be no doubt as to the feeling among American authors upon that subject; they are unanimous not only as to the desirability, but very unanimous as to the practicability of it, seeing perhaps than the business men less clearly the difficulties in the way.

1821. You speak of difficulties in the way, will you point out what difficulties in your judgment would exist in the way of establishing an international copyright between the two countries?—One of the first difficulties which occurs to me is the confusion with it of the question of protection. That is a question which is pressed very urgently by the manufacturers of books, the printers and the binders, whose interests in some cases are not identical with those of the publishers, and may be very widely different from those of the authors.

1822. To what points would their objections address themselves?—They have the feeling that any international copyright which permitted the introduction of books manufactured in whole or in part in Great Britain would diminish very considerably the amount of book manufacturing done in the United States. They have now to withstand a certain amount of competition with the book manufacturers in England, and a competition which in some directions has been very successful; that is to say, it has shut out of the American book market books of a certain class which have heretofore been published in America, such as illustrated books, gift books, and children's books. The supply of those books in the last four or five years has come in a larger proportion each year from English houses. Books of this class are selected for holiday gifts very largely with reference simply to the amount of show they will make for the cost. The manufacturers, the printers and binders of books, have in the last few years suffered in America in that respect, and also as regards competition in the works of standard authors, the copyright of which has not yet expired here. The works of Macaulay are an example. The manufacturing of books like Macaulay's History, standard historical works which have a steady sale, constitutes an important business interest; and the American book manufacturers have the feeling that if there were an international copyright, English houses would take away a certain portion of that manufacture. I am not giving an opinion of my own individually, but I am speaking from a printer's point of view. That has been a prejudicial influence which has been exerted when measures have been brought before Congress, and which has had its effect in influencing public opinion. In several drafts which have been made of a measure of international copyright, it has been suggested to make use of the English composition of the books; that is to say, the stereotype plates which have been made here, rather than re-setting and re-stereotyping the books in America, so so as to save the extra expense, which, if incurred, must be partly borne by the public or the author; but the printers protest very strongly against any such saving, because it implies using English type and composition in place of American; and those printers who are continually pressing for the protection of American printing industry, have done a good deal to head off the several measures which have been suggested, because a large number of those measures imply the use of English type, and English composition, and English workmanship for a portion of the books, even if these are to be printed in the United States after being stereotyped here. That is not an unnatural objection on their part.

1823. (*Chairman.*) Are you of opinion that that feeling on the part of the American printers and binders is increasing or diminishing?—Three or four large publishing houses are also printers and binders. They are Protectionists. They have been able to have a certain amount of influence in that direction upon the protection policy, which at this moment is the prevailing policy, and which subject has very much mixed itself up with the copyright question. At the meetings which I have attended I have noticed that that portion of the trade was especially pugnacious in this particular respect. The question of "American industry" came up at once. The feeling among the publishers who are not book manufacturers, such as myself, and who have represented to a certain extent English authors, is it seems to me established in favour, not only of the advisability and justice, but of the practicability of an international copyright, and such houses would think it a very poor piece of economy, as I have before explained, to have that copyright so framed that it should be necessary to do the entire making of the book in the United States, because the extra expense would in some cases merely encourage importation, and in other cases would put the matter in such a shape that the books must be issued at a very high price, which would limit the sales and would thus diminish the profit of English authors and American publishers, and enhance the cost to the readers. Although those houses are a numerical majority, their influence has been smaller than that of the four or five publishing houses who are also manufacturers, and who unite with those who are manufacturers simply without being publishers.

1824. With respect to a treaty or arrangement for an international copyright, have you any special view which you wish to express upon that subject?—I have not come prepared to speak about this question definitely at all. I have not even prepared myself with data in shape to enable me to suggest a plan. The general idea of my father, who gave a great deal of attention to the copyright question, was to place English authors in the United States upon the same footing as American authors, giving them the privilege of making contracts with houses in the United States for the publication of their books there, with certain limitations, which he did not perhaps himself consider desirable, but which he supposed would be necessary before any such measure could be carried out, of which

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the first was that such contract with an American publishing house should be made with a house which was really an American publishing house, namely, with an American citizen, the idea being that possibly a certain amount of trade jealousy existed as regarded the establishment of English branch houses. The natural result of an international copyright without such a limitation would be that other houses would do as Messrs. Nelson, Routledge, and Macmillan have already done, namely, establish branch houses in New York; and not only for the publication of works of English authors, but having exceptional privileges on both sides of the Atlantic, American authors would go to them with American works in order to supply the English market at the same time, as has already occurred with Macmillan. Such a result the American publishers would naturally be a little troubled about, and in order to limit it in some way my father's plan proposed the limitation of the contract to a contract with a publisher who was an American citizen.

1825. Supposing that a publisher was an American citizen but was also in such a partnership as you have described, namely with an English publishing house, how would your regulation work then?—That contingency has been considered, and has been simply allowed for as something very natural, and as something which would not be satisfactory to the old houses, but it was thought that the other concession was sufficient, and that if you could interest American dealers in the English trade, with a certain solidarity of publishing interests, it would not necessarily be a misfortune.

1826. (*Earl of Devon.*) Are you able to tell us how many publishers there are in the States who are not American citizens?—The principal houses which occur to me at the moment are Messrs. Routledge, Messrs. Nelson, Messrs. Macmillan, and Messrs. Lovell of Rouse's-Point, a new house, interested principally in manufacturing.

1827. (*Sir H. Holland.*) Did they not cross from Canada?—Yes, they are working with Canadian capital.

1828. (*Mr. Trollope.*) Cannot any Englishman open any place of business in New York?—There is nothing to prevent him from doing so.

1829. I can go over and become a baker in New York to-morrow?—Most certainly. There would be some question as to the owning of the estate connected with your bakery, but you could lease.

1830. I could lease and carry on trade?—Certainly.

1831. I do not understand then how your father's proposition could avail to keep the publishing business in American houses, because if any Englishman can open business as a publisher in the States, he would have all the facilities both with an American and with an English author which any American publisher could have, would he not?—Originally, as I have mentioned, the proposition was suggested merely as a condition of a proposed International Copyright, namely that it should only be obtained through some American citizens, or negotiations with some American publishing house.

1832. You probably see the point which I wish to make. Do you think that it would be possible to maintain a clause which would keep the publishing business in American hands?—I think that there might be difficulty, and that the result would be very uncertain. The clause was suggested merely as a concession to the extreme American feeling, and as probably one of the concessions which would be necessary before that feeling could be modified.

1833. With respect to what you have said about protection, do you think that the question of protection as to the importation of books has any bearing upon the question of International Copyright?—Certainly not in principle, but in practice at present with us it has a bearing, protection being a very active question with the printers and binders, they having a good deal of capital at stake, and their workmen having a good many interests at stake.

1834. If you or any other person understanding the subject were to sit down and draw out a bill to carry out International Copyright between the two countries, that bill would not bear at all upon the importation of books?—It would bear indirectly upon the importation of some portions of books. If it permitted an English book which was to be copyrighted in the United States to be printed from English stereotype plates it would bear to a certain extent upon importation, because the English stereotype plates must be imported from London into the United States before they could be used, and that was one of the very natural suggestions which was made, because a great many books if they had to be produced entirely in America (especially the illustrated books) would bring no profit at all.

1835. But the importation of those plates would be a matter to be arranged by a separate law, which would be an enactment of your Congress?—It is already arranged by the enactment of Congress, the duty upon such plates being 25 per cent. by the general Customs tariff.

1836. There might then be a complete International Copyright Law between the two countries without interfering in any way with that protection which applies to the importation of plates?—No reference need be made to it in the passage of any international copyright law; but I refer to it as an explanation of the class of influences working against the establishment of that law.

1837. You began your evidence by saying that you thought that the American authors would be glad to see an international copyright established?—Yes.

1838. Do you think that it would be for their pecuniary advantage?—Yes, although the class of authors of whom I was first thinking were men who had not so much in view their own pecuniary advantage, but the rights and justice due to the guild of authors. The older men who have written and talked upon this subject are men who are under wider influences, and who have thought of what is right to the guild of authors.

1839. You think that it would be for the pecuniary advantage of authors?—I think so.

1840. Will you tell the Commission the way in which it would act for the benefit of American authors?—With reference to the writers of fiction for instance, whose books have to attain a certain reputation before they can become standard, but which sell as ephemeral literature for the first season, the sale depends very much upon the price. At the railway bookstalls a book making the best show for 50 cents will attract the attention of five buyers out of 10, the other five perhaps buying particular authors. At present the books which can be sold for 50 cents on our railways are most largely English reprints, which have paid little or no copyright to the English authors and which give a safe profit to the American manufacturers. There is a difficulty with the publishing of an American work of fiction, that unless an author has obtained a reputation, it is a question whether his work can be sold at a profit at all; and therefore it is most customary to arrange for the first or second book of that author upon a different footing from that on which the arrangement is made when he has gained a reputation. The probability is that a work of fiction by an unknown American author, even if fairly criticised, is published at a loss. The arrangement between an American publisher and a new American author is almostalways made upon that expectation—it is not until the second, third, or fourth book has appeared, with fair criticisms, that there will be a remunerative sale. That is true of other works besides those of fiction, but most especially true of works of fiction, which have an ephemeral sale.

1841. So that, with regard to works of fiction, the operation of the Act would be to increase the price which American publishers would have to give to American authors for their works?—Yes; or you might put it to increase the profit which they would have to divide with American authors for their works; it would amount to the same thing.

1842. Would not it operate in the same way with authors of all classes?—Yes; I gave the example of works of fiction merely because it was the most striking; it would operate with standard literature.

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1843. So that it is your decided opinion, and, as far as you know, the opinion of those who have discussed the matter in America, that an international copyright would increase the profits of American authors?—Yes.

1844. And increasing, as it would, the profits of American authors, would it not naturally increase the number of American authors?—It probably would.

1845. Any increase in the profit of any trade would I suppose increase the number of those who embark in it?—Yes, it would increase the number of capable men who could afford to embark in authorship.

1846. And therefore it would have the effect of inducing capable men in America to devote their time to literature?—I should judge so, certainly.

1847. If that be so, then must not the converse be true; namely, that the absence of an international copyright law in America has the effect of preventing capable men from devoting their time to literature?—Yes, and that was the basis of a report made by Henry Clay to the United States Government as far back as 1833; he laid the greatest stress in that report as to a measure of international copyright, upon the injury done to American literature. He considered that the greatest grievance in the matter, from which American literature was suffering so severely, was from the unauthorised competition, and that it made the trade of publishing American literature almost an impossibility, and the trade of writing American literature practically an impossibility. It was probably more difficult then, however, than it is now.

1848. Your conclusion then is, that the absence of an international copyright between the United States and Great Britain is a great evil to that country?—Just so; I was asked concerning the difficulties in the way, and I have stated one or two. I do not know whether I should not complete what I had to say on that point. There is another very important difficulty which is continually brought up in the discussion of the matter with us, and although it seems like a selfish obstacle, it is practically one as to which we have to convince public opinion there, so as to act upon Congress, before American publishers and authors can accomplish anything. I refer to the idea that the price of English copyright books would be increased by an international copyright law. In the states they are published in very cheap popular editions for popular distribution; and, in comparing those editions with the great cost of average English editions, the American book buyer feels that he would never be able to purchase editions as they are issued here, and that an international copyright law would limit the editions in the United States to a price which would very largely shut him out from the literature which he is now enjoying. That, as far as we can judge from our experience in book making, is partly true; but then there is this which partly meets that objection of these book buyers, namely, that if there were an international copyright and protection either for American houses undertaking English works, or even for English houses there themselves, a great many houses would then undertake them who dare not now undertake at all many desirable enterprises; they would risk capital to print standard works in sets. By the present arrangement, if we start a set of books, and if the first portion of the set is a success, we run the risk of at any time having a rivalry in the trade, after we have planned and advertised the set, and brought it to a partial success, and others reap the advantage of it. That is very largely the case; and consequently, not only do these enterprises not get undertaken so well as they ought to be, but in very many cases they are not undertaken at all. We are deterred by the special risks, and our Western book reader, who makes these objections, does not obtain those things which he would obtain, and obtain in a harmonious and uniform shape, if there were international copyright. English books are now published by various houses, in different forms, and the readers of English authors very often cannot get the volumes in any uniform shape. I may instance the works of George Macdonald. His books had a large sale with us, but they were published in different shapes by different houses; and after the first sale of the books had gone by, no one house had an interest in keeping the set up, because they feel that by doing so they will be doing what is largely to the benefit of their neighbours, and in consequence of its not being kept up in a practical shape, it goes out of sale; whereas, if only one house had a set of stereotype plates, they would have an interest in keeping the book at an economical price, and not only would the profits of Mr. Macdonald be increased (he has been paid for his books), but the reader would get a better set of books at a lower price in the end. That is one of our answers, as publishers, to that objection.

1849. Let me put an instance. No American publishing house could afford to put out an expensive edition of Lord Macaulay's works because there would be no security for the property so created?—There is great risk in doing it; they do take that risk sometimes. There are rival editions of Macaulay, but it is a risk which, unless a publisher is very sure of a sale, would deter him in many cases from undertaking such an enterprise.

1850. You have spoken of American authors; have you thought how this question affects English authors?—We see at once a direct loss to English authors from the want of such an arrangement, and those who are interested in the matter personally from friendship to such authors, as well as those who regard it as a matter of general justice, wish to see the arrangement effected.

1851. Are you aware that English authors are read as much at any rate in your country as in their own?—There are many English authors whose books are necessarily limited to this country, but the most popular authors at once find as many readers with us as with you.

1852. Your population is greater than ours?—I suppose so; our reading population certainly is.

1853. Therefore it is natural to suppose that popular English authors will find more readers with you than with us?—Yes.

1854. As a publisher have you ever inquired what proportion of profit the American publishers give to an English author as compared with that which he gets here?—No, I have not had sufficient figures before me to average it; I only know that the amount of payments from American publishers to English authors for advance sheets has very much increased in the last five years.

1855. Do you think that English authors get 100*l.* from American publishers for every 1,000*l.* that they get from English publishers?—Those authors who are paid for their advance sheets, I suppose, get a larger proportion than that. I can state a case, namely, that of "Hero Carthew;" the name of the author was not given, but it was stated to be by the author of "Dorothy Fox." The advance sheets were sold to a friend of mine; he has sold about 4,000 copies, but he paid 300*l.* for the advance sheets, and he is out of pocket. The average payment is from 25*l.* to 100*l.* for advance sheets. That must often be very much more than 10 per cent. of the English profits paid to the author.

1856. That must have been an exceptional case?—The publishers very often lose by paying for advance sheets, because they do it in the dark. They buy them on the reputation of the author, and if the author has written one or two good books they secure the next book by the same author, and there may be a great falling off, so that there is a considerable amount of speculation in the matter.

1857. At any rate the proportion paid by American publishers is very much less than the proportion paid by English publishers?—I suppose so; but American authors whose books are published here, as far as I can judge from the statistics, receive a much smaller proportion for those books than the English authors have received whose books within the last 25 years have been printed with us. It is now more regularly the habit of our houses to pay English authors, either directly through their publishers or otherwise.

1858. An international copyright, if we could get it, would thus serve both parties?—Yes, but I want to say, in defence of our trade, that I know it to be the rule at

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present with our leading houses, in default of a law, to make an arrangement with English publishers or English authors, paying such prices as may be fixed here, and it is the exception when it is done without paying those prices. The purchase now amounts to very little as far as protection is concerned, but the payments are made. At present we get no protection in making the payment to English authors excepting what is called the courtesy of the trade. The leading houses in the trade respect each other's arrangements, although in some cases they quarrel and reprint upon each other.

1859. (*Sir J. Benedict.*) Can you enlighten me with regard to the copyright in musical publications in America?—I am very ignorant on that point; I never had occasion to look at it.

1860. You are, perhaps, aware that there is hardly any protection in that respect, because whatever is printed in England, and in Germany as well, unless it can be protected by an American citizen upon his name and authority, is printed in America without any reference to the author; and music being of less bulk than a literary work, it is much easier to publish it. Do you think that if a treaty could be formed between the two countries it might be extended to musical publications as well as to literary works?—I can see no difficulty there, because a protection is afforded to musical publications in the United States under the present copyright law, it is a part of the same copyright law which applies to books, and any extension of that copyright law I should think would necessarily include music as it would engravings.

1861. Do you not think that the argument which has been alluded to as to the scarcity of American literary writers applies even more forcibly to the Fine Arts; I mean to drawings or to musical publications. In a country which is so flourishing in every other respect as America it has always been a matter of wonder that there are so few musicians of eminence. If there was reciprocity between the two States, would not it considerably increase the number, and be an inducement to a great many young men to devote their attention to music?—I should suppose that that would be very naturally the case.

1862. Do you not think that if a treaty was proposed on that basis, not exclusively for a literary purpose, but also for everything concerning the fine arts, it would be more beneficial than if it was exclusively one for literary purposes. Are you not of opinion that there is a rising generation in America who are very ambitious to compete with Europe in every branch of art and science?—I should suppose so certainly; but if the copyright law was extended it must be extended in all those classes, and it now with us includes music and engravings; that would be the only practicable way of extending it at all.

1863. Is it your opinion that if the legislature was inclined to encourage such a movement, and if it was brought forward in a practical manner, it would be an advantage. You will agree with me that what has been done previously has been done by fits and starts, and that nothing positive has been arranged between the two countries; some concessions have been made, and they have been revoked. A treaty embracing, as it were, every branch of science has never been contemplated; at least I am not aware of it. Are you aware of any such attempt having been made before?—I am not aware of any such attempt having been made, and I could not tell how difficult the passage of any such measure before the legislature would be, because I do not know the class of objections which would be raised. I have never had to do with musical people; they doubtless would have their own special objections, as our book manufacturers have their special difficulties; but how great their difficulties would be I do not know.

1864. With reference to dramatic performances, in the present state of things you will agree with me that English authors have hardly any protection for their plays. It is allowed, I think, that any man who employs a shorthand writer able enough to take down a performance at length, may use that copy of it without any protection to the author here. What I have said with respect to music I think would equally be for the benefit of dramatic authors, of whom there is at present a scarcity in America. In your opinion would such a law if it could be agreed upon between the two countries find sympathy with Congress and with the people in general?—It will be a matter of education, and of sentiment, before we shall arrive at that sympathy for music and the drama as a practical matter. There is no great difficulty in educating the voters of the small eastern states; but there is a great deal more difficulty in educating the mass of the voters in the west, who practically control the legislature of the United States. I think that it will be done in time, but it will take some time.

1865. With the view of giving an inducement, by a treaty, partly to the writer, or composer, or poet, or dramatic author, and partly to the publisher, do you not think that some preparatory agreement could be made which would ultimately lead to a more perfect law of copyright for the two nations?—That would be the natural shape for the first arrangement to take, and that I think would be practicable, but I still think that it would be a matter of time.

1866. It has been argued here, for instance, that if some of the literary men in this country could agree with some of the literary men in America, a law might be framed which would prove successful, or which would attract such public attention as might lead to beneficial results in the two countries. Do you think that such a mixed commission between the two countries, sitting perhaps in the States, in New York or in Philadelphia, would be accepted by the nation and would be popular?—I should suppose that if the question is to be settled at all, the appointment of a commission would naturally be the first step; but if it consisted of literary and artistic men only I should fancy that the measure which they would frame would hardly cover the entire ground; the business houses should I think be represented, so that the business interests could be fairly considered and provided for.

1867. I do not think that there could be any difficulty in that, all the leading publishers know a great deal about literature and even the principal tradesmen could be included, bookbinders and printers could come to an understanding. Do you not think that it is most deplorable that this state of things should go on year after year without coming to a decision?—The last attempt on our part to arrange for the appointment of such a commission was in 1873, and the measure was thrown out of Congress by a sufficient majority under the direction of Senator Morrill, who is the present Secretary of the Treasury; and as the existing influence in the present Congress would certainly be adverse, a new influence must be built up. A committee was appointed to inquire into the subject, of which Senator Morrill was chairman, and his report was adverse, and was probably the best statement of the reasons against the measure which has been put into shape in the United States.

1868. (*Mr. Daldy.*) Was not it the Library Committee of Congress in 1873, from which that report emanated?—It was.

1869. That practically was a Parliamentary Committee, it was not a general Committee. May I ask you with reference to general Committees or Commissions, whether the President has not the power of appointing them; take for instance the nomination of the various officers of the Centenary Exhibition, who nominates the officers who control and manage that Exhibition?—The United States has but a partial control in that commission, but the United Statess officials in that commission were appointed by the Executive.

1870. Therefore probably it depends, does it not, upon the nature of the Commission as to whether it is appointed by the Houses of Parliament, the Congress and the Senate, or whether it flows from the executive?—There are two points there, first the authorisation of a Commission, and secondly the appointment of the members of the Commission. I am, however, no authority upon this point.

1871. I think you said that you considered that an

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International Copyright law would increase the price of books?—Of English reprints.

1872. Not of American books?—Oh, no.

1873. Would that increase be great, or do you think that the increased security which the publisher would get would enable him to publish his work almost at the same price as before?—I should be hopeful of the latter result. With regard to a comparison of the present prices, I have noted down the prices of two or three books which illustrate the point. Comparing, for instance, American copyright books published in the United States with English copyright books published in England, in order to see which meet the requirements of the middle classes best as to price, I find that the difference is not great; but that there is a difference. Our popular edition of Irving's works, which are still copyright with us, we publish at a dollar and a quarter per volume, which at the present rate of currency is equal to about 4*s.* 6½*d.* The cheapest edition of Macaulay is published here, as far as I can gather, at 6*s.* a volume. To that extent Irving would come nearer to the popular price in the United States than Macaulay here. Prescott's works are there published for the equivalent of 9*s.*, while Molesworth's history costs here 16*s.*, and Stanhope's 16*s.*

1874. Is there not a cheaper edition of Molesworth?—You may know.

1875. It is 6*s.* a volume?—But with us we have the cheap editions ready as soon as the book is published, while the cheap edition here is perhaps issued one, two, or three years later. The American publishers try at once to reach the needs of the popular class who are only able to pay a small price, but the course which the English publishers take in that respect seems to be a kind of second thought.

1876. May we not do that just as much under a copyright law as as present?—That one may hope. But these are the classes who really influence opinion. We American publishers have always argued with you that we can sufficiently increase the sale by publishing at a low price. I will refer to another instance, namely, the publication of a book called "Von Kloten's Reminiscences of a Working Man," or "of a Working Life." That book is published in handsomely two volumes, at 26*s.*, and a book very similar in its character and containing rather more matter, Matthew's "Getting on in the World," is published in Chicago for 7*s.* 4*d.*; and I know that 36,000 copies of it have been sold, whereas I suppose that only a few hundred copies of the Von Kloten can be sold. We publish to sell by thousands, and to sell at a low price, while in England the first edition is published at a high price to sell by hundreds; and that is what frightens the American readers.

1877. Do you think that an international copyright would increase the number of English books which would be reprinted in the States?—I should judge not. Those which are reprinted now at a fair profit would be reprinted with a greater security, but some which are reprinted now at a small profit, would not be undertaken if any considerable payments were to be made for them.

1878. I think that some associations were formed in America for considering this subject, were they not?—The last international copyright association of which I know (I think that there may have been earlier ones) was formed in 1866, and is still in existence.

1879. I believe that your father was connected with it?—My father was the executive officer of that association; he was the working secretary.

1880. Has his mantle fallen upon you?—I am a member of the association, but I have no official position in it.

1881. Is that association still agitating the question over there?—It is not; the adverse report of Senator Morrill discouraged their efforts, and they concluded that nothing could be done with Congress in its present shape.

1882. (*Dr. Smith.*) If the principle of an international copyright was laid down as follows, that the English work must be reprinted and bound in the United States, without the type being actually set up in the United States, do you not think that a compromise might be effected on that basis?—That is the compromise which was suggested by my father, and of which I think the majority of the trade are doubtless now in favour.

1883. If that was carried out, in the first place there would be no opposition on the part of bookbinders, because every book under that proposition would have to be printed and consequently bound there; and, secondly, the printers, though they would not get the work of composition, would get perhaps an increase of business from printing. Do you concur in that view?—It must be borne in mind, with reference to that point, that the business of composition and stereotyping is very often carried on by firms who have hardly anything to do with printing. The capital locked up in composition and stereotyping would be affected by that proposal.

1884. As far as that trade is concerned, we of course should have to reckon upon their opposition?—Yes.

1885. But, on the other hand, would not the price of the book be cheapened, both for America and for England, if it could be set up once for all; would there not be an inducement both for the English publisher to publish the book cheaper in England and for the American publisher to publish it cheaper in America, from the very large sale which might accrue in consequence of an international copyright, if the expense of composition in America was saved?—Certainly that would be the case, even without protection, and arrangements upon that basis are now being made from year to year with regard to the books published in England. It is the custom for English publishers to sell duplicate stereotype plates to American publishers, the American publishers paying half the cost of the composition and the exact cost of the duplication, so that the original expense is shared between the two houses in the two countries.

1886. But is there not at present an import duty of 25 per cent.?—Yes.

1887. Which of course adds to the price of the book in the United States?—Yes.

1888. (*Sir H. Holland.*) I understand you to say that you would divide the publishers into two classes, namely, those who print and those who do not print?—Yes.

1889. And that you think that three or four of the large houses who print have very great influence in the country?—They have, as representing the manufacturers behind them as well as their own interests alone.

1890. Do you not suppose that a good many of those publishers who do not themselves print, oppose any international convention, because I find in Mr. Morrill's report of 1873, to which you have referred, that he says that a very large number of domestic publishers are understood to be hostile to the whole subject of international copyright?—I should judge that that is a mistake. As far as I understood from the impression in the United States, those who were very active against an international copyright, and who had a strong influence were, numerically, the minority, but the majority were certainly in favour of the measure, although they are somewhat divided among themselves as to details.

1891. Since 1873, have you had any opportunity of testing the opinion of publishers on this subject?—Only indirectly, because since 1873 no formal meetings have been called on the subject.

1892. Then I understand that you agree with Sir Edward Thornton and others who have stated that the negotiations which have been started at different times between the United States and this country as to international copyright, have failed mainly on account of the opposition of publishers?—I do not know whether it would be fair to say "mainly." Mr. Baldwin, the member for Worcester, Massachusetts, who had charge of the first bill brought by the International Copyright Association into the House of Representatives, reported (the bill never came to a vote, being thrown out in committee), that the opposition mainly was the opposition of the Western States. Nearly all the book publishers are in the East—in the three large cities.

1893. (*Mr. Trollope.*) In what year was Mr.

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Baldwin's report made?—In 1868; he reported to the International Copyright Association in New York, that the opposition was from the Western voters, and his words were to the effect that the Western voters must be educated in the matter before any measure could be carried.

1894. (*Sir H. Holland.*) Did those western voters represent the publishers or the reading public?—The reading public, because there are no important publishers of books in the West.

1895. Are you aware that in 1870 a draft convention, framed on the model of a convention agreed upon by Mr. Crampton and Mr. Everett some years before, was submitted to Mr. Fish; that it was then submitted to authors and publishers; and that Sir Edward Thornton reported that the authors were unanimously in favour of the convention, but that the publishers were almost unanimously against it, and that it would be impossible to overcome the resistance which would be made by publishers to the proposal then submitted, unless an article were inserted stipulating that those British authors who obtained a copyright in America should be obliged to have their works set, printed, and bound in that country?—I can hardly understand that report as to the publishing trade. I know of no formal canvassing of the opinion of the publishers in 1870, although it is possible that is only from my own oversight. I know of no application to them, and I am decidedly of opinion that the majority are in favour of the measure and are merely uncertain as to the details.

1896. I understand you to say that in your opinion an international copyright convention would improve the condition of American authors?—Yes.

1897. And that not so much because it would raise the price of American books, but because it would exclude the cheap reprints of British authors?—It would diminish their importation. I do not know that it would exclude them.

1898. It would tend materially to diminish the reprints of British stories and novels?—Most certainly.

1899. I understand that you dissent altogether from Mr. Morrill's Report, to which you have referred and to which your attention has been called?—Most certainly.

1900. You are distinctly of opinion that the reading public in America would not suffer from an international copyright?—The reading public in America would certainly not suffer, although for a few years there might be difficulties in the adjustment of prices. May I say one word with reference to one of your questions, that is with regard to the discussion in the United States? Some decision was given in England by Lord St. Leonards to the effect that it was not the intention of any English copyright law to protect books which had been manufactured abroad. That came up in 1831 in connexion with a musical case of Boosey *v.* Jeffreys. Those words, which have since been quoted in the United States, show that the same difficulty had occurred in England, and that the decision here had been clearly that in order to obtain the protection of copyright the manufacture should be done in Great Britain.

1901. The latest case of all was Low *v.* Routledge, as you probably know?—Yes.

1902. (*Earl of Devon.*) You say, I think, that the great bulk of the publishers are in three towns; which are those?—New York, Boston, and Philadelphia.

1903. What proportion of the publishers belong to your association?—I should say about three-fifths, as nearly as I can remember.

1904. Does that comprise those who do the largest business?—It does, with the exception of three or four of the largest houses in the United States, who are also manufacturers.

1905. Those houses stand aloof?—Those houses have practically stood aloof.

1906. Cases frequently occur, I think in which on the title page of books circulated in England the name of an American publisher appears jointly with that of an English publisher; what state of things does that imply?—There may be one of several arrangements indicated by it. In many cases it would imply an arrangement by which the American publisher has purchased a duplicate set of plates, he paying half the cost of the composition of the book. In another case he may have simply arranged to purchase a thousand copies, or 500 copies, of the book. A third case is that he is merely the consignee of the English house, and that they send to him hundreds, or dozens, of the book.

1907. In the first case to which you refer I suppose the object would be that the book should be issued for sale contemporaneously in the two countries?—As nearly as practicable.

1908. That does not give American copyright to the English book?—It gives nothing whatever, excepting the courtesy of the trade. There is a notice to the other publishers in the United States that this particular publisher issues the book.

1909. But that is not under law?—No, it is the publishers' arrangement between themselves.

1910. (*Chairman.*) One or two witnesses have suggested that while in their opinion it would be almost hopeless to attempt negotiation with the United States for an international copyright in the ordinary sense of the word, it might not be so hopeless, if instead of an international copyright in the ordinary sense, something in the nature of a royalty was proposed, that is to say, a payment to the owner of an English work of 10 or 12 per cent. Has your attention been directed to any scheme of that sort?—That is one of the suggestions which under the arrangement at present is partly introduced, but it does not differ to any extent from the present arrangement of the payment of American authors; it is the custom of American publishers in 19 cases out of 20 to pay American authors by a royalty, and that royalty is nearly always 10 per cent. of the retail price of all copies sold of the book; in some cases the first thousand are excepted, and one of the probable arrangements with regard to us under an international convention is that we might pay English authors in the same way. I think that the English arrangement is much more generally to pay a fixed sum for the copyright, purchasing it outright on the part of the publisher.

1911. Do you agree with the witnesses to whom I refer, that if a proposal of this sort was made, it would be more likely to be arranged than an ordinary international copyright?—I am not sure that I know just what you would cover by "an ordinary international copyright," or why such an arrangement would not in itself be ordinary; it would be so in one sense of copyright, namely, a right to receive something on each copy; it would be our ordinary arrangement, the exceptional arrangement with us would be the purchase outright. In many cases I suppose English authors would object to having to receive accounts of sales from such a distance, and would prefer receiving a less amount as a fixed price; and it would be for the publishers to decide the matter with them.

1912. (*Sir H. Holland.*) Under the system of a royalty, I presume the printing in America of the English book is to be secured?—That would be the first suggestion.

1913. As I understand you, you think that no arrangement could be made for a royalty which did not provide for the printing in America?—In the present state of feelings most certainly not.

1914. (*Mr. Trollope.*) Referring to the question Lord John Manners asked you just now, is it not the case that an international copyright pure and simple would give the English author the power of dealing with the American publisher on any terms which he might please, either as to royalty or as to purchase, or of not dealing at all if he could not find an American publisher who was willing to accede to his views?—Most certainly; he would have his selection of publishers, and his arrangement of terms; the idea would be to put him on the same footing in that respect as the American author.

1915. But the proposal which Lord John Manners just now brought under your notice would enable any American publisher to publish any English work which he pleased, without any express agreement with the English author, on the payment to the English author or owner of the English copyright of a certain

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paid royalty?—I did not fully understand the proposal. I now understand the point. To that proposal in that shape the bulk of the American publishing trade would certainly be opposed; they would prefer to make such contracts as they do now.

1916. (*Chairman.*) Then you do not agree with those witnesses who have suggested this scheme of a royalty as one more likely to find favour with publishers and others interested in the copyright question than a pure and simple international copyright?—No. I did not understand the proposal before or I should have answered differently. There would certainly be grave objections to it in business, and the public would not be so well served.

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1917. (*Mr. Daldy.*) Is there anything in the American copyright law which renders it necessary for an American book to be printed in America?—I think not. A book may, I think, be printed in Canada and brought in on the payment of a duty. The publication must first be in the United States.

1918. There is no stipulation securing the manufacture of an American book to America?—No; I understand not.

The witness withdrew.

Adjourned to Friday next at half-past 12 o'clock.

Friday, 14th July 1876.

PRESENT:

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR JOHN ROSE, Bart., K.C.M.G.
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

MONSIEUR CHARLES GAVARD further examined.

Monsieur C. Gavard.

14 July 1876.

1919. (*Chairman.*) There were two or three legal questions reserved at our last meeting; you were good enough to say that you would come before us to-day and give us some further information upon those points?—I shall be very happy to give the answers.

1920. In the first place with respect to the omission in France of the deposit of a copy, can you tell the Commission what penalty, if any, is inflicted by the French law on the omission to deposit?—I believe that it is a fine, but I am not certain. I am not able to give you the formal answers. I shall get an exact answer from Paris upon that point.

1921. The second point was, whether in the event of an author not registering his work first, but registering it subsequently, he would be able to sue for an infringement of his copyright which had taken place previously to registration?—I think that that would not occur in the state of the French legislation. It is impossible to publish a book without deposit, the printer would be prosecuted by the official attorney.

1922. Therefore, your answer to that question would be that you do not think that the case can practically arise under the French law?—Yes.

1923. The third point, I think, had reference to dramatic representation. If the manager of a theatre pays an author may he then without obtaining the author's permission have the piece represented on the stage?—In France there is a French Dramatic Authors' Society. I have sent for the information, and have not received the official answer, but I can submit to the Commission all the rules.

1924. You perhaps will have the kindness to send the rules?—Certainly.

1925. (*Sir H. Holland.*) By Article 3 of the Law of 1791, which apparently is still law in France, it is enacted that the works of living authors shall not be represented at any public theatre in any part of France without the formal consent in writing of the authors?—Yes.

1926. Therefore, as far as you know, and as far as the law of the 13th January 1791 goes, the formal consent of the author is required?—Yes.

1927. Have you any further observations to make?—I wish to refer to two points which were taken in my former evidence, on which I do not think that the evidence which I gave was sufficiently clear. The first point is as to the rights which English authors can claim in France, either in accordance with the terms of treaties or of the general law. There is a French decree of the 28th of March 1852 which absolutely prohibits piracy, consequently foreigners are put on the same footing in France as natural subjects, and can exercise the same rights and under the same conditions. It follows that a foreigner who wishes to claim the protection of the decree of 1852 is bound to give the same deposit as a French author; but foreigners who wish to claim the terms of the convention existing between their own country and France, have the right to do so, and in that case they are bound to fulfil the formalities laid down in that convention. In the present state of things, the formalities required from English authors are the same as those required by the decree of 1852, that is to say, the deposit. The French proposal now is to abolish this deposit, and in that respect the position of foreigners in France will be improved.

1928. And the English author will be in a better position, in truth, in France than the French author, will he not; because the French author will have to make a deposit, but the English author, claiming under the terms of the convention, will not have to make a deposit?—Just so; he will only have to fulfil the formalities in England.

1929. And therefore, so far as the deposit is concerned, the English author in France will be in a better position than the French author?—Yes.

1930. And *vice versâ* the French author in England will be in a better position than the English author, because the French author, under the convention, will not have to deposit a copy in England?—Yes, but he is obliged to make the deposit in France.

1931. And so the English author has to make a deposit in England?—Yes.

1932. Therefore in France the English author will be in a better position, so far as the deposit in France is concerned, than the French author?—Yes.

1933. He, however, has had to make his deposit in England?—Yes.

1934. And in England the French author will be in a better position than the English author, but then he has made his deposit in France?—Yes. The second point is as to the representation of dramatic works. There is only one essential point to be altered in the convention as regards the French, namely, with respect to the representation of translations. The French Government propose an extension of the period in which the translation must appear from three months to three years, for the following reason. At present a foreign author in order to secure his rights in England is obliged to make a translation of the piece within three months of its registration, and the registration must be effected within three months after its publication or representation in France; so that an author is obliged to print, publish, and have a translation made of his piece within six months of its first representation. The cost of translation and printing is on an average from 30*l.* to 40*l.* That is a heavy charge, because at the first representation of the piece it is not known whether it will be successful or not. The consequence is that authors, before they know what profit they will get from the piece which they

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have written, are obliged to make a translation of it, or else they are exposed to the loss of their right of translation. If, however, three years were allowed for the translation they would then have time to see whether the piece was likely to be successful or not, and would make the translation or not accordingly.

1935. Is there a strong feeling upon this point amongst French authors?—Yes.

1936. Do you not think that three years is too long a period? I can understand in the case of a book that success may not be ascertained for some length of time, but the success of a play is generally known within four or five nights of the first representation, and yet you propose to extend the time from a minimum of six months to three years?—Yes.

1937. And on the ground that the translation is a heavy cost, and that the success of a play is not known at once. Now, as I have pointed out, the success of a book is not known at once; it may rest without having success for some time, but the success of a play is generally known within a few nights of its first representation, and I would suggest that three years is a very long period?—The question is looked upon in France in quite a different light; they do not wish the necessity of translating the piece to be imposed upon the author at all; it is looked upon as a charge on the author, consequently if this charge must be imposed upon the author they wish that it should be postponed as long as possible.

1938. If a play is a success in France, and if a reasonable time, say a year or a year and a half, is given to the author to consider whether it shall be translated or not, do you not think that sufficient; the author gets some profit from the translation, does he not?—I would wish that the necessity imposed on the author to translate was done away with altogether; but if it is kept I think that it should be deferred as long as possible.

1939. Probably, then, I am right in supposing that you consider the case of a play as differing from that of a book?—Yes.

1940. Because in the case of a book you have to look to the interests of the reading public, but in the case of a play you would say that that is not so; the public may do without a translation of a play?—If I understand rightly what you have said, it is that the success of a dramatic piece is more quickly seen than that of a book.

1941. That is another point, but I am now upon the point that you say that the wish of the French authors is that the writer of a play should not be compelled at any time to have a translation of it published?—Yes.

1942. Probably you would not take that view with respect to a book, because one can understand in the interests of the reading public, who have to be considered in both countries, that it is desirable that a book should be translated after a certain time, whereas that does not hold good of a play; it is not necessary that the public should know of a play, but you may say that it is necessary to give them a translation of a useful book?—The question in France is looked upon in quite another light. By the decree of 1852 foreigners and Frenchmen are put upon the same footing, and from the moment that they have secured their rights no obligation to translate nor any other obligation is imposed upon them. It is for that reason that the French Government ask for the same facilities in foreign countries.

1943. (*Mr. Daldy.*) Would it meet your views if the right of representation was separated from the right of translation, and if the law as to the right of translation applied to the translation of a play as to other books, but if a separate right of representation was secured?—The publication of a work is kept apart in France from its representation; I am speaking of the convention, this distinction already exists in the convention; but Article 4 has particular reference to the representation of translations, and it is that article which the French Government wish to change and make more favourable to securing the rights of authors.

The witness withdrew.

JOSEPH GREENHILL, Esq., examined.

J. Greenhill, Esq.

1944. (*Chairman.*) I think that you are the registrar of the Stationers' Company?—Yes, I was appointed by the Stationers' Company under the authority of the Act of Parliament of the 5th and 6th Victoria, chapter 45.

1945. May we take it then that the origin of registration at Stationers' Hall is under the Act of Parliament, or is it by some old charter?—Not the origin.

1946. Will you state the origin of the system?—The earliest register of copies at Stationers' Hall extant commences in 1557, but a register was kept by the brotherhood previous to the incorporation in 1556. The earliest ordinance of the company relating to copyright is dated in 1565. The registers have been continued from 1557 to the present time. From 1662 to 1679 registration previous to printing was compulsory; since the date of the first Copyright Act (8th Anne) the registers of copies have been regulated by statute. From 1814 to 1842 registration was compulsory. In answer to some suggestions made by the secretary I have to state that the company have never derived any pecuniary benefit from the fees collected under the existing Acts. The registering officer appointed by them under the Act receives the fees for his own use, paying thereout the expenses of the office, excepting the salary of a man employed as porter, and rent, repairs, coal, gas, and water, which are provided or borne by the company. A separate office is provided exclusively for the business of the registry at the expense of the company. The registering officer is also employed by the company, for which he receives separate and additional remuneration.

1947. Perhaps you can explain to us what is the system in use. What is the course of procedure?—When a person applies to register a copyright he has to fill up a form relative to that copyright. The forms are given generally in the Act of Parliament. I have brought a specimen of each form.

1948. (*Sir H. Holland.*) Is that the Act of 1842?—Yes, that is the existing Act for British copyright. (*The witness delivered in copies of the forms, vide Appendix.*) What we have to see is that persons have filled up these forms as far as we can judge in the manner contemplated by the Act.

1949. (*Chairman.*) Can you tell us what is the average number of works registered every year?—I have these special numbers which I will give you for the last five years. There are original entries, assignments from those original entries, certificates of registration, entries under the Fine Arts Copyright Act, entries under the Foreign International Copyright Act, and there are searches. In the year 1871 the number of original entries was 3,231; there were 156 assignments, 325 certificates issued, 1,498 fine art entries, 845 entries of foreign works, and 612 searches of the registry. In 1872 there were 3,247 original entries, 140 assignments, 399 certificates, 1,915 fine art entries, 1,686 entries of foreign publications, and 674 searches of the register. In 1873 there were 2,249 original entries, 111 assignments, 286 certificates, 2,548 fine art entries, 1,967 foreign entries, and 727 searches. In 1874 there were 2,440 original entries, 154 assignments, 369 certificates, 2,452 fine art entries, 2,411 foreign entries, and 708 searches. In 1875 there were 2,756 original entries, 159 assignments, 485 certificates, 2,356 fine art entries, 2,568 foreign entries, and 730 searches. The fee on an original entry is 5*s*., it is 5*s*. on an assignment and 5*s*. on a certificate; on a fine art entry it is 1*s*., and on a foreign entry 1*s*., and the search fee is 1*s*. There are also entries of Minutes of consent, but they have nearly ceased. Those are all entries under the Act of Parliament by British subjects, or by subjects of countries having conventions with Great Britain, when we term them foreign entries. I have a note of the names of those countries which have executed conventions with

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Great Britain and the dates when the conventions were executed.

1950. (*Mr. Trollope.*) The last name in your list is Sardinia, is it not?—Yes.

1951. That means Italy, does it not?—We conclude so, we assume so at the office.

1952. These original entries include whatever books may be brought to you?—Yes, books and music, and everything under the term "book;" as defined in the Act letter-press, or a chart, map, or plan separately published.

1953. It includes all the books which are brought to you?—Yes.

1954. I see that the number of original entries has fallen off from 3,000 odd in 1871 and in 1872 to 2,000 odd in 1873, 1874, and 1875?—Yes.

1955. Can you explain that?—Yes; people used to come and register their trade marks notwithstanding we told them that there was no registration of trade marks; they used to ask us to receive them in order to fix the dates; most of their trade marks were objects such as animals and birds, and it occurred to me that instead of their registering them under the Act of Parliament and our enforcing upon them a fee of 5*s*., they might register the drawings from which those things were made at an expense to them of 1*s*., and therefore I think you will find that the entries under the Fine Arts Act have increased.

1956. In proportion?—Yes.

1957. You account for the apparent falling off in that way?—Yes; instead of taking a fee of 5*s*. I thought it more liberal on the part of the company to be satisfied with a fee of 1*s*. I therefore recommended the people to enter under that Act for what it is worth. Of course we set our faces entirely against the registration of trade marks because there was no Act of Parliament which contemplated it.

1958. Have you ever formed an idea as to the proportion of new books which is brought to you for registration?—I have never calculated the proportion, but there are very few; it is generally known that there are very many more new publications than those which are registered.

1959. Therefore it would not be suprising to you to hear that the number did not exceed six per cent.?—No; 6, or perhaps 10.

1960. Would it throw too great an amount of work upon your office if registration were more compulsory?—No. Under the previous Act of Parliament, namely, the Act of 1814, it was made compulsory.

1961. From 1814 to 1842 it was compulsory?—Yes.

1962. You personally, I think, were connected with Stationers' Hall at that time?—I was; in fact I have been connected with the Stationers' Company from 1818.

1963. Therefore you are able to say whether the amount of work which was then brought to you was more than your staff or your space could accomplish?—Certainly not more.

1964. And you do not say that with the increased amount of publication which has taken place since that time your space or means would be too limited?—Certainly not if it were four or five times as much as it is.

1965. (*Mr. Daldy.*) Is registration under the Fine Arts Act compulsory?—It is so far compulsory that if the parties do not execute an agreement when paintings are parted with, neither party possesses the copyright, and parties cannot sue for injuries done them prior to registration.

1966. Is the agreement registered at Stationers' Hall?—I have no knowledge of the form of the agreement; there must be an agreement specifying who is to have the copyright, whether the artist retains the copyright or whether the purchaser has the copyright.

1967. The agreement must be registered?—Yes, the form gives the names of the parties to the agreement, and the date of the agreement. Unless there is an agreement, the copyright is thrown open to the public for the fine arts, paintings, drawings, and photographs.

1968. Is there a form for making an entry of a painting or photograph without a transfer taking place?—The artist himself first in general enters it, and when he parts with the painting the purchaser enters it under that form, giving the name of the party who is then the possessor of the copyright, and the names of the parties to the agreement, and the date.

1969. Is there any separate form for the entry of the proprietorship totally independent of any transfer of the copyright?—That is the form; it does for both purposes. Of course if a person enters his own painting, of which he is naturally in the first instance the possessor of the copyright, he does not then fill up the second and third columns, because there has been no agreement with a second person.

1970. Do you get many entries of original proprietorship of paintings?—No, comparatively few; the artists are very negligent in that respect.

1971. (*Dr. Smith.*) If I understand you aright there is 5*s*. paid for registration?—Yes, of a book copyright.

1972. And if a person wishes to have a certificate of that registration he has to pay 5*s*. more?—Yes.

1973. So that he would have to pay 10*s*. to obtain the certificate?—Yes.

1974. You do not give the certificate as a part of the registration?—No.

1975. (*Sir H. Holland.*) I did not catch what staff may be said to be necessary for the present registration; you said that there is one superintending officer?—Yes.

1976. Has he clerks under him?—Yes, I have a sufficient number of clerks.

1977. What number of clerks have you now under you?—Two, and occasional assistance.

1978. Do I rightly understand you that if registration was made compulsory you would not have to increase that staff?—No, I do not say that. I should be ready of course to increase the staff, having space for the purpose.

1979. There would be a material increase of business?—Of course, if it was strictly compulsory.

1980. Not merely in the registration, but the change would probably lead to more searches?—It might of course, because people are now very much dissatisfied with the searches, inasmuch as they come to search for books and do not find the information which they seek on account of their not having been registered.

1981. You have space in the office for that purpose if the registration should be made compulsory?—Yes, the company could give any amount of space.

1982. The company *qua* company does not get any remuneration from the registration?—No, none whatever; the registering officer receives the fees for his own use, paying the expenses of the office excepting the salary of a man employed as porter, and excepting rent, repairs, coal, gas, and water.

1983. Do the company, as far as you know, attach much importance to keeping the registration at their hall?—Having been connected with the registration for so many years and having all the old registers of copyright, they certainly do consider that an amount of prestige attaches to it; in no other way are they interested, certainly not in any pecuniary way.

1984. It is because the registration has been done there for a long time and on account of the prestige?—Yes, and from their connexion with literature. Many of the publishers and printers and stationers belong to the company.

1985. And therefore they would view with dislike any removal of the registration to any Government Office, or to the British Museum?—I am not prepared to say that they would oppose anything of that kind. I believe that they are perfectly satisfied, so far as the fees are remunerative, to continue the registration.

1986. But the feeling would be in favour of keeping the registration at Stationers' Hall?—I think so.

1987. What makes the difference between the number of entries and the number of certificates; the number of original entries in one year was 3,231, and there were only 325 certificates. I thought that when

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J. Greenhill, Esq.

14 July 1876.

the entry was made, a certificate was given at the same time?—No; a certificate is a more formal document, and many people say that they will not take a certificate until they have occasion to go into court or to show that they are the proprietors of the copyright in some way or another.

1988. An extra fee is required for the certificate?—Yes; it is 5*s.* for the registration, and when a person wants a certificate it is 5*s.* extra.

1989. (*Chairman.*) When the act of registration takes place, and the 5*s.* fee is paid, is a receipt given?—Yes; we give the person a little ticket to show that he has paid 5*s.* or 1*s.*, as the case may be, so that he may show to his employer that he has been to the Hall.

1990. Does not it occur to you that the receipt so given might be regarded as a certificate?—No, we endeavour to make it as little like a certificate as possible. In fact I remember one case in which there was a bill in Chancery. I saw the bill, and one of these little tickets had been copied out as if it was a thing really of importance whereas it was a mere memorandum to show that the person had paid 5*s.* or 1*s.*, as the case might be; but they had evidently fancied that it was of some authority.

1991. But is not the object of the certificate to prove that the act of registration has been formally and legally accomplished?—Yes, and that is the document for which they pay 5*s.*

1992. Does not the receipt also legally show that the act of registration has been properly accomplished?—No.

1993. In what way is it defective?—In the first place when the form is brought to us for registration it cannot of course be put into the book out of its order; we have sometimes a dozen coming at the same time from the same party; and then, again, we do not mention even the name of the work on this little ticket, and a legal certificate must be a copy of the register.

1994. (*Mr. Trollope.*) The name of the work could be mentioned on the ticket, could it not?—It certainly could, but not as it would appear on the register.

1995. If it were so mentioned, that ticket might be used as a certificate of registration?—But the Act of Parliament gives us another 5*s.* for a regular document, and therefore we do not wish to lessen the chance of getting those certificates by giving a regular certificate for nothing, which of course would be some trouble, and if the ticket were more formal it would require a stamp.

1996. (*Chairman.*) Under the present system registration to be effective costs 10*s.*?—Not to be effective. If you want to prove the registration you then pay an additional 5*s.* for the certificate, but all those registrations are quite as effective as if parties had taken out a certificate.

1997. In the event of a lawsuit are they as effective?—No; then the Act of Parliament says that you must have a regular certificate.

1998. Therefore to be practically effective in a case of litigation the fee really is 10*s.*?—Yes, but you are not obliged to have a certificate until it is actually required.

1999. (*Mr. Trollope.*) The only object of that second document is to obtain the second 5*s.*?—No; it is to enable you to go into court, because no other document but that would be recognised in court. It bears a stamp and an official seal, and is a copy of the entry in the register book according to the Act.

2000. The stamp and the official seal being simply forms which are put on the document?—Yes.

2001. Could not those simple forms be as easily and cheaply put upon to the original receipt?—It would be very inconvenient to attach them to the original receipt. I may mention that that little receipt merely originated with myself, in order to give a little safeguard to the parties sending the money, so that they might know that it had been received, and that their messengers were honest.

2002. No doubt the originating of that receipt on your part was a good thing done, but would not that good thing be carried on and be a greater good if that little receipt could be made to become the testimony of registration?—At many times it would be very inconvenient to mention the names of the various books which came for registration.

2003. Can you say why it would be inconvenient?—That is evident, because it would give us much more to do, much more writing and much more trouble.

2004. The name of the book would have to be written in?—It would.

2005. So far, no doubt, there would be more trouble. Would there be any other additional trouble?—Yes, incidentally there would be other trouble.

2006. I have no doubt you are right, but we should like to understand what it would be?—I have not turned my attention to it. This little ticket was perfectly voluntary on my part; it was not contemplated by the Act of Parliament in my view, and I suppose that the framers of that Act of Parliament in apportioning that fee considered it a proper remuneration for what they designed that we should do; perhaps if they had intended us to give tickets and certificates at the same time they would have increased the remuneration. For instance, respecting the foreign works, 20, 40, 60, or 100 frequently come at once; the mere examination of these forms to see that they correspond with the works, which are obliged to be deposited with them, takes a long time, and if we gave them a list of all those works at the time it would add to it very considerably. The fee for registering a foreign work at present is manifestly insufficient, being 1*s.*, and if the Act of Parliament gave us more trouble respecting it, we should consider it a greater hardship.

2007. Can you show me one of those little tickets?—No, I have not one with me.

2008. You can probably tell the Commission, when that ticket or receipt is given, what is written into it at the moment. The form is printed I suppose?—Yes; we begin, I think, by stating "Original entry;" then there is the figure 5 for 5*s.*, and underneath comes the assignment and so on of the various works, and against that is the fee paid; then for whatever fee is paid either I put my initials, or one of my clerks puts his initials, at the bottom, and there is the date when it is brought.

2009. At the time you write in the initial and the date?—Yes.

2010. Not the name of the person?—No.

2011. Nor the name of the book?—Nor the name of the book.

2012. It is merely an initial affixed to the payment of a certain fee?—Yes.

2013. In addition to that you would have to write the name of the book and the name of the owner of the copyright?—Yes.

2014. Would there be more than that?—I do not know that there would.

2015. (*Chairman.*) At present the registration fee for foreign books and for works of fine art is 1*s.*, is it not?—Yes.

2016. Do you charge 5*s.* for certificates for fine art works as well as for foreign books?—Yes, in all cases.

2017. (*Dr. Smith.*) If I understand you aright, you consider that shilling for the registration insufficient to remunerate you for the trouble?—Yes, under the Foreign Copyright Act; it may not be insufficient under the Fine Arts Act; but the foreign writing is very indistinct, and they having to deliver a copy of the book we must see that everything tallies in the title without variation. Very frequently copies of musical publications are brought, and we must then be very particular to see that they correspond exactly with what is on the form. There are so many different arrangements of the same piece.

2018. (*Chairman.*) After a work has been deposited at Stationers' Hall, what is the next step?—The only work which is obliged to be deposited at Stationers' Hall is under the foreign registration, and then the party is obliged to deposit at the same time a copy of

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the book, and that is forwarded at the end of a month or so to the British Museum.

2019. Is there any deposit of prints and fine arts?—No; the party under the Act has permission to deposit a sketch or photograph of his painting, and that is attached to this form and filed and kept; but there is no perfect copy to go to the Museum, or anything of that kind. It is under the Foreign Copyright Act that the delivery of copies is at all compulsory.

2020. (*Dr. Smith.*) Does the registration of a work of fine art give you more or less or the same trouble as the registration of a book?—Much about the same.

2021. But the fee in the case of a book is 5*s.* and in the case of a work of fine art 1*s.*?—Yes.

2022. You however do not consider that there is any additional trouble in the registration of the book, although the fee is so much larger?—No.

2023. (*Sir H. D. Wolff.*) You have said, I believe, that at the present moment only about 6 or 10 per cent., generally speaking, of new publications are registered?—Yes.

2024. I see that the sum which you got last year for registering original entries and assignments and for certificates, came in round numbers to about 800*l.* and that what you got from the shilling fees came to about 300*l.*; last year the sums received came to something above 1,100*l.* altogether, that is one sixth per cent.; but supposing that it was made compulsory, those fees would amount to more than 18,000*l.* a year, and therefore there would be a large margin for reduction in case the registration was made compulsory; the whole process could be carried out at a much smaller cost?—Certificates could be given for much less, because the cost of a certificate, of course, is merely the cost of the copyist.

2025. Could not original entries be given for less?—They might to a certain extent but by no means to that extent, because the original entry is only made after consultation, and it takes some time; frequently a person takes half an hour in making an original entry to see that it is properly made.

2026. You consider that that person consumes an amount of public time equal to 5*s.*?—Yes, and not only that, but the whole staff is expensive; books and stationery are expensive.

2027. But if there were so many times the number of the present number of entries and certificates the expenses would not increase *pro tanto*, would they?—They would increase to a certain extent of course. For instance I have now two assistants, and might then require six or eight.

2028. But supposing that you had ten times as many, it would not come up to the enormous amount of 18,000*l.* a year?—No.

2029. Therefore, by making the registration compulsory and forcing everyone to come to the registration office a much smaller fee would be required?—We went into that matter some few years ago when Lord Westbury was bringing in his Bill relating to Fine Arts, and I saw him on the subject of the fees, and called his attention to the fees suggested in the Bill introduced by Mr. Black of Edinburgh, in the interest of authors and publishers, who considered 2*s.* 6*d.* for a registration of an original entry or assignment, and 1*s.* for a certificate as equitable to all parties, which Lord Westbury assented to and promised to carry out.

2030. Do you think that that would give any surplus over the expenses?—Yes, it might.

2031. Would that surplus go to the funds of the Stationers' Company?—At present it goes to me, but of course if there was to be 18,000*l.* a year coming in it would be different; that, however, is all speculation. I have turned it over in my mind, and 2*s.* 6*d.* I think would be a fair thing for registration and 1*s.* for the certificate, that is merely the work of a copyist after it is put upon the register. Under the late Act of Parliament there is a stamp of 1*s.* attached to the certificate. I have always given the stamp in. I am at liberty to charge it but have not done so.

2032. With respect to the ticket, you say that you do not think that it would at any time be taken by a court as evidence of registration?—No.

2033. It is impossible?—Yes.

2034. It is merely an acknowledgment which you give at the time?—Yes, just to prove the honesty of the messenger. I do not know that we do it in all cases, it is perfectly voluntary on my part.

2035. Do searches take a long time?—Sometimes.

2036. Are they done by the clerks, or by the people applying?—By the people applying; I take no responsibility for it, but give them the indexes and they search. Sometimes a search only occupies a quarter of an hour, and sometimes extends to two days. The fee of 1*s.* is for the search; they may search 20 or 30 volumes of registers for 1*s.* for each book, with respect to which they seek information.

2037. (*Sir H. Holland.*) What was the nature of Lord Westbury's Bill which you spoke of just now?—That was for a registration of fine arts.

2038. I suppose that the greater part of the certificate is now printed, is it not?—Yes.

2039. What you have to fill up in the certificate is the name of the book?—The title and the various other information given in these forms.

2040. Therefore as much of it is printed now as can be printed in any certificate?—Yes.

2041. And you do not see your way to giving a certificate at once instead of giving a receipt?—No; the certificate would be a copy of the registration, we could not give the certificate at once.

2042. The certificate now is a copy of the registration, and is made a legal document in the courts. But do you not see your way to any alteration in the law so as to make you register the book and give the certificate at the same time?—No, because what we should give in that little ticket would be so meagre.

2043. But I meant giving the certificate in the same form which it has now?—Then we could not do it. How could we give 50 or 60 of those certificates at once? It would take hours, as the works must be on the register first.

2044. You do not see your way to doing it?—No.

2045. On the ground that it would occupy so much time?—Yes, and it would frequently keep so many persons waiting.

2046. It is a matter of legislation; of course Parliament might make a mere receipt with just the name of the author and of the book sufficient in a court of law as *primâ facie* evidence of registration; at present the certificate is so?—Yes.

2047. The only objection to giving the certificate, as I understand, is that it takes so much time to fill up the title of the book, and the name of the publisher, and the name of the proprietor, and also the date of the publication?—Yes; we could not do it at the moment, as the work must be on the register.

2048. Not at the moment, but I presume that you could do it within one or two days?—Yes, a person could have a certificate generally the day after registration.

2049. (*Chairman.*) Is it not rather a question of the number of clerks whom you would have to employ. If you were allowed a sufficient number of clerks could not you get through this work with corresponding rapidity?—It could be done to a certain extent undoubtedly.

2050. (*Mr. Daldy.*) Can you tell me whether the appointment of registrar is an annual appointment or whether it is made once for all?—It is, I should consider, an annual appointment renewed as a matter of course.

The witness withdrew.

Adjourned to Tuesday next at half-past 12 o'clock.

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Tuesday, 18th July 1876.

PRESENT:

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
SIR JULIUS BENEDICT.
FARRER HERSCHELL, Esq., Q.C., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

J. Boosey, Esq.

18 July 1877.

JOHN BOOSEY, Esq., examined.

1944.* (*Chairman.*) Will you state to the Commission your occupation?—I am a music publisher.

1945.* (*Sir J. Benedict.*) Your firm has been a very long established one in this country?—For about 60 years.

1946.* Your father was an eminent publisher; was not he very much connected with international copyrights ever since he began business?—Yes, entirely.

1947.* Can you give us any information as to how the new Copyright Act, I mean the Act of 1842, has worked with regard to musical publications; do you think that it is sufficient in all its regulations, or do you suggest any improvements which could be made, so as to render it more profitable for the author and more certain for the publisher?—I have had very little experience under the English Copyright Act; all my principal transactions have been under the international treaties.

1948.* But still you publish a great many English copyright works?—Yes.

1949.* Has it struck you that as the law stands at present it would be capable of amendment and improvement?—I cannot say that I have any suggestions to offer at all in that way.

1950.* You think that altogether it has worked well both for the publisher and for the author?—I think so.

1951.* What are the arrangements which you think are the most profitable with regard to international copyright. Is there any difficulty in settling that matter in a way which would be satisfactory to foreign authors. I suppose that you are aware that there have been no end of questions as to the copyrights of foreign authors in this country?—Yes; every copyright is open to dispute; we never feel certain of retaining our right to any work.

1952.* (*Chairman.*) Do the words "every copyright" in your answer mean every foreign copyright?—Yes, new points are raised about every foreign copyright, whenever it comes into a court of law.

1953.* (*Sir J. Benedict.*) What is your opinion with regard to the assimilation of the English copyright to that of foreign countries, for instance, that of France and Germany; are not those about the only countries which have an agreement with regard to musical works?—No; we have treaties with Italy and Belgium and Holland, with about eight countries altogether, I think.

1954.* Are you aware that complaints have frequently been made by foreign authors of the evasion of their copyrights in this country?—Certainly; foreign authors look upon the system as a mere trap for the purpose of depriving them of their pretended rights in England.

1955.* Can you give us any single instance of that infraction?—Yes, I can mention several instances. Until ten years ago we thought that it was necessary only to give the names of the author and composer of a work in making the registration, but in a lawsuit in which we were concerned it was settled that it was necessary to state also the name of the arranger of the pianoforte accompaniment.

1956.* (*Mr. Herschell.*) What description of work was that?—An opera. We discovered that it was necessary to give the name of the gentleman who merely did the mechanical part of the accompaniment, although his name had not appeared before. Consequently the copyright in all operas published before that time became lost merely from the omission to give the name of the arranger of the accompaniment. Then there was another decision which destroyed a great quantity of property; we had been in the habit of depositing at Stationers' Hall the ordinary English copy of an opera within six months of its first appearance, in order to secure the right of translation; but it was decided that an ordinary translation would not answer the purpose, but that a literal translation, in which not one word was changed, was absolutely necessary in order to secure the copyright; consequently all operas which had not been before translated in this way suddenly became worthless as far as the English version was concerned.

1957.* (*Sir H. Holland.*) A literal translation of the original play was required?—An exact translation. The case was "Frou-Frou," for which a large sum had been paid, and the whole rights in it were lost, because the registered translation was not exactly literal.

1958.* (*Mr. Herschell.*) What was the case in which that was decided?—Wood *v.* Chart. The registrar himself seems to be ignorant of what forms to use, for the registration of foreign works. Ten years ago we were in the habit of registering the right of publication and the right of performance in one form, but the registrar suddenly took it into his head to insist upon having two forms, and to have an additional witness on one of those forms, who had never appeared before. I asked him the meaning of his new witness, and he said that he merely introduced him because he thought that he would strengthen the entry. The hardship was, that if we received forms from our foreign composers under the old system, the registrar refused to take them, and very likely there would not be sufficient time to get them altered to suit his new views. I merely mention these things to show what a great drawback it is for the copyright to depend entirely upon the form of entry.

1959.* (*Chairman.*) Was a separate fee charged?—Yes; it was with the view to get double fees. I thought it an extraordinary thing to introduce a new witness not mentioned in the Act.

1960.* (*Sir H. D. Wolff.*) Was that at Stationers' Hall?—Yes. There are many other points constantly under discussion; we have now two lawsuits in hand in which entirely new points have been raised.

1961.* (*Sir H. Holland.*) With reference to the witness, do you mean that a second witness was introduced?—No. No witness at all was required by the Act for the assignment of the right of representation. The registrar did not ask for a witness as to the right of publication, but merely as to the assignment of the right of representation.

1962.* (*Sir H. D. Wolff.*) Had he a right to ask for it?—Not at all.

1963.* Then you could have gone for a mandamus?—Yes; but if we were pressed for time we should have lost all our rights. There was a very valuable property, "*La fille de Madame Angot;*" the right of representation of which (worth several thousand pounds) was lost through a slight informality in the same way; the form was neglected to be sent over to us (through the death of the publisher) until the last moment, and there was a slight error in it which there was no time to get rectified, and the property was lost.

1964.* (*Sir H. Holland.*) In what did the error consist?—I forget what it was. I think that it was

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the absence of a witness; it was an error in the form we received.

1965.* (*Sir H. D. Wolff.*) Was that form under Act of Parliament?—Yes.

1966.* (*Mr. Trollope.*) It was not your own error?—No, but an error on the part of the foreign proprietor.

1967.* (*Sir H. Holland.*) When was the form sent to you?—It was sent over to us to deposit on the last day.

1968.* Was it an error in the form used abroad?—Yes.

1969.* (*Chairman.*) You admit it to have been an error?—Yes; but it is a very serious thing for the existence of a valuable property to depend entirely upon correct registering.

1970.* (*Sir H. Holland.*) But it apparently had been delayed until the last moment?—It had; there was not time to send it over and get it back again.

1971.* If it had been sent over earlier there would have been time to get the error rectified?—Yes, but the delay occurred through the death of the French publisher.

1972.* (*Sir H. D. Wolff.*) Could not it be registered afterwards?—No, it was entirely lost.

1973.* For all time?—Yes. Another point has been raised in one of our lawsuits which is now proceeding, with reference to the right of performance in an opera. The Act states that if a dramatic work is not published the title only is necessary for registration. Now we are in great difficulty with an opera, because the grand orchestral score is not published, but on the other hand the pianoforte score is published. If we do not deposit any copy at all, our opponents turn round and say that the greater part of the work is published in the pianoforte score; if we deposit the pianoforte score they answer that it is not the edition performed at the theatre. That is exactly a case in hand.

1974.* (*Sir J. Benedict.*) In the lawsuit in which the copyright was lost, was not it decided that the arranger for the pianoforte being named had almost the same right and privilege as the original composer?—The decision had nothing to do with the arranging right; it merely decided upon the necessity of giving his name as one of the composers: he was looked upon for the first time as one of the composers of the work.

1975.* And in the other case, it not being an arrangement for the pianoforte, it became valueless as a copyright?—The whole opera became valueless, and not the pianoforte arrangement only.

1976.* (*Sir H. Holland.*) You fall between two stools; the orchestral score is not published and the pianoforte arrangement is not sufficient?—Yes. We have deposited at Stationers' Hall the pianoforte copy in the case now in dispute; our opponents say that that is not the edition performed. We answer that it is not necessary to deposit any edition at all, because the orchestral score is in manuscript. On the other hand, the pianoforte score contains a great part of the orchestral score, and it is impossible to decide how to act until a decision has been given. In fact the whole of the copyrights under the international treaty are exposed to all sorts of frivolous and vexatious attack.

1977.* (*Chairman.*) You have now explained to the Commission the inconvenient position occupied by foreign musical composers?—Yes.

1978.* Have you any suggestions to make as to how that inconvenience should be removed?—I think that the general feeling is that foreign composers and authors should have their rights as English authors have them, subject to the deposit of a copy in some English library, and that the right should not depend wholly upon the correct drawing up of a particular form.

1979.* (*Sir H. D. Wolff.*) Monsieur Gavard, the French Chargé d'Affaires, suggested that registration in another country, legally proved, should be sufficient for the copyright in this country, without any re-registration; what is your opinion in that respect?—I think that that would be quite sufficient. That in fact would be giving every author and composer the same rights here as he has at home. We feel it at present a great hardship to have all our property exposed to every kind of frivolous and technical objection.

1980.* How do you pay the writer of an opera; do you pay him a lump sum, or do you pay him according to the representations in England?—We generally pay a foreign composer a sum for the copyright, and so much a night for the right of performance.

1981.* If the opera is performed in the provinces, how do you check it?—That we have some difficulty about. We have agents to collect the fees in the provinces.

1982.* Have you any mechanism like the Dramatic Authors' Society?—No, we have no prompt means to prevent ourselves being robbed.

1983.* When you have published a song, may people sing it in public without the author's leave?—No, not without the author's leave.

1984.* Are not songs published merely, as it were, for private performance?—No, with a view to public performance. No composer has any idea, or wish, to receive any fees for the right of performance. Lately, an agent has started up, who is employed by persons who have bought deceased authors' rights; but no living composer, that I am aware of, has derived a single sixpence from the performance of his songs excepting at theatres.

1985.* (*Mr. Herschell.*) I suppose that the sale, by the popularity of the song, is the way in which he expects to get remunerated?—Yes, I have spoken to Mr. Hatton and Mr. Sullivan and all the principal composers; this agent has applied to them all, and no living composer cares to employ him.

1986.* (*Sir H. D. Wolff.*) Would a composer have a right to prevent a person from singing his song in public, he having published it?—Certainly; he could demand 2*l.* a night; and to a man like Mr. Hatton it is a very tempting thing; the agent has told him that he will obtain 400*l.* or 500*l.* a year for him, but he has scouted the idea of such remuneration.

1987.* (*Mr. Trollope.*) Do you understand why Mr. Hatton has scouted the idea?—He said that he composed music with the view to it being performed everywhere, publicly and privately, and that that was all he expected. The agent then went to Madame Balfe, who said that she would do nothing to interfere with the performance of her husband's songs.

1988.* (*Sir H. Holland.*) Would that include music halls as well as the stage?—Everywhere.

1989.* (*Sir H. D. Wolff.*) A mere song writer would look for his remuneration for the copyright from the sale of his songs?—Yes.

1990.* (*Mr. Trollope.*) You mean that Mr. Sullivan and Mr. Hatton think that they can carry on their business better through music publishers than through the agency of dramatic agents?—Yes, that is as clear as possible. I have consulted them. A great fuss has been made lately about the rights, because two or three people have asserted them in the way I have described; one, a lady, who has bought Wallace's rights from his son, another is Mrs. Bodda, who has bought Bunn's rights from the lady to whom he left them. Those people have employed this agent, and there has been a general excitement on the subject of performing rights.

1991.* (*Sir H. D. Wolff.*) I suppose that no one has a right to adapt music or alter it; for instance, a popular opera comes out, and a publisher rearranges it; that, I suppose, is only done with the consent of the author?—Certainly.

1992.* (*Sir J. Benedict.*) Are you aware that the right which the composers can claim in this country belongs to them in every other country as well as here?—Yes.

1993.* And that it is exercised in France to a very large degree. Are you aware that in France there is a society of musicians and dramatic authors combined together, who have made an arrangement to protect their rights by that association?—Yes.

1994.* I suppose that you are aware also that it is not limited to Paris, but that the same agents have a

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very strict supervision over all the theatres in France and in Germany, and all the music halls, and that without their implicit permission and agreement no piece of music of whatever description can be performed?—Yes, I am quite aware of that.

1995.* Do you not think that it is perhaps a matter of injustice that authors, who certainly by their talent and powers contribute to the success of a piece, should not after publication derive an additional benefit from the performance of their pieces?—I can only say that no composer that I have met with shows the slightest desire to have such a privilege. It is because the money made by the publication, which is much larger in England than in France, is so good, that they are satisfied with it. They consider that if the other right were exercised, it would interfere with the profits from the publication. If a composer can make 500*l.* in six months by a song, he naturally is indifferent to the smaller rights of performance.

1996.* That is an exception to the general rule. You would not be able to quote many songs which would bring 500*l.* in six months. I speak now not of the popularity of the moment, but I refer to works (call them songs) which have become classical in the course of time, and the composer may be in distressed circumstances. He has that right himself, and his widow or his children, after he is dead, would derive a profit from the talent which he has employed in composing those works. I believe that the law has provided for that, and I want to ask your opinion upon that subject. I do not speak of 2*l.*, I think that such a demand is unwarrantable; but with a moderate fee for performance, say 2*s.*, or even 1*s.*, do you think that there would be any difficulty? If successful songs were performed at places of popular resort, such as music halls or gardens, do you think that the managers or the musical directors of such places would have any objection to granting a moderate fee to the composer for the work being performed?—I think that the managers might not object to paying a moderate fee, but I think that the whole of the composers would announce that they waived their claim. Composers now are in the habit of paying singers handsomely to sing their songs, and as they attach so much importance to these performances or advertisements they would never think of receiving money for them.

1997.* (*Mr. Trollope.*) Do you say that the composers pay the performers to sing their songs?—Very considerably. The popularity of a song is entirely made from its being sung in public. The composers are entirely opposed to the idea of receiving fees for the performances which they assist in taking place.

1998.* (*Sir J. Benedict.*) This applies almost exclusively to English composers, does it not?—Entirely to English composers.

1999.* We come now to the question of foreign composers. Do you not think that the foreign popular composers of the style of music which is now so much in vogue would find it rather hard upon them, if having the system in their own country of claiming a fee whenever their compositions are performed, they were excluded, not by law, but by custom in England. Could you make a distinction between the foreign composers and the English composers. You say that in one way you want to assimilate them to the English composers; would it in your opinion include also the foregoing of the right of claiming a fee for the performance of their songs, because in my opinion that would be a new law introduced?—I know many French composers, and I never heard any of them suggest such a thing as receiving any fees for the performance of songs and extracts from their works in this country; it is entirely new to me.

2000.* Are you not aware of Monsieur Gounod making great difficulties about his works?—That was about the performance of his operas, not about his songs.

2001.* (*Sir H. D. Wolff.*) Had he some such difficulty about "Faust"?—He had no difficulty about "Faust" he received about 80*l.* for the publishing right; it was sent a day too late to Stationers' Hall to secure the acting right.

2002.* (*Sir J. Benedict.*) Is it your opinion that, notwithstanding the law as it stands at present, the system ought to be continued as it is without any alteration?—What system?

2003.* The system of the performance of songs and compositions without the right of the author to claim payment for it?—At present the composers have the right, but they do not avail themselves of it.

2004.* Do you think that much is gained by a right which is not exercised, or which is obsolete?—I think that the composers would rather be pleased to have the right taken from them.

2005.* Would you vest the right in somebody else. Should the publishers have the right?—Certainly not.

2006.* Where would you put the limit; would you allow songs which are the right of the authors to be introduced, as is often the case in pantomimes and in little pieces; would you permit managers and directors to take them indiscriminately, as they have been in the habit of doing, and put popular songs, like some of your publications of Mr. Sullivan's, into their pantomimes and entertainments, and not give any fee to either publisher or composer?—I would make a distinction between the concert room and the theatre. I would never have music used in a theatre at all without the composer's consent.

2007.* Would you make a distinction for music halls?—Yes. Music halls I would look upon in the same light as theatres.

2008.* Where do you draw the line; where does the music hall finish and where does the concert room begin. There are music halls, I believe, where they give almost entire operas?—I think that the distinction might be made that when a song was sung in ordinary dress no fee should be paid for it, but that as soon as it was used in a dramatic form a fee might be claimed.

2008*a*.* Who then would have the right to claim the fee?—The composer.

2009.* (*Sir H. D. Wolff.*) At pantomimes they mix up all the popular songs in medleys, and they have burlesques of popular songs and of original songs, and it is very difficult to check it, is it not?—Yes. We claim all our rights from theatres and music halls.

2010.* Even for a parody?—Yes, because the proprietors of music halls help themselves to everything; they will take a new opera which we have lately bought and will adapt it, and spoil it for any use in a theatre afterwards.

2011.* (*Mr. Herschell.*) In practice the distinction which you mention has been made, and composers have required payment in the case of music halls, but they do not do so as regards concert rooms?—Yes. I do not mean to say universally, but as regards operas possibly.

2012.* (*Mr. Trollope.*) With regard to the distinction of dress, would not payment be avoided by merely bringing on the singer in plain clothes?—Yes, that difficulty might occur.

2013.* Then in a dramatic performance your proposal might be overcome by simply bringing on the singer in plain clothes?—That I think would not often happen. Our operas have been entirely used up by music halls. In one instance a manager said, "I could "not think of performing a certain opera, the melodies "having been used up in burlesques."

2014.* (*Sir H. Holland.*) What arrangements do you make with music halls? Do you charge so much for each night's performance?—Yes, they pay a nightly sum, or a certain sum for the use of a work for several months.

2015.* (*Mr. Trollope.*) Have you been generally successful?—No. I have two or three suits going on with music halls now.

2016.* (*Sir H. D. Wolff.*) At a concert they do not sing the whole opera but merely the songs?—Yes; at what is called a recital from an opera they perform

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the whole of the music in ordinary dress, and in that case certainly I think that we should charge them.

2017.* It is very difficult to say where the line should be drawn?—Yes. I am thinking only of single songs. The line might be drawn between the performance of music as a dramatic entertainment or at an ordinary concert.

2018.* People who give an ordinary concert are trading on songs and on nothing else; it is not like having extracts from different airs?—Quite so.

2019.* (*Dr. Smith.*) Has this case ever arisen that an abridgment of an opera has been made and performed on the stage?—Frequently.

2020.* In that case do you consider that you have any right against the person who has made the abridgment to recover damages or payment?—Certainly. We should claim exactly the same fees as if the whole work had been done.

2021.* It has been held that an abridgment of a literary work has been made without infringing the copyright of the work; and if a musical composition by the Act of 1842 comes under the same category as a literary work, I do not see why an abridgment of an opera might not be made as well as an abridgment of a history; what is your opinion upon that point?—I certainly think that it ought not be allowed. A great many operas would be improved by being abridged.

2022.* When such a thing takes place you consider it as an infringement of your copyright?—Quite so.

2023.* Do you consider that you can proceed against it?—Yes, even if a single piece be given.

2024.* (*Sir H. Holland.*) By an abridgment of an opera you mean simply cutting out so many pieces, but not altering the music?—Yes.

2025.* In the case of an abridgment of a book there is a considerable alteration of the book, and it is more an adaptation of the book?—Yes.

2026.* But when you speak of an abridgment of an opera you do not mean that kind of abridgment, but simply the excision of certain parts?—Yes.

2027.* (*Sir H. D. Wolff.*) Is there a copyright in a new setting of an old piece of music?—I do not exactly understand the question.

2028.* Supposing that somebody took some old piece of music of which there was no copyright, and published it as a new arrangement? Would there be a copyright in it?—Certainly there would be a copyright in the new arrangement.

2029.* This attack on people for singing songs appears to have originated with what is called "The Authors', Composers,' and Artists' Copyright and Performing Right Protective Office"?—Yes, that is Mr. Walls' second name, and he has I believe only three clients.

2030.* He seems to go all over the country to attack persons who sing songs?—He does.

2031.* Do you think that it would be advisable to amend that statutory provision?—Decidedly.

2032.* And not to have this 2*l.* fee?—Yes, that composers should not have the power of claiming it.

2033.* You would allow anybody to sing a song at a concert for money without paying anything?—Decidedly. Quite an improper use is now being made of the right; deceased composers' rights have been purchased for a trifle, and are being improperly asserted.

2034.* (*Sir J. Benedict.*) Do you not think that doing away with the fee altogether would be open to abuse in another direction. I quite agree with you that the composer is very much interested in making his work as popular as possible; but taking away every vestige of protection and every vestige of penalty for unprincipled persons evading the law is, as I believe, very unjust and absurd. It might be that you would bring on a gentleman in plain clothes to sing a song in the midst of a fantastic piece, and make the people laugh, and it might perhaps defeat the object of popularity; it might make that song ridiculous in the eyes of the public if any manager had a spite against the publisher. Do not you think that some provision should be made that if the composer wants the right he may claim it, and that a definition might be given of something which would ensure his right; because it is all very well for a living man, but do you not agree that it is otherwise in the case of a deceased composer. I suppose that you knew personally the late Sir Henry Bishop?—Yes.

2035.* Are you aware that he died in very distressed circumstances?—Yes.

2036.* Have not his works been enjoying an almost unparalleled popularity?—Yes.

2037.* Do you not think that his family ought to be entitled to a little protection for his works, which are now published by anybody without any compensation to his children. Do you not think that they ought to have the right of protection after his death?—But Sir Henry Bishop's works were published 40 or 50 years ago, when composers were very poorly paid, whereas now composers are so very handsomely remunerated for the publication of their works that they no longer require or expect any other source of profit.

2038.* (*Sir H. D. Wolff.*) Is it not the case that to prevent songs being sung in this sort of way, some composers have declined to publish their songs?—Certainly not.

2039.* Do you know a piece called "Box and Cox?"—Yes, I published it.

2040.* By Sullivan?—Yes.

2041.* I of course speak under your correction, but, if I recollect rightly, it was a long time after that piece was brought out before it was published?—No, I published it almost immediately afterwards. There was some dispute between Mr. Sullivan and German Reed, I think, about the right of performance; that was the only reason why it was kept back from being performed publicly and generally.

2042.* A little piece of that kind, like "Box and Cox," which is full of songs, but which is not continuous, and not like an opera, would be liable to be played in public places; it has, I believe, been performed in the country in a concert room; but the German Reeds came on in costume?—Yes.

2043.* How would you protect a piece of that kind?—I should certainly protect it as an opera.

2044.* As a dramatic piece?—Yes. It is quite a question whether all dramatic pieces might not be protected in the concert room, and everywhere else. I was speaking more with reference to single songs, which do not belong to any works.

2045.* (*Sir H. Holland.*) But there is unquestionably a copyright in a dramatic piece like "Box and Cox," if you take the proper form of registering it?—Certainly.

2046.* (*Mr. Herschell.*) And no song could be sung from it?—No kind of song can be sung anywhere now without reference to the author's rights, strictly.

2047.* (*Chairman.*) Is it the fact that under the present law songs not printed and not published can only be sung in public by the permission of the composer?—Yes, but that applies to published songs as well; no song, either in manuscript or published, can be sung without the permission of the composer.

2048.* In the case which I am suggesting, of a song not published or printed, is it a fact that the copyright is rendered perpetual by its not being published or printed?—I suppose that the copyright would be perpetual, as it commences from the time of publication.

2049.* (*Sir H. D. Wolff.*) Are not songs sometimes written by composers for a particular concert singer?—Yes, generally so.

2050.* A great composer would write a song for Madame Somebody to sing, and she would sing it; that song having been written by the composer for her, would it not be very hard that she should sing it in some country town, and that another person should sing it there on the same day?—I never knew one singer object to another singing the same song; she would only be too glad to have it made as public as possible, if she had an interest in it.

2051. (*Sir H. Holland.*) You have hitherto dealt mainly with the case of songs; you have not yet said

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much about plays. I do not know whether you have any suggestion to make in respect of plays, except as to the case of the translation of plays. The name of the case with regard to "Frou-Frou" was Wood *v.* Chart?—Yes.

2052. Was not that rather a peculiar case in this respect, that although translations of plays were protected, imitations and adaptations of plays to the stage were not then protected?—They were not then protected.

2053. Mr. Wood changed "Frou-Frou" into an English play, and made it an adaptation?—Exactly so.

2054. And then he tried to protect this adaptation, as a translation, and the court said, "If you had made "a tolerably literal translation of the play we could "have protected you, but you lost your right of protec- "tion by making an imitation?"—Yes; but the court said that an exact literal translation was indispensable.

2055. What the judge said was this, "What the Act "required for some sufficient reason, as I have said "before, when it required that a translation should "be made accessible to the English people, was that "the English people should have the opportunity of "knowing the French work as accurately as it was "possible to know a French work by the medium of "a version in English." That is what Lord Justice James said about it?—Yes; ever since that decision we have had exact translations made of our operas without the alteration of a word.

2056. That is to say if you have wanted to protect a translation?—Yes.

2057. Are you not aware that in 1875, in accordance with the desire of the French Government, an Act was passed, and an Order in Council issued, protecting authors against imitations and adaptations of dramatic works to the stage?—Yes; I am aware of that, but I believe that still a literal translation is necessary even under the new law.

2058. If you want to protect a translation it is naturally on the ground that the English reading public are to know what the French play is, and are not to be satisfied with an adaptation or imitation?—Precisely.

2059. But what hardship is there upon French authors, if in addition to protecting a literal translation of the work they can also guard against an imitation and adaptation?—A literal translation has still to be made.

2060. But without publishing a translation they can now guard against adaptations?—I believe not.

2061. Do you think that there is a hardship in that respect upon French authors now?—I think not now that the point has been decided; but I mentioned it as a hardship because it was a point which was unknown, and the ignorance of which exposed a great deal of property to depreciation in consequence.

2062. But as the law now stands you can protect not only the literal translation, but also the imitation or adaptation to the stage?—Exactly so.

2063. As I understand, you have no further suggestion to make with respect to foreign plays?—No, I know very little of foreign plays.

2064. As to operas your evidence seems to show that the whole difficulty lies in the form of registration?—Precisely so.

2065. And you would suggest that when the author of an opera has complied with the requirements in his own country, proof here that he has complied with those requirements should be sufficient?—I think that that should be quite sufficient.

2066. And probably you would think that a certificate from the local registration office that all the requirements had been duly complied with, ought to be sufficient when the author came here?—I think so, and then he would be exactly upon the same footing as one of our authors or composers.

2067. (*Sir J. Benedict.*) With regard to registration, do you think that the present system could be simplified?—I have proposed to abolish it altogether.

2068. (*Sir H. Holland.*) I understand you to propose in the case of foreign works to do away with registration in England altogether?—Certainly.

2069. (*Mr. Herschell.*) I can understand that you give to a foreign author, without any registration here, the rights here, because he complies with the requirements of his own country; but would you not have some record of it here; would you not have some record of the publication?—Yes, I would have just a mere record; but I would not make the copyright depend entirely upon the wording of a form, as it does now.

2070. (*Mr. Trollope.*) You think that loss of the copyright would be a penalty too heavy for the offence of non-registration?—Yes; it is impossible to comply with the Act. I think that we have not a single property which is not open to attack. As to the right of performance in an opera, I am perfectly at a loss to know how to register it until some decision has been given which may entail serious expense.

2071. (*Sir J. Benedict.*) Do you speak of the registration at Stationers' Hall?—Yes.

2072. Has it not struck you that it would be a great improvement, even in foreign publications, if there was a registration for the English publication within a certain given time (which of course would be attended to by the publisher in his own interest) for a moderate fee, which could be done at, say, the British Museum. A deposit at the same time would include the registration, and you would get a receipt instead of having additional fees to pay; they would have simply to record the fact that such a copy of a work by such a foreign author had on such a day been deposited at the British Museum, or any other place of that description?—I daresay that it would be useful to have such a registration.

2073. Are you aware of the fees now exacted at Stationers' Hall?—Yes.

2074. Are they expensive?—They charge 5*s.* for an English work and 1*s.* for a foreign work at present for registration.

2075. But for a copy of the certificate of registration you have to pay an additional fee?—Yes, 5*s.* extra.

2076. Do you not think that it is rather hard to have to pay that amount for a single piece of music, the same as for a book?—It is a high fee certainly.

2077. And do you not think that if the fee was reduced to a moderate figure the system would be more generally adopted by all the publishers?—Yes, it might be made compulsory and the figure very much reduced.

2078. Do you generally register your works as a rule?—We never register English works.

2079. But do you register foreign works?—We are compelled to do so; we get the whole of our rights through the registration, and that is what I object to.

2080. (*Sir H. D. Wolff.*) You could, I suppose, if you chose, become a member of the Dramatic Authors' Society, and get your operas paid for?—Not unless I had written or composed a work; they will not allow a publisher to be a member.

2081. The other day a friend of mine died who was a great play writer, and his son continues to get the fees?—Yes, I suppose so, as assignee or executor.

2082. (*Sir J. Benedict.*) How is the author now situated, with regard to his copyright in the words, with the composer. You are aware that great difficulties have been made by the authors of words?—The authors have the same rights as the composers.

2083. If those rights have not been exactly stipulated beforehand, has it not often occurred that the words have had to be changed so as to have the music performed. Have there been any instances of the author of the words and the composer falling out, the author keeping the rights to the words and prohibiting the performance?—The author has exactly the same power as the composer of the work, so that of course if they quarrel he can spoil the joint transaction.

2084. Do you think that the composer or the pub-

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lisher of a musical work would have a right to have the words altered, taking the original ideas of the author and putting them in a different shape, and publishing the music with other words?—Certainly. I think that the composer ought not to be deprived of his rights in his music because he has quarrelled with the author.

2085. (*Chairman.*) Then do you carry out that idea by suggesting that the author of the words in a similar way should be at liberty to set them to a different tune?—Yes, that is very frequently done. Sometimes words are set half a dozen times over.

2086. (*Sir J. Benedict.*) What is your opinion with regard to the right to what is called a royalty; do you think that it is a fair way to the composers in general, or is it not opening the field to a great many abuses. It has been suggested that by the right to a royalty in any work, and principally in musical works, very often compositions of an inferior character have been brought forward, and have maintained their claims on the public, with, I may say, a deterioration of the public taste, in face of more meritorious and better works, which have been shelved for the very reason that they did not apply to the popular taste; and it has been suggested that it is not desirable that such stipulations should intervene, and deprive the public of the works of composers of, I may say, higher standing than those that have gained the public favour. Do you think that the royalty system has been instrumental in producing this effect upon the public?—I do not think that it has had any effect upon the public taste at all. The singers have sung the songs which have been most popular, no matter whether they have had an interest in them or not; the public have always decided what they have liked, and the singers have sung such songs as the public have approved of.

J. Boosey, Esq
18 July 1876.

The witness withdrew.

Adjourned to Friday next, at half-past 12 o'clock.

Friday, 21st July 1876.

PRESENT:

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

SIR CHARLES L. YOUNG, Bart.
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
SIR LOUIS MALLET, C.B.
SIR JULIUS BENEDICT.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.
J. LEYBOURN GODDARD, Esq., Secretary.

THOMAS CHAPPELL, Esq., examined.

T. Chappell, Esq.
21 July 1876.

2087. (*Sir J. Benedict.*) You are a music publisher?—I am.

2088. Your house has been one of the longest established in London?—Yes.

2089. For how many years has it been established?—About 70 years.

2090. You have had a great deal to do with copyrights, both International and English?—Yes.

2091. We shall be very glad to know what your views are on the copyright law as it stands now, and whether you have any improvements to suggest, or any deficiency to point out which might be remedied?—I should like to mention a few things, which however may have been already suggested. One of the grievances of course is Stationers' Hall; but I daresay that that matter has been before you. The fee for entry is, I think, too large. The 5*s.* fee is prohibitory to a great extent. We do not enter more than about one work in 20 in consequence of it, music being very trifling in matter. There is no doubt that the entries, as far as our trade is concerned, would be very much larger if the fee were 1*s.* instead of 5*s.*; and probably registration should be made obligatory as regards all copyright works. It is not obligatory at present; it is simply obligatory before taking proceedings for an infringement. Then, as I may perhaps venture to say, I think that the register at Stationers' Hall is very badly kept; it is imperfect, it is irregular, and it is bad in many respects. I can give the strongest possible instance of that in the case of an opera of our own, which happens to be the most valuable one that we possess; it is the opera of "Faust." When we were told by a fellow publisher that we had no copyright in it, because it had never been entered at Stationers' Hall, I was thunderstruck, for I believed that I had by chance entered the opera myself, happening to be at Stationers' Hall. Consequently having done it myself I had never put down in our books the little fee which I had paid, having paid it out of my own pocket, and I could find no trace of the payment of it; whereas if our man had done it he would have charged the fee. I spoke to my brother about it. I said, "I am sure that it was entered." He went down and with some difficulty persuaded Mr. Greenhill to allow him to look over the day book of about the time when I knew it would be. The entry was found at last, but it had never been posted. Consequently if we had not by an accident discovered it we should have lost a property worth 5,000*l.* simply from the negligence of some clerk at Stationers' Hall. That is an instance of the irregularity which exists. I happened to enter two operas which have never turned out anything, but the one which became of enormous value had been omitted to be posted altogether, showing the looseness with which things were done there.

2092. (*Sir C. Young.*) No sort of certificate is given at the time?—No, they give no certificate whatever, you have to pay 5*s.* for that. They charge 1*s.* for the entry of a foreign work. Some of the publishers have been obliged to threaten legal proceedings to make them insert the entry in the way that the publishers desired; their answer was that it was too much writing for the money, and that they would not put it all in. I believe that the dramatic right if claimed ought to be entered distinctly, as well as the copyright, and that touches upon a point which very nearly concerns us. According to the Act it is stated that the dramatic right dates from the first performance of the opera or piece, and the copyright from first publication, but I happened to have an interview with the late Mr. Blane, a very eminent counsel, and who was the most eminent on copyright questions, and I believe was one who assisted in the compilation of the last Act. He asked to see me; I had a long talk with him, and he stated that in his opinion the performance of an opera, or of a piece of music, was a publication within the meaning of the Act. He did not convert me to that opinion, because, if so, I do not see why the two dates are given, but as his opinion is certainly worth a great deal more than mine, I think it right to quote it. Where we are in a great difficulty is as to what is a performance within the meaning of the Act. Supposing that Mr. Rubenstein, a very eminent composer, who composes music very much in advance of his time, as Beethoven did before him, composed a piece,—if Mr. Blane's opinion be correct, then if that piece was played at St. James's Hall on the pianoforte that would be a publication, and if so, the most valuable works would become non-copyright just at the time of their

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T. Chappell, Esq.

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greatest value, when their fame had been established 20 or 30 years afterwards. There are actions being tried upon this point. Then there is of course, also, the following question; it has been decided by the law courts that the singing of a song is liable to a fee of 2*l.* for each performance, the same as if an opera were played. That matter has been taken up, and a great many poor singers who perhaps scarcely get 2*l.* for singing a song, have been charged 2*l.* for singing it. The thing has fallen into the hands of assignees, who have no interest except to get what money they can. I think that there should be a limit. I think that the composers ought to have the right of claiming something, but not any such payment for the singing of a single song as 2*l.* If they relinquished the right altogether, I think that they would be giving away a valuable right. I think that a small fee, if desired, should be obtainable by the owner of the copyright for singing a song. That is the case in France; they pay either half a franc, or something, for every performance, but of course it appears very unjust in this country, especially as it has come upon the singers perfectly unawares; they have never had such a thing done before. It has been done latterly in consequence of an assignment having been made to other people, who have no interest, except a pecuniary one. Actions have been brought, and these singers have been county-courted, and made to pay the 2*l.*, merely for the use of the words. Madame Balfe, who is the representative of Balfe, was most unwilling that it should be done, but she had no power to prevent it, because Mr. Bunn happened to write the words, and left his copyright to his wife, who sold the right to somebody else, who now comes down upon the singers for merely singing these words.

2093. (*Mr. Trollope.*) Is there more than one such assignee now at work. Is there more than one person engaged at present in pressing these claims of 2*l.* on behalf of the party entitled?—There is one person who is employed as an agent. In that particular case it is by Mr. and Mrs. Bodda, who are the owners. The agent has also attempted it in an opera of Sir Julius's, which Harrison bought, and which has been transferred to a Mrs. Hay. There is also the son of Wallace; it is a question whether he has any right in the work or not, he however has, I believe, employed this agent, and being quite out of the musical world, is very glad to get 2*l.* from anybody. In many cases it has been tried where no right existed. I happened 15 years ago to foresee a possible difficulty in the case of an assignment, and I took the right of performing when I bought the song. In the case of a very popular song of Wallace's, Foli was going to sing it, and this agent came down upon him. I said to him, "Take "no notice of it, the right exists in me and in "nobody else." I said to the agent, "You had better "leave this alone, you have no right to it." For the last 15 years I have taken that course; but that has not been the case with all publishers. Mr. Boosey, who is a very clever man of business, and has as large a business as anybody, has not done so. These are practical inconveniences which have arisen. But I think that it is a very great point to be decided, whether performance can be regarded as publication, as in Mr. Blane's opinion it was. That arose from my having bought an opera which was given at Covent Garden; it had been performed first at St. Petersburgh. I gave 500*l.* for the opera, which had no success whatever. Mr. Blane said, "You have no copyright in it." I said, "I know that there is no "dramatic right in it, that is lost by its having been "given in a country with which there is no inter-"national copyright; but then," I said, "not a note "of it has been published, therefore the copyright "exists just the same." He said, "In my opinion it "does not; the copyright is lost the same as the "dramatic right: the performance is a publication "within the meaning of the Act." He was a very high authority, he was the man who upset an opera of Nicolais' by his ingenuity in picking a hole.

2094. (*Sir J. Benedict.*) Am I to understand that it is only the author of the words who can claim the 2*l.*?—Either, or both. Therefore, supposing that one of them does not do it, as in the very case which I have mentioned, where Madame Balfe thinks it an injustice, there is a right in the owner of the words, which are certainly an unimportant matter compared with the music in the case of songs, but still are of some importance; and the singing of them is thus prevented, or payment is demanded. There is a county court case coming on, and therefore the case may be decided even before your Report is made; it is a case in which Bancroft is interested; he introduced about eight bars of a song of Wallace's; he only plays it in his theatre as an interlude of music. The agent, hears that the tune is played; he does not give him any notice, but he allows the piece to run on, hoping that it may run for a great many nights. It happens to be a failure, and only runs for 20 nights, and he then demands 40*l.* from Bancroft, namely a fee of 2*l.* for each time, for the performance of these eight bars by the band, those bars not being sung at all but merely being played as an interlude. That case is coming on at the county court. I believe that they have now gone for one performance; they are going to try it. What the decision may be I cannot say, but it shows, I think, the practical inconvenience which exists. There is another publisher in London that I know, who bought a song called "Tommy, make room for your uncle;" it is a popular tune, although not of the highest class. An agent said, "This tune will be in all the pantomimes at Christmas;" he said, "The best course is to take no "notice of it, but I shall be able to get you 500*l.* or "600*l.*, because after the pantomimes are over we "will go for 2*l.* for each performance of this tune." That I know was the proposal which was made, it was not accepted, because it happened that the publisher refused. An agent came to me equally, but I did not like the character of the man or the character of the proceedings. Of course I would not give him any power over my works, nor would the other publishers to whom I have referred; they looked upon it as a thing which ought not to be done. But still, there it is, if it is a performance it becomes very awkward.

2095. (*Mr. Trollope.*) To whom does the 2*l.* go?—To the person who demands it, it naturally ought to be divided between the two if they get it. By the French law all the rights of authors (I am only speaking of music) are I believe divided, two thirds to the composer of the music and one third to the writer of the words, but as there is no law or regulation of that kind here each of them can demand the 2*l.*

2096. What proportion would the agent get?—That is a matter of arrangement between them; of course I cannot say what he gets, my own belief is that he gets half; of course he would not take all this trouble without getting something for it.

2097. The agent takes the legal proceedings, but he is not the person legally entitled to the money?—No, he acts for the assigneee. But it is a work of great labour for them to find out all these things, they have agents everywhere for the purpose. A man conducting a band has a tune played, and he has proceedings taken against him, because a military band has played it, so that if the Prince of Wales ordered a tune to be played in the Albert Hall the man might be liable to this penalty.

2098. (*Mr. Daldy.*) Under what law is the payment of this 2*l.* enforced?—It is in the Dramatic Act, 2*l.* for the performance; it was of course meant for the performance of an opera; it says, "a sum not less than 2*l.*," it may be more, but any magistrate would make it as small as he could. I would suggest, but it is merely a suggestion of mine, that for singing a song there should be a charge, say, of one shilling, reserving the right to the author to demand it or not.

2099. You think that that penalty should be reduced?—Yes, in the case of detached pieces.

2100. (*Mr. Trollope.*) You have adopted the word

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"penalty." Is it a penalty or a fee?—Yes, it is not a penalty, but it looks like a penalty in such a case as that; 2*l.* may be a very proper fee for an opera being performed.

2101. (*Dr. Smith.*) Then you do not propose that the fee should be abolished altogether in the case of songs, I am not speaking of operas?—I think that composers would be foolish to give up what may eventually, by a proper arrangement, become a very valuable thing for them, and I think that it would be very fair that singers, whose fame is very often made by singing a particular song, should pay a small something, which in the aggregate would be a very large something, for the benefit of the composers. I am therefore of opinion that a small fee might be charged for a detached piece. I do not think that 2*l.* is too much for the performance of an opera, because it can be reduced by arrangement; and whenever those parties give an opera they are perfectly aware that they are infringing the law if they do not pay the composer, therefore they do it knowingly, and in my opinion 2*l.* is not too much for them to pay.

2102. (*Sir L. Mallet.*) This is a point in the matter which I have not considered, but I do not think that it is easy to understand why it should be right that a singer should pay a fee to the composer any more than that an actor or reader who reads Tennyson or the works of any living author, should pay a fee to the author. There is no fee, as I understand it, under the copyright law for the recital of a piece of writing, which seems an analogous case, is there?—I do not think that there is; that is just an analogous case with the other. I say that you should reduce the 2*l.* in the case of detached pieces. You can abrogate the fee if you please, but it is clear that the law should not be left in its present state.

2103. (*Sir J. Benedict.*) It is stated, as to an infringement of the copyright, that the Act of the 3rd and 4th William the IVth, chapter 15, provides, "that if any person shall, during the continuance of "the sole liberty of representing or causing to be re- "presented any dramatic piece, contrary to the intent "of this Act, or right of the author or his assignee, "represent or cause to be represented, without the "consent in writing of the author or other proprietor "first had and obtained, at any place of dramatic "entertainment within the British dominions any "such dramatic piece or any part thereof, every such "offender shall be liable for each and every such "representation to the payment of an amount not less "than 40*s.* or to the full amount of the benefit or "advantage arising from such representation, or the "injury or loss sustained by the Plaintiff therefrom, "whichever shall be the greater damages, to the "author or other proprietor of such dramatic piece," &c. I want to know whether the composer would have the same right as the author of the words, which would be a penalty of 4*l.* for each song sung?—Yes, distinctly. It is an established rule in France that there is a small fee for singing a song, for the benefit of the composer. It is a question, I think, whether the composers are not entitled (it is a performance to that extent) to a small fee. I am a publisher, but I am now rather arguing for the composers than for the publishers; it would only operate when a song was sung without their permission.

2104. (*Sir C. Young*).) No fee, I suppose, goes to the composer of the words?—Yes; in some cases it goes to the representatives of the composer of the music, and in some cases to the representatives of the composer of the words; in the case of Bunn it goes to the representatives of the writer of the words, and in the case of Wallace to the representatives of the composer of the music.

2105. (*Sir H. D. Wolff.*) What is the custom in publishing songs, does the musical composer generally pay the writer for his words down?—That is uncertain, they are always bought either by the publisher or by the composer, generally by the publisher; the words are usually bought out and out, but not in the case of operas, because the man who writes the words of an opera retains a joint right in the performance wherever it is given, and it is too valuable to sell. Take "Trial by Jury," which I bought a little while ago; Sullivan composed the music and Gilbert the words. Mr. Gilbert disposed of the right in his words as set to music only to me for 50*l.*, but he retained the right of publishing the libretto, and also the dramatic right, which are 50 times more valuable to him in a successful thing like that, and which perhaps will bring him in 2,000*l.*

2106. In librettos of that kind are there equal rights with those of the composer of the music?—Yes, it is so in England. In France the proportion is one-third to the writer of the words, and two-thirds to the composer of the music; whether that is by law or by custom I cannot tell you, but I know that that is the effect.

2107. Take the kind of librettos which existed 30 years ago, which the poet Bunn wrote?—Yes, I am speaking of them.

2108. Would he have equal rights with the composer of the music?—Yes, in England.

2109. He has no right to the music apart from the words?—No. I bought "The Bohemian Girl." I bought for 100*l.* the right of printing Bunn's words to music, but I did not buy the other rights; he retained them, and these are the very rights which have now come into action, because they have passed through two or three hands. He is dead, and bequeathed his other rights to a friend. You never can tell how it will turn out. Sometimes one right is very valuable, and at another time another right is very valuable.

2110. Would the composer have the right to publish the same music with other words?—Certainly; at least I assume so. I am doing it in the very case which I have mentioned, for I thought it a very great injustice upon singers. I have had new words written to these very songs in question, and I am presenting copies to the singers, and tell them that they may sing them, Madame Balfe having given me the right to the music. But I do not think that that can ever come to much with a popular song, because the tune gets so wedded to the words that people scarcely understand it when sung to other words, although the new words written by Mr. John Oxenford are perhaps better than the words written by the original writer, Mr. Alfred Bunn.

2111. (*Mr. Trollope.*) You feel satisfied that Mr. Bunn's executors would have no claim against you with reference to that use of the music?—I feel perfectly satisfied of it.

2112. (*Sir H. D. Wolff.*) An opera, say, is called "The Bohemian Girl," of which somebody writes the words, and somebody else the music; it becomes popular as "The Bohemian Girl"?—Yes.

2113. You can scarcely publish the music, even with other words, without letting people know that it is "The Bohemian Girl" music, which has obtained a popularity?—It is quite clear that you could not do the whole opera without it, but it is not so with a detached tune. The words of "The Last Rose of Summer" are of course Moore's, and good enough for anybody, but still Lady Dufferin wrote "The Bay of Dublin" to the same tune with other words. It is a common habit with popular tunes when the music is non-copyright, and then a dozen publishers put a dozen different sets of words to them.

2114. Those are popular airs, the old airs?—Yes; I think that it would be useless to try to adapt a new story to an old opera.

2115. In the case of these songs, for instance, with Mr. Oxenford's words, I suppose that somehow or other on the title page you indicate that it is the original tune of so-and-so?—Yes, we do.

2116. Then that to a certain extent infringes on the copyright of the author of the words?—I do not think so, because he never had a right in the music, but only in his own words.

2117. (*Mr. Trollope.*) The matter has never been tried at law?—No.

2118. (*Sir J. Benedict.*) Are you aware of another

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grievance which composers have, that in a great many instances snatches of melodies, tunes belonging to instrumental pieces, dances, or ballets, have been transformed into songs by manipulators, who have altered the harmonies and have put their own poetry to them, and have published those very songs under the name of the original author?—That has been done, and of course I consider very improperly done; it has been done in the case of Gounod. It was originally done by a gentleman who took a great many tunes. The publishers were clearly wrong, because they knew that these things were done, and they still had them published "By Gounod;" but the moment that Gounod wrote to them they were all stopped. It was clearly an improper practice at the least, it was admitted by the publishers at once, they immediately saw the error of it.

2119. Then, again, I think that one of the other grievances of which composers have a right to complain is, that what are called "arrangements" are made irrespectively of the wish or of the intention of the composer, and the publishers have not hesitated to bring out what they call "Simplified Editions?"—Yes.

2120. I may say, destroying the original idea of the composer by putting entirely false harmonies and making them simple, that is to say vulgar, and palming them off on the public under the name of "Simplified Editions" of the composers. I think that it is almost impossible to find anything so detractive from merit, it is exactly as if we took a play of Shakespeare, or a work of one of the present writers, Tennyson or Sheridan Knowles, and said, "It is too high-flown poetry, and we will give a new edition," and as if Mr. Murray, or Mr. Longman, or Mr. Bentley said, "I will bring out an "edition which is within the reach of the public. I "will take out all the high-flown sentences"?—Yes. I think that the present law is quite strong enough to prevent that, if the composers use the rights which they have. Of course when they assign the copyright and every right which they have, they clearly divest themselves of those rights. It is quite open to them to make any conditions which they like when they sell their rights. I am quite sure that nobody would buy an opera if he was to be bound down to make no arrangements of it, because the whole value exists in the arrangements as regards the selling portion. I quite agree that it has been grossly abused in some way, but then unfortunately it has been abused by men of good standing, by composers who have been nominally people of good standing, but who were not very strong in their harmony. I think that all those powers exist, but that if a composer divests himself of all his rights he must not complain; he can make any conditions that he pleases, he may say that no arrangement shall be published without his sanction; but I do not think that you could put that into the Act. I think that you would get into a great many difficulties if you attempted to define it.

2121. (*Mr. Daldy.*) If an author divests himself of these rights, do they not belong to the proprietor to whom they have been assigned?—Yes. Sir Julius speaks of the proprietor having done these things. The bad harmonies do not arise with the publisher; he engages a popular man to do the thing, and Sir Julius as a very good musician knows that it is very badly done, but the publisher does not know it; he knows that these things are demanded by the public.

2122. (*Dr. Smith.*) Take the case of a literary work; suppose that a popular author sells the copyright of his work—take one of Mr. Charles Dickens' works, for instance—do you not think that it would be an exceedingly unjust thing that the publisher who has bought the copyright should alter the work in the lifetime of the author?—Most certainly; but that is not the question with regard to music; music must be arranged in parts for the score. Probably you are not aware that the composer absolutely, as a rule, does not arrange his own work; he writes the full score for the instruments, but abroad no composer of any eminence reduces it for the pianoforte; somebody else does that for him under his supervision. I might suggest that it is a very serious thing that really a very slight error in the entry of a copyright at Stationers' Hall, almost a clerical error, deprives you of all right. This happened in the case of an opera of Nicolais; it was entered, "composed by Nicolai," and the reduced score for the pianoforte had been done by somebody for him, under his supervision, whose name never appeared in the matter, as it was thought so mechanical a performance; but when the case came before the judges, the judges, of whom there were three, decided most unwillingly, as they said, against the copyright. They said, "This "arrangement is of itself capable of having a copyright, "therefore the name of this reducer of the score ought "to have been put into the entry at Stationers' Hall, "and it not having been put we are bound to decide "against the owner of the copyright." That was a matter of an opera of no great value, but carrying costs of perhaps 1,000*l.* The judgment was never appealed against to the House of Lords; whether they would have upheld it I think is a matter of doubt, but so it was; and therefore simply by the omission of the man's name who had been the mechanical reducer of the score, the copyright of Nicolai's opera, "The Merry Wives of Windsor," in English, was lost.

2123. (*Mr. Daldy.*) Did not it arise from its not being properly transferred by the composer?—No, it arose upon the point which I have mentioned. Mr. Blanc was junior counsel in that case, and the point was most unwillingly adopted by Mr. Boosey, who was the infringer unknowingly—there was a personal quarrel between the other publisher and himself—and he said when this was told him by the counsel, "But for our quarrel I would not allow it to be produced," because he thought that it was so unjust. Then as regards foreign treaties, when the Prussian treaty was made, which was the first, there was a difficulty in the working of the Act, that the rights were so difficult to give. The French treaty was then being arranged between the two countries. I happened to know one of the gentlemen on the French Commission, and I wrote to him and said, "Do for goodness sake avoid making a very long treaty like the Prussian." I said, "Why cannot "you say that a Frenchman is to have the rights of "an Englishman in England, and that an Englishman "is to have the rights of a Frenchman in France?" He wrote to me afterwards to say that he had tried to get it, but that there were objections arising, and that he could not carry it; but it appears to me that that is the intention of the Act. Having found the difficulty myself, I wrote merely to suggest that an international treaty might be made in that way.

2124. (*Sir H. D. Wolff.*) With regard to the question of the fee for songs, it is at present 2*l.*?—Yes, because the Act says "or any part thereof."

2125. Is not that rather high?—I say that I think it should be 1*s.* because somebody suggested to me that if you say that there should be no fee, then (which is coming a little into vogue now) persons will give a morning recital of an opera, where there is no acting, but they will sing through the 30 pieces of an opera, and if you abrogate the fee altogether, they will be at liberty to do it without the permission of the composer, and without any fee. Therefore I say that if there is a fee of 1*s.* for any single piece, of course the composer need not demand that 1*s.*, and in a great many cases the composers never would do it unless a society was formed like the Dramatic Authors' Society for collecting these fees and giving them to the authors. In my opinion it is a very fair thing. But supposing, as has been suggested by one of the Commissioners, that there is a recital of poetry by such a man as Mr. Bellew, say of "The Jackdaw of Rheims," I do not think that he should do it, and take money at the doors, without payment; it is a valuable right, as it seems to me.

2126. (*Dr. Smith.*) With reference to the words of the Act which you have quoted, "or any part thereof," if a separate song is sung, which is no part of an

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opera or of a dramatic piece, can a fee of 2*l.* be demanded for it?—They are demanding it; it has never come to a law court for a separate song, but I think that they have the same right.

2127. In the Act there is no reference made to separate songs?—No, there is not, and therefore that, as it were, is in abeyance; but assuming that they might have the right, I have for 15 years in purchasing copyrights added the words "the right of performing the same." They were demanding it in the case of "The Bellringer," which is a song of Wallace's. It is assumed that the fee can be demanded for a separate song, but it is not really in the Act and it has not been decided to my knowledge.

2128. (*Sir H. D. Wolff.*) I am in favour of the fee for the advantage of the composer, but there appears to me to be some difficulty in collecting it?—It would not be worth collecting, unless by a society.

2129. 40*s.* would not be much for a theatre here, but for some little place in the country it would?—Yes; it is the greatest hardship. A plaintiff was nonsuited the other day in a case against a benevolent society, but simply on the ground that the benevolent society had no existence, and that there was nobody to attach. That occurred in Clerkenwell the other day; but the judge seemed to assume that the right existed; the plaintiff was nonsuited, as people often are, from the difficulty of finding out the proper parties. That was the case of a benevolent society giving a penny reading or something of that sort. I know numberless singers who have had to pay 2*l.* I can answer for there being numberless instances in which they have paid; but in our own cases we have sometimes saved them. With Sir Julius Benedict's opera, "The Lily of Killarney," a very popular opera, these persons would have done it in a great many instances, but I am able to protect the singer. I bought the right of Harrison, giving him a 10*l.* note. I said, "I "will give you 10*l.*" He said, "It must never be "sung in a music hall." I said, "All right," and I bought that right, and it saved a great many unfortunate singers. If there is a duet they come upon each of them, and if there is a quartette or a chorus they make them all pay 2*l.* each.

2130. (*Mr. Daldy.*) Do you think that that 40*s.* was put into the Act because that sum would carry costs?—I do not know why it was put in. We are now on a point which only concerns music, and which does not touch literary gentlemen at all. Of course my evidence is worth nothing except with regard to music; and as music becomes more important every day, with all the schools thus, if 50 chorus might sing at the Albert Hall, every one of them would be liable to pay, and the amount would be 100*l.*

2131. (*Sir H. D. Wolff.*) It clearly would not be well to have a fee so high as to deter people from singing a song?—It is too high if that happens, because the singing right has fallen into the hands of people who do not care anything about the work or anything else, all they want is any money which they can get; the authors are dead in all these instances, and the people collecting the money are merely assignees of those persons. I am happy to say that Sir Julius is not dead, but in his case he disposed of all his rights, and a poor lady advanced 1,800*l.* upon operas of which Sir Julius' is the only one worth much. She took a mortgage upon them.

2132. (*Mr. Trollope.*) In point of fact the persons to whom you allude are self-elected agents?—Yes, they are dependent entirely upon it, or something of that sort.

2133. (*Sir H. D. Wolff.*) There is Mr. Wall?—Yes, he is the instigator of it, and these proceedings according to his account are to benefit the authors, and he has an arrangement with the parties; he has told us that.

2134. You think that it would be well that there should be some legislation upon that point?—Yes, I think so.

2135. And legislation which would establish the right of the authors?—I only suggest it for the benefit of the composers. I think that it would be a pity to say that they could exact no fee for singing songs separate from operas, but I think that it should be a small fee. I say not exceeding 1*s.* for each performance.

2136. Would it not be very difficult to collect the 1*s.*?—You may say 5*s.* if you like. It could never be done excepting by a society, and then the singers would pay in a lump for so many songs.

2137. (*Sir J. Benedict.*) Are you aware that there is a society of dramatic authors in France, and that the rights between the authors and the publishers have produced no less a sum than 25,000*l.* or 30,000*l.* a year?—Yes, for these very rights.

2138. In that society musicians are excluded, and on account of their exclusion another society has been formed of dramatic authors, musicians, and editors, which has only been in existence for about 15 years, and the result of last year's receipts was a division of profits of more than 20,000*l.* These societies combine together to have agents in all the large towns, and to collect the copyright fees, which amount in the year to a very considerable sum; and the result is that the two societies not only protect the authors, but prevent any abuse in the performance of a work which is not authorised either by the author or by the publisher. Are you aware of that?—I am perfectly aware of it. Of course the amount might be 5*s.*; but I should suggest that if you do away with all rights you perhaps take away from composers and authors what in a few years may become a very valuable right.

2139. (*Chairman.*) With respect to the error which you discovered at Stationers' Hall regarding the registration of the particular work to which you have alluded, do you remember asking for a receipt?—No, I think that they refused to give any receipt at that time, they gave none. I believe that they have since adopted a plan of giving one, but they gave none then. Of course we pay 1*s.* when we want to look at their books. I was thunderstruck when I was told that the work had not been entered, because, although I could not absolutely swear that I had entered it, yet I fancied that I had.

2140. Can you fix the year?—I cannot from memory, but I think it was in 1858.

2141. You are of opinion that at that time there was no system of giving a receipt when the registration took place?—I think so. I am sure that I had no receipt. Somebody has told me that they have now adopted a plan of giving it. I think that they do so now, but I know that they did not then.

2142. We have had this form put in by the present registrar of Stationers' Hall (*handing a ticket to the witness*)?—This is quite new.

2143. In your belief at the time when you yourself went to register the work that form was not in existence?—I feel certain that it was not in existence.

2144. And no equivalent paper, or certificate, or receipt was given?—I am certain of it. When we deliver the copies at the British Museum they give us a receipt. We have to deliver copies at Stationers' Hall and they enter them there, and then we have to deliver copies at the British Museum. We have to deliver at two places. At present at Stationers' Hall they, no doubt, conduct the business better, but there is a question whether it should not be removed altogether to the British Museum; at all events if it is kept at Stationers' Hall the office ought to be reformed and enlarged. As I have said before, I think that it ought to be obligatory, upon the payment of a small fee, to enter every copyright work.

2145. I will just call your attention to one point in this form of receipt, I think you will see that there is an entry "certificate 5*s*"?—Yes.

2146. At the time when you went to register your work, are you aware whether you could have had a certificate on payment of another 5*s.*?—Yes, I was perfectly aware of that, but we only take certificates when we require them. The very moment that I found that the entry had been all right I got a certificate and settled the question, and the copyright has

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T. Chappell, Esq.

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remained, but it was a question of quite 5,000*l.* for us, which if the entry had not been discovered would have been lost through the carelessness of a clerk, that is what it would have amounted to.

2147. (*Sir J. Benedict.*) Do you not think that it would be most important that there should be a summary process in cases of piracy assimilated to the French law on the subject. It appears from Mr. Blanc's book, page 5, that under the present anomalous position of prosecutions for piracy, if it happens that an author, or his publisher, has not made any entry of his work in the outset for some time after his work has been published, and if a piracy has taken place for a certain period before the entry, the proprietor cannot recover damages for copies sold before the entry was made which must be made to enable him to bring an action?—That is really in the law, and that is why I say that the registration of all copyrights should be made compulsory, and then you do away with that if you have a small fee and make registration compulsory. It is clear that now you can obtain no penalty for anything before you enter; you only enter works which are worth pirating in fact, and the consequence is that you do not enter perhaps above one in 20. I am speaking of the music trade; many of them are trumpery things, and we can always enter them at any moment if we find that they become valuable.

2148. (*Mr. Trollope.*) You suggest that this registration should become compulsory?—Yes, with a fee of 1*s.*

2149. Have you considered what should be the penalty for non-registration, if registration were compulsory?—The penalty seems to me to be the penalty of losing the right.

2150. That would be the entire and immediate loss of the copyright instantly?—No; I should say that the work should be registered within six months, or a year, or something of that kind, because illness or many things may intervene. I should say that it should be compulsory to register any copyright work (of course I am not speaking of non-copyright works, which it would be absurd to enter) within a year of the date of publication.

2151. Then you would protect the copyright unregistered for 12 months?—Yes.

2152. And after the expiration of the 12 months, if the registration had not been made, you would punish the absence of registration by the loss of the copyright?—Yes.

2153. Does not it occur to you that that penalty would be very severe?—It would certainly be so in important works, but then it would be such gross carelessness on the part of the publisher, that I cannot conceive that he would be guilty of it.

2154. The neglect would be on the part of the publisher?—Clearly.

2155. On whom would the penalty fall?—On the publisher.

2156. Would not the penalty fall on the owner of the copyright?—If the publisher were not the owner, of course it would put the author who kept his copyright in an awkward position if his publisher neglected to register; but that publisher would be liable to the author in an action for his neglect, at least he ought to be so certainly.

2157. Do not you think that that would impose upon the owner of the copyright a penalty heavier than the law would wish to exact?—I think that it might do so certainly in the case of neglect.

2158. (*Sir H. D. Wolff.*) Do you not think that it would do to increase the fee for every six months of delay?—Yes, I think that that might be done; it might be said that the person should be obliged to register within a year under a fine of 5*l.*, and that if he neglected to do so within a longer period he should pay 20*l.* for the entry, or something of that kind.

2159. (*Mr. Trollope.*) And should retain his copyright?—And should retain it. It might be a very serious matter to the author from the neglect of the publisher.

2160. (*Mr. Daldy.*) Did I rightly gather from you that in the case of piracy before registration the penalty cannot be recovered?—Yes.

2161. Under what Act is that?—Under the Dramatic Act I think.

2162. You spoke of a certain agent collecting these sums of 40*s.*?—Yes.

2163. That agent cannot be self elected, he must have authority to do so?—Yes, he has a power of attorney from the assignee of these rights, whatever they are. I know that he holds a power of attorney.

The witness withdrew.

Adjourned to Tuesday next at half-past 12 o'clock.

Tuesday, 25th July 1876.

PRESENT:

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

SIR CHARLES L. YOUNG, Bart.
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR JULIUS BENEDICT.

Dr. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

A. Sullivan, Esq.

25 July 1877.

ARTHUR SULLIVAN, Esq., examined.

2164. (*Chairman.*) We have had some evidence from Mr. Boosey and Mr. Chappell on the subject of musical copyright, perhaps you may be enabled to give the Commission some evidence as to the way in which the present law affects composers?—I think that there are two points on which it might be improved; one is that the time allowed for the length of the copyright is very short, and that it might be lengthened with advantage, because it does not reach to a man's children. A man may die in the middle of his career, and wish to give his works to his children, but the copyright in those works may expire before his children have the full benefit of it. I do not quite see why a limitation should be put with regard to the creation of a man's brain any more than with respect to the investment of capital; after all his brain work is his capital. I never could quite understand why that high moral tone should be taken about the right of the community to brain work, so that the benefit of it to a man's family should cease after a certain time.

2165. (*Mr. Trollope.*) You probably know that the period in France is 50 years after death?—So I have heard.

2166. And in Germany 30 years?—That I did not know.

2167. Would you propose that the law in England should in some measure be assimilated to that in those countries?—If it were assimilated to that I think that it would be very much better.

2168. (*Chairman.*) You think that the period is not sufficiently extensive?—Yes.

2169. Would you suggest any other period, or do you go so far as some witnesses have done, namely, to suggest that the copyright should have no term what-

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over attached to it?—I suppose that it is rather Utopian to suggest that it should have no term attached to it; but I think that it should run during a man's life, and for at least 50 years after his death.

2170. Apart from the general observation on your part that copyright is not sufficiently extensive under the present law, have you any further suggestions to make as to any practical inconveniences which result from the existence of it as it is?—There is one point, perhaps, connected with the right of representation as we call it. I am very much in favour of the composer, or the publisher through him, having the legal right to control the performance of his works, whether they are dramatic or whether they belong to the concert room. At present, I fancy, the composer has no control over works which are simply concert works and which have no connexion with the stage, such as songs, &c.

2171. (*Sir J. Benedict.*) Does not it strike you that there is one provision omitted in the copyright law which is of the utmost importance for musical composers. It seems to me (I do not know whether you agree with me) that hitherto musical compositions for the stage have been labouring under the greatest disadvantage as regards arrangements by the publishers. I do not know whether you are aware that some of the best works of English composers have never been published in their entirety; the editors have published extracts of popular songs out of those works, whereas pieces which are of the utmost importance, concerted pieces, &c., have very often been laid on the shelf, and have not been published at all. I speak advisedly, because that has been the case unfortunately with my own productions. Hardly any of the works of our old English composers have been published complete. You are no doubt aware that a great many have been lost?—Yes, but I should think that that was rather the composer's look out than otherwise. I do not know that you can control that by an Act of Parliament. You cannot compel a publisher to publish anything which he does not choose to publish.

2172. I wish to protect the rights of composers as well as the works of literary men. Do you believe that Mr. Charles Dickens, or Mr. Thackeray, or Charles Eliot, would have allowed any publisher to say, "Now, sir, in your work there are things "which will not go down with the public. I have "bought the copyright; I can do with your work "just as I like; I can publish the volume complete, "or I can publish extracts, or I can publish it when "it is my pleasure to do so?" Do you think that this is fair. I do not say that the publisher should be compelled to give a complete work at once, if such is not to his advantage at the moment; but do you not agree that it would be advisable a limit should be put on any work of copyright by saying that if in such and such a period that work is not perfectly before the public as the composer planned and wrote it, after let us say ten years, which is ample time, the composer shall come back to his own rights, and be able to dispose of the work as a penalty upon the publisher not publishing it in its entirety?—I think that you are rather opening the door there to a series of petty actions and perhaps heavy penalties on the publisher by little quibbles. The publisher or the printer might accidentally leave out something, and a question of that sort might arise; the work might be printed faultily, and the composer might then be able to say, "You have not published my work in its "entirety, as I intended it to be published, and now "the copyright should revert to me." I do not think that that is a case which presses very hardly, although you may have had it in your experience. I think that we ought to credit the composer with a certain amount of common sense, and that he ought to take care of his affairs in that way. He can make an arrangement beforehand with his publisher, by saying, "You "shall publish this work as I hand it over to you in "its entirety, or you do not publish it at all."

2173. For instance, it has been mentioned of late that when a work is performed it is no infringement of the copyright if out of that work, of which, perhaps, two thirds have been performed and not published, a quantity of pieces are omitted, and any pirate may afterwards appropriate to himself melodies or ideas which were contained in that work, and publish them without the slightest fear. If he has a good ear and can stenograph the melodies himself, he may employ them, and he becomes the *de facto* proprietor of stolen goods, which he gives out to the world as his own?—If you caught a man reproducing ideas which he had heard in the concert room, or reproducing whole phrases, the publisher would produce the original manuscript if it belonged to him.

2174. But that would not protect it?—Then you cannot protect it; you cannot protect yourself against plagiarism in that way.

2175. I do not quibble about a few bars, but speak of the right to have the work published entire. You sell your copyright, and the publisher says, "Well, I "have not the means, and I do not think that it will "answer. I have made an arrangement, and I will "not publish the entire work?"—Let the composer make his arrangement with the publisher first. You cannot protect a man against his own want of common sense. I do not think that you ought to legislate for that.

2176. (*Chairman.*) I understood the last question of Sir Julius's to apply to musical compositions not published?—Then I say that a composer can produce the original manuscript.

2177. (*Sir J. Benedict.*) Where is that original manuscript. If you just turn and twist a phrase and bring it out as nearly alike as possible and appropriate it to yourself, where is the manuscript?—If you have a manuscript, I do not see of what use it is under those circumstances. You may call a dozen of the most accomplished musicians in England into court and ask them about it, and, probably, six will be of one opinion and six of another.

2178. I only put the case of a dramatic arrangement which is not published complete. With musical compositions it is not the same. Can you maintain that any arrangement has been made by any composer with a publisher which compels the publisher to produce that work as it was written within a certain given time? I think not?—If I handed any work to a publisher, and if he paid for it, and acquired the copyright in that particular work, if he did not publish it in that form I should at once proceed for an injunction against him, or should bring an action against him, and I think that I should have the law on my side.

2179. (*Sir H. Holland.*) Are you speaking of a case in which you make an arrangement with a publisher to publish a song or musical composition?—Take any musical composition. If I handed the manuscript to the publisher who acquired the copyright, I should naturally expect him to print it as I handed it to him. If he did not do so I should say, "You have done me a gross injustice; you have not "completed your covenant with me."

2180. That would be clearly so where he published an altered piece as one of your own creation; but the question which I suppose Sir Julius is rather referring to is, supposing that you sell your manuscript piece to a publisher, he then of course would have the right to publish it exactly as it is, and publish it as your work?—Yes, but not in a mutilated form.

2181. Then the question would be whether he, reserving that power to himself, might materially alter and then publish it, if he does not attach your name to it?—Oh no, he could not do that; I think that Sir Julius means that the publisher may publish the composition in a mutilated form. If he did so, I think that the composer would have a right against him.

2182. If he does so, and attaches the name of the composer to it, he can be restrained?—Clearly so.

2183. (*Chairman.*) In your opinion the case suggested by Sir Julius Benedict is already met by the present law?—I think so.

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A. Sullivan, Esq.

25 July 1876.

2184. And you do not therefore desire any change in that respect?—I think not.

2185. (*Mr. Trollope.*) You mean that a musical writer has now the same protection under the law as has the literary writer?—Yes, I should think so, quite.

2186. (*Sir J. Benedict.*) Do you not think that there is a great deal in custom; do you not think that publishers would evade the law and would say, "We "cannot publish a thing with difficult accompaniment; "we must make the thing popular or otherwise it will "not answer." If there is anything obscure in Shakespeare, they might get a penny-a-liner, who makes it accessible to the general public, and the same with a composer. The publisher says, "These far-fetched "things cannot go down, and I must defend my "property; it is my property now. I find that it "does not answer to publish it as it is; it does not "pay, and therefore I must alter it." Has that never come to your knowledge; have you never heard of Monsieur Gounod having 52 songs published which were pirated from his works, he never receiving a shilling for it; the harmonies being entirely destroyed, and what is called "simplified" for the general taste?—I did hear that when Monsieur Gounod heard of it he brought an action against the publishers and restrained them; I am not quite sure that he did not get damages for it.

2187. I believe that he did not get a farthing damages?—Perhaps he did not go for damages; at all events he restrained the publishers from doing it any longer, and that shows that the case was met by the law.

2188. The compositions had been sold and the publisher had made his profit?—But the law prevents its being done any longer.

2189. (*Sir C. Young.*) Has this ever occurred to you, that you have sold a composition of yours out and out to a publisher, and that it has afterwards been published with certain modifications without your name?—Never.

2190. (*Chairman.*) When a publisher wishes to make alterations, or what you may call mutilations, in a composition, would not the natural time for him to make those suggested alterations be previous to the execution of the contract?—Yes, if he thought of them at the time; but of course it often happens that we cannot tell until some time after a work has been published whether it is likely to be successful or not, and then some modifications may be thought advisable; but in that case hitherto I have always found my publisher anxious to consult me about it, and he has invariably acted upon what I have suggested. Of course you may find a case where a composer is so very tender hearted upon his own works that he will not touch them.

2191–5. (*Sir H. Holland.*) When Monsieur Gounod's case was decided the law was uncertain, but it is quite possible that in the future, the law having been settled, like cases will not arise?—I should think that it may now be taken as a precedent.

2196. Do you not think that the author ought to have the right to protect his own productions?—Clearly. Of course he ought to have that right.

2197. If the publisher has the right, he perhaps may never publish the entire work. The author dies, and that work upon which, perhaps, he has spent many years of labour is never known as he imagined and wrote it, but a garbled miserable edition of the publisher goes to posterity, and is considered as the production of the author. I ask you whether that is just, or whether it is fair?—No, it is not just, and it is not fair; but I say that the composer has the protection in his own hands. He has it during his own lifetime, and after his death his executors must look after it in the same way as they look after his other property.

2198. His manuscript gets lost?—Then let him publish it in a proper form during his lifetime—let him get it printed complete and entire in his lifetime.

2199. He cannot enforce it?—Yes, he can enforce it.

2200. You make a contract with a man, and he says, "I will bring out the work in five or ten years, it is my property;" but you cannot control the form in which that work is published, so as to have it published as it was imagined and written by the composer. The musical editor has a right to publish it when he likes and how he likes, and with all those arrangements and changes which he thinks proper in order to insure popularity. That is what I want to come to. That is not the case in France; it is not the case in Germany; it is not the case even in Italy. You must produce the work of the author in its complete form, as he has written it, in order to establish the copyright. In the case of a work of Wagner's it was not popular at first, but it was published in Germany immediately, with a view to guard against any piracy, and the consequence is that it has now become one of the most popular copyrights?—May I ask whether that was done by the law?

2201. I think that there is a law to that effect for literary and musical works?—I cannot help thinking that you are putting the law into effect to guard against a man's want of judgment and common sense and precaution.

2202. (*Sir C. Young.*) What I understand you to say is, that the composer has it entirely in his own power?—That is my personal opinion.

2203. (*Mr. Trollope.*) He must use his own diligence and care to see that he is not injured by the publisher?—Yes.

2204. (*Sir J. Benedict.*) Would you not advise an assimilation of our copyright law, with regard to musical and literary productions, to the copyright laws of countries with which we have a treaty; that is to say, to modify the law and to provide that a simple entry, according to the laws of France, Germany, and Italy, where we have an agreement, should be quite sufficient to insure the copyright in this country, and *vice versâ*, so as to do away with the difficulties about the registration here?—Yes, I think that the present state of the law is rather faulty, because the registration is very carelessly done, and it is not compulsory. I think that it ought to be made compulsory, and I think that the fee ought to be a very small one, so as to make it worth every publisher's while to enter a work. At present publishers do not enter at Stationers' Hall one out of twenty compositions which they publish. It is not worth their while, for they do not care anything about it. A publisher told me yesterday, "I should certainly "register certain songs," naming certain composers, "because they are valuable; but as regards others, I "put on the title page 'Entered at Stationers' Hall,' "but I never take the trouble to go down and register "one in twenty." Therefore, I think that the registration ought to be made compulsory, and the fee reduced to a very small one.

2205. (*Mr. Trollope.*) How would you make it ompulsory?—By a fine.

2206. Not by the loss of the copyright?—No, because then you might hit the unfortunate composer through the publisher.

2207. You think that the penalty of the loss of the copyright would be too severe?—Yes.

2208. You think that registration might be made compulsory with a moderate fine?—Yes, which should fall upon the publisher. The publisher is the agent of the composer in all these matters; very often they share the copyright together, but all the business part is left to the publisher; and therefore if you punish the composer by the loss of the copyright you are not punishing the right man.

2209. (*Sir J. Benedict.*) There is another very important question with respect to dramatic performances, not only with regard to music, but in general. Has it struck you that we are very deficient in anything like organisation, and that something similar to the French arrangement for protecting an author in the provinces and in the colonies could be

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inserted as a part of the law? I do not know whether you are aware that a number of small theatres in the provinces perform the works which have been successful in London?—Yes.

2210. Do you know whether there is any protection for the composer and the author in the performance of those works?—Yes, there is, so far as dramatic works are concerned; but I cannot help thinking that the law might go forward to add protection to works performed in the concert room, as I have said. I think that the composer should have the right of vetoing the performance of his work if he likes; not that he would use it as a rule, because it is to his advantage that his work should be performed everywhere, as the sale of the work depends so much upon the popularity which it acquires; the better it is known the more it is sold. I cannot help thinking that the composer might have the right to charge a small fee, which he need not exact. My object in saying this is to get rid of the common informer who now exists, and who goes about exacting heavy penalties. If you had a fee of 6*d.* or 1*s.* for the performance, which is not a ruinous amount, I think that it would be but just to the composer. If a song is very popular the composer need not exact the fee. I would not give any penalty for the nonpayment of this fee, but I would let him have the right of recovering it if he pleased, and then you get rid of this very great source of trouble from certain parties exacting penalties all over the country.

2211. (*Mr. Trollope.*) Are you speaking of the 2*l.* penalty?—Yes. Lately I was directing certain musical entertainments, and the singers put down songs of Balfe and Wallace, and after a time a bill of something like 80*l.* was sent in, which I put into a pigeonhole and thought no more of.

2212. (*Chairman.*) Do you propose that that shilling fee should be recoverable each time that the song was sung?—Yes.

2213. (*Mr. Trollope.*) A penalty of 2*l.* may now be exacted on each singing of a song?—Yes; and not only that, but if there was a performance in which 2,000 people took part at the Crystal Palace, and they performed something of Mr. Balfe's or of Mr. Wallace's, and if this common informer went down, every one of those 2,000 persons in the chorus and the orchestra would be liable to a penalty of 2*l.*, making a very nice little fee of 4,000*l.* payable, which is ridiculous on the face of it. I would give the composer the protection but without a penalty. I would let him be able to recover that fee, and that is all.

2214. The informer at present, I presume, cannot recover that 2*l.* for himself?—He gets it.

2215. If he claims the 2*l.* and exacts it, can he put that 2*l.* into his own pocket, or is he bound to give it to the composer?—So far as I know, he does not give it to the composer, or to the representative of the composer, but he gets it into his own pocket. There is one man, an informer, who is in league with two or three people who purchased old copyrights of Balfe's and Wallace's; it is a very discreditable way of doing things. I do not know their private arrangement, but I suppose that they divide the money between them.

2216. (*Sir H. Holland.*) Are you sure about that, because the Act specially provides that the penalty is to be recovered by the author, or his representatives?—The author is dead, and he is represented by certain assignees, and this informer goes about getting the penalty. I cannot tell whether he gets it for himself or whether the representatives get it, but depend upon it by the hard way in which he works he does not do it for nothing, or for the pure love of art.

2217. Whatever he gets, I suppose, is under an arrangement with the representatives of the author themselves?—Yes.

2218. Not under an Act of Parliament?—No.

2219. (*Mr. Trollope.*) This 2*l.* in truth is, under the Act, a fee and not a penalty?—No, it is a penalty.

2220. You say that 2*l.* is a penalty and not a fee?—It is a penalty and not a fee. It cannot be less than 40*s.*, but it may be more; it may be "to the full amount "of the benefit or advantage arising from such repre- "sentation, or the injury or loss sustained by the "plaintiff." On the other hand, while wishing to get rid of the penalty, I would not throw the right of performance quite open; I would have some right of control on the part of the composer; because this happened in my own experience a short time ago. A sentimental song of mine which has a certain popularity was advertised to be sung in a burlesque in a theatre. I thought that it would hardly benefit me if the song was sung between a couple of "breakdowns," and I said that I would have it taken out. They said, "You cannot, it is not a dramatic work, "there is nothing to prevent its being sung as a "concert song." I said, "If you do so, I will get an "injunction, and will bring an action for damages." I made a fuss about it, and they took it off, but I do not think I was in the right.

2221. (*Sir H. Holland.*) A song is a musical composition, and a musical composition is protected by the Act of the 3rd and 4th William 4th, chapter 15, so far as regards places of dramatic entertainment?—That is the line which I took, but I was told afterwards that it not being a part of a dramatic work, the fact of its being sung in a place of a dramatic entertainment did not protect it.

2222. Has not the doubt arisen from this, that the more recent Act of the 5th and 6th of Victoria, chapter 45, which is the principal copyright Act, extends to musical compositions all the advantages which were given to dramatic compositions by the 3rd and 4th of William 4th, chapter 15. Under that Act it is clear that musical compositions would be protected in places of dramatic entertainment; but then arose the question whether the provisions of the 5th and 6th Victoria, chapter 45, which are wider in terms than those of the 3rd and 4th William 4th, chapter 15, did not give to musical compositions a greater protection than against the performance in places of dramatic entertainment only, and whether they did not extend the protection to the performance of musical compositions and songs in concert rooms. That was how the question arose?—Then I think that the question being so very doubtful, and so very uncertain, it would be wise to put it on a definite basis.

2223. You are distinctly of opinion, in which probably we all concur, that any doubt on this point should be removed?—Yes, I think that it should be removed at once.

2224. And that the author or publisher of any song should have the power of prohibiting its performance in any concert room?—Or in any place. It is needless to say that a man would not use that power in an arbitrary way, because it is to his advantage that his work should be performed, but I have given you a case in point, in which it was necessary to use the power.

2225. You desire that the composer of a song, so long as he maintains the copyright, should have the power of protecting himself against the performance of it in any public or private room?—Yes.

2226. Would you also desire that the composer of a song should have the same rights even though he had sold the copyright to a publisher?—I think that as the two rights are separate, the publisher ought to make an arrangement with him to that effect; because it is exactly the same thing in an opera; the two rights are totally separate; I have sold the right of publication of my works, and have kept the right of representation in my own hands; I do not think that the question has ever arisen.

2227. You would say that the author should have that protection given to him, without any doubt, so long as he maintained the right of representation in his own hand?—Yes.

2228. But you would not go so far as to say that with a view to his general reputation as a composer he should have that power as to performance when he

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had parted with the right of representation?—No; he should not be able to use it vexatiously.

2229. (*Mr. Trollope.*) But with an ordinary song there is no right of representation?—That is what we are trying to get; we are wanting to fix the law. It is now so doubtful that I wish to see it put on a definite basis; I want the composer or his representatives to have the right.

2230. If you sell an ordinary song to a publisher, do you not at the same time sell the right of singing that song in any room?—No, it is never put in any agreement, it is left entirely blank.

2231. Is not the sale supposed to cover that right?—At present the custom is that it covers that right, but no question of right has ever been brought into the courts, and I want to see it brought in; I want to see the question definitely settled. Of course, if you sell a song you do it with the idea that it shall be sung everywhere, and shall be sung as much as possible in order that its sale may be as great as possible, by its being pushed into every concert room and every possible place where two or three people are gathered together; and, of course, if you stop the performance of it you stop the sale; but without exercising that right vexatiously and arbitrarily, I should like to see the composer or his representative (it may be the public) have the right to control the career of that song somehow or other.

2232. (*Dr. Smith.*) The representation of it?—The representation of it.

2233. (*Mr. Trollope.*) But at the present moment if you sell a song to a publisher is it not presumed that you sell all right in that song?—Yes, I say that question has never been tried at present whether you do sell it, but I wish to try it. Supposing that a song of mine is sung in public by a person who sings very badly, and who has a bad voice; I say, "There is another 5*l.* out of my pocket." I should like to have the right of stopping that person from singing that song.

2234. Although you have sold the right to the publisher?—Yes, if the composer parts with his right of representation to the publisher the latter of course would have it.

2235. (*Sir C. Young.*) Cannot you do so now?—We cannot in concert-room works.

2236. Cannot you put it in the terms of your contract?—No, because the publisher might say, "You may put it in your contract with me, but the law gives you no protection."

2237. (*Sir H. Holland.*) There is not the least doubt about the law, that you can protect yourself against the performance of a song in any place of dramatic representation?—But a concert room is not a place of dramatic representation.

2238. We must go by steps; there is no doubt that you can protect yourself against the performance of a song in a place of dramatic representation?—That I do not know; that was the case which I cited just now; I tried it and succeeded, but I do not know that I had the law on my side, they were frightened perhaps.

2239. The law seems clear as to a place of dramatic representation, but there is a question whether concert rooms, by the provisions of the later Copyright Act, fall under that head?—It is as well to settle that question.

2240. When you part with your song do you not part with the whole of it, including the right of representation in a place of dramatic entertainment or elsewhere; do you not part with all you have?—I part with the right of publication, but the question as to singing has never arisen. I never had any trouble in the matter in that way. I have only sold the right of publication, and every composer has done the same.

2241. (*Mr. Trollope.*) If you sell a song can you afterwards put the same song into an opera?—Oh no.

2242. If you sell a song can you afterwards prevent an itinerant musician from singing that song in the street?—I should like to do so.

2243. Can you do so?—I think not.

2244. Can the publisher prevent it?—I think not.

2245. (*Dr. Smith.*) That is the point?—That is the point.

2246. In the case of an opera or a dramatic piece of music, the right of publication and the right of representation are quite distinct?—Yes, and they are differently fixed.

2247. You wish to assimilate the right of publication and the right of representation in the shape of singing in a concert room to the dramatic right?—Yes, to put them on the same footing.

2248. (*Mr. Daldy.*) Would it meet your views to define them as two separate rights. I suppose that you could at the present time sell the right of performance to one person and the right of publication to another?—Yes, that is done.

2249. You wish to incorporate it?—Yes, I wish to put the dramatic music and the concert-room music on the same footing, and to incorporate them.

2250. The definition of a dramatic piece includes "musical entertainment." Does not that protect it in the concert room. A dramatic piece under the Act of 5th and 6th Victoria is a musical or dramatic entertainment, would not a concert be a musical entertainment?—Yes, sometimes.

2251. And if so it is protected by that Act?—Yes, clearly. If so there is an end of the question, and we are protected, but I should like to see it settled, I should like to see a precedent established.

2252. You consider a concert a musical entertainment?—Yes, of course.

2253. Then the terms of the Act protect musical entertainments?—But only in places which are licensed. You may have a song sung between two teetotal addresses, and I should hardly call that a musical entertainment.

2254. (*Sir J. Benedict.*) Is there not another great grievance which takes place now nearly every day, namely, that conductors of musical pantomimes, or music halls, take the most prominent subjects from songs and vulgarise them, and have a right to do so according to the law. In the lawsuit of Boosey v. Wood the arranger was considered quite on a par with the composer, and the cause was gained by Mr. Boosey. It was said that a man who could arrange from any melody whatsoever a piece of music was almost as clever as the composer himself, and an outlay of 1,500*l.* or 2,000*l.* was lost by that decision. Does not it strike you that in our days you have hardly a pantomime in which ideas of the most popular composers are not pilfered to almost an incredible decree. Songs are introduced as tunes for the orchestra and vulgarised, and people say, "Dear me, I have heard that in a pantomime." Could not that be stopped?—I think that it could be stopped, but I suppose that it is only in an extreme case that one would do it. I should, however, think that the Act does cover it. There again, I think, that the small fee of 1*s.*, which I propose, would be useful; that if the conductor of a pantomime wanted to introduce a popular song, it might be said, "Yes, you may use it by paying 1*s.* a night for it."

2255. Then, again, how is this penalty to be enforced. It is all very well to say that you have a penalty or a fee of 1*s.* Are you aware that in France there is a law, and that the composer or the author of any work is protected in this way: he gets his share out of the performance through the instrumentality of the guardians of the poor, who have a sum of so much on each performance; they receive at the same time the contributions for the poor and for the author, and he gets his fees for any song and any dramatic performance without trouble. How would you organise a machinery which would enforce, say at Sunderland, or at Tynemouth, or at any other place in the North, the protection of your own compositions?—In the present unsatisfactory state of organisation, I think that I must look after it myself. I can county court a man if I find it out. But of course that is not a question which the Act has to

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deal with; any society organised for the benefit of composers is a private matter. I should very much like to see one established.

2256. (*Mr. Daldy.*) Could not it be met by compelling prepayment and making a written authorisation necessary, so that if a person wished to sing any song he should apply to the composer and pay him 1*s.*?—That cannot be done, because the machinery is too clumsy. At the last moment a song is changed at the commencement of the performance through the illness of a singer. I do not think that permission should be necessary; I would not ask permission first. The money could not always be prepaid, that is impracticable.

2257. (*Sir H. Holland.*) Have you found any difficulty arising from what Sir Julius Benedict was just now referring to, namely, the infringement of your copyright in any song by slight adaptations of it or alterations of it?—It happened to me once, and then I went and protested against it and had it altered immediately.

2258. You do not consider that the law is faulty in that respect?—I think that it is faulty, but I do not see how it can be altered. I think that it is a purely technical matter.

2259. Each case must be decided upon its own merits as to whether there is a substantial alteration or not?—Yes; and I think that it is very difficult to decide it.

2260. Probably you agree with what Lord Lyndhurst says, "If you take from the composition of an "author all those bars consecutively which form the "entire air or melody, without any material alteration, "it is a piracy; though, on the other hand, you might "take them in a different order, or broken by the "intersection of others, like words, in such a manner "as should not be a piracy. It must depend on "whether the air taken is substantially the same with "the original. Now the most unlettered in music can "distinguish one song from another, and the mere "adaptation of the air, either by changing it to a "dance, or by transferring it from one instrument to "another, does not, even to common apprehensions, "alter the original subject. The ear tells you that it "is the same. The original air requires the aid of "genius for its construction, but a mere mechanic in "music can make the adaptation or accompaniment. "Substantially, the piracy is when the appropriated "music, though adapted to a different purpose from "that of the original, may still be recognised by the "ear. The adding variations makes no difference in "the principle?"—Yes.

2261. You agree with that statement of the law?—Yes, although it is not expressed with technical accuracy. It is a curious thing in music, that a glaring plagiarism may exist without any resemblance at all in the actual succession of notes; you hear it in the rhythmical treatment, or in the form. On the other hand, you may find the same melodic succession of notes, in two compositions, and yet the most practised ear will fail to detect any resemblance between them if the rhythmical treatment is different.

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The witness withdrew.

The Reverend JOHN WILLIAM BENNETT, B.A., Rector of Markshall, Essex, examined.

Rev. J. W. Bennett, B.A.

2262. (*Chairman.*) I believe that you wish to give this Commission some information with respect to the operation of the Act of the 3rd and 4th William the Fourth, chapter 15, as extended to musical composition by the 5th and 6th Victoria, chapter 45?—Yes.

2263. Will you have the goodness to state what the grievance of which you complain is?—I produce the printed bill of an entertainment of which a certain song formed a part, that bill is as follows: "An enter-"tainment will be given in the large room, Upper "Stoneham Street, in aid of the Coggeshall Cricket "Club, on Thursday, February 10th, 1876. Doors "open at 7.30. The chair to be taken at 8 o'clock by "Thomas Simpson, Esquire." Then comes the programme of the music and reading and recitation. It is only to show the character of the entertainment that I produce this bill. In the first part of the programme the last thing was a song, the name of which was left blank, to be sung by Mrs. Eve, of Braintree. She sang, "Sweet spirit, hear my prayer," from "Lurline." She had sung the same song on the previous night at Braintree. Within a short time after this concert was given an application was made on the part of Mr. Wall inflicting a fine of 2*l.* in each case for the song which had been sung both at Braintree and at Coggeshall. If I had known earlier that the Commissioners wished to see me about it, I would have had with me the paper to show them the receipt. However, I can put before the Commissioners a memorandum which I got this morning from the lawyer's clerk in town, who paid the 2*l.* to Mr. Wall on behalf of the Coggeshall Cricket Club for the song which was sung by Mrs. Eve, at Coggeshall. He also made an arrangement to have the 2*l.* in the Braintree case kept over for a few days so that the case might be inquired into, but the result was that the sum was paid, because Mrs. Eve had sung this song from "Lurline."

2264. (*Mr. Trollope.*) The 2*l.* as I understand was paid in each case without any contest?—A lawyer was consulted about it, though it was not actually taken into Court.

2265. The lawyer recommended that the 2*l.* in each case should be paid?—I believe the solicitor thought the claim might be successfully resisted, but he recommended that the 2*l.* in the case of Mrs. Eve should be paid to save her annoyance and trouble.

2266. And it was paid?—And it was paid. Here is an extract from the lawyer's diary given me this morning by his clerk.

2267. Do you know whether the 2*l.* was paid to Mr. Wall?—Yes, to him, on behalf of Mr. Bodda, who owns, I believe, the copyright of "Lurline."

2268. Do you happen to know whether any receipt was given by Mr. Wall?—Yes, a receipt was given, and if I had known of my attendance here sooner, I could have got the receipt; I expected to have got it this morning at the lawyer's office in town, but the clerk told me that the receipt had been sent down to Coggeshall.

2269. Do you know in what words the receipt was given;—whether Mr. Wall acknowledged the receipt of the money on behalf of Mr. Bodda?—Yes, I cannot give you the exact words.

2270. (*Sir H. Holland.*) Was this a public concert room, or a schoolroom?—A schoolroom.

2271. Was any money taken at the door?—I believe so.

2272. Everybody had to pay for admission?—Yes, it was in aid of the funds of the Cricket Club; the payment was 1*s.* for front seats and 6*d.* for back seats.

2273. (*Chairman.*) Have you any other instance to lay before us?—I cannot give any other instance of my own personal knowledge, but I have reason to believe that there have been a great many instances. The point which I wish to bring before the Commissioners is this; it seems that in a song there are three copyrights, a copyright in the words, a copyright in the music, and then the right of performance; and that is where the hardship seems to be, namely, that when you buy a song you may not sing it.

2274. (*Sir H. Holland.*) But you did not buy it?—I mean, if you buy a copy of the song.

2275. You may not sing it in a public place?—No. That seems to be no benefit really to the composer; it is certainly none to the publisher. I was talking the other day with Novello's about it, and they say that Mr. Wall's proceedings in this matter are very detrimental to the publishers; that in consequence of what he has done some publishers have a great many songs in stock which they cannot sell.

2276. On the other hand, would you extend the right of singing a song to any place, a theatre, or a

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place of dramatic representation, or a public concert hall?—What I would except would be operas and cantatas. I do not think that there ought to be any right of performance retained by the copyright owners applying to a song; there are no means of finding out on the part of the public who has the right of performance, because it appears that one person may hold the copyright in the words and in the music, and that another person altogether may have the right of performance. I know that in one instance Mr. Wall was applied to by some one who was going to sing a song, asking whether his right would be infringed by the singing of this song at a concert. The reply was, "If you will subscribe 21 guineas we will tell you "whether we have the right of performance of the "song in question or not."

2277. That is a subscription to Mr. Wall's society?—Yes; he would not give the information.

2278. Practically your proposal would take away altogether, in the case of songs, except songs which happened to be in operas or in plays, the right of the composer to prevent their being sung anywhere?—I think that he gives up that right when his song is published, or at least I think that he ought to do so. I can conceive that in the case of a cantata it is a different matter, because there is an immense deal of labour in a cantata, and I should imagine that a man is hardly paid for the labour which he has bestowed upon a cantata, simply by the number of copies of it which are sold; and therefore perhaps he is entitled to some sort of royalty upon the performance of the cantata; but I cannot think that the same thing holds good in a song, and I think that it is a great hindrance to musical art, and to furthering music among the people, that you cannot sing these small compositions without a payment of this kind.

2279. (*Mr. Trollope.*) Do you not think that there would be a great difficulty in defining a dramatic representation?—I think not. I do not see where the difficulty would lie; but my proposition would not touch operas, unless you chose to except single songs or single duets from an opera, but I should say that there should not be a representation of the whole opera or of any large portion of it. For instance, this song, "Sweet spirit, hear my prayer," comes from an opera, and I would exempt any such single song from the right of performance alluded to.

2280. If a musical entertainment was given which consisted altogether of songs, and at which a large sum of money might be taken, would it not be fair that the owners and publishers of the songs should have the benefit arising from their popularity?—I think that they have it by the sale of the copies of the songs. If a song is sung at a concert and is liked, there is immediately a large sale of the song; but that is not the case with an opera, people do not buy an opera after they have listened to it, and it is the same with a cantata, they do not buy a cantata unless they are musical people.

2281. They buy the songs out of the opera?—Yes.

2282. And a song out of an opera would be protected, but a song which happened never to have been in an opera would not be protected?—I would confine my remarks to a single song, or a single song from an opera. I would include single pieces from operas.

2283. Then would you not find it very difficult to prevent the whole music of an opera being picked out and being so divided as to be performed without payment?—I think not, because if you were not allowed to sing more than one song, or one duet, or one piece, from any opera at any entertainment, I think that would meet it.

2284. (*Sir H. Holland.*) Then you are making a further limitation, because I was going to suggest that you might give an entertainment for the Cricket Club from "La Sounambula," and take out all the solos?—No, I would limit it to one song from one work.

2285. (*Sir J. Benedict.*) Without fee?—Without fee or without permission already granted of the right of performance.

2286. With your experience of such entertainments, do you not think that people would pay a moderate fee, say 6*d.* or 1*s.*, for a song, if they could get the permission to perform it on that condition, and be safe from any proceedings?—The difficulty is that you cannot tell to whom to apply; for instance, supposing that Mrs. Eve had known anything about this Act (which she did not happen to know) she would not have known who was the proprietor of the song.

2287. (*Sir C. Young.*) Would there be any difficulty in having written upon songs "Permission to sing this song can be obtained at" such a place?—The right is parted with and it is difficult to know to whom it belongs. I can give you an instance in which I had great trouble to obtain permission to print a hymn tune in a book which I was editing. I had reason to believe that it was in Masters's hands, and I wrote to Masters for permission to print this hymn tune; he wrote back to say that he would allow me to do it upon payment of 10*s.* I sent him the 10*s.* and requested his written permission; he kept me waiting for a week (the book was in the hands of the printer, Novello) and at the end of a week he returned me the 10*s.*, minus the price of the Post Office order, saying that the copyright did not belong to him, and that he did not know to whom it belonged, but that it might belong to Metzler. I, however, found that it belonged to Longman. That case created a great deal of trouble.

2288. (*Sir H. Holland.*) Might not the difficulty be met by providing that if any song was sung without the consent of the person who had the copyright in it a small fee of 1*s.* should be payable. That person might not choose to demand it, but if he did demand it, then without difficulty you would pay the 1*s.*?—Yes, I think that that would be better than the present state of things, but we should like to see all songs free.

2289. But some composers may take a different view, and may say, "We ought at all events to get "some small fee for the performance, if we choose to "exact it"?—Yes. But there will be a difficulty in ascertaining where the right of performance is lodged. For example, I was told at Novello's some little time since, "You can sing anything of ours." I said, "Let "me clearly understand you; shall I not be subject to "proceedings being taken against me by Mr. Wall for "singing any single song that you publish." The answer given I think by Mr. Steadman was, "I think "that we cannot quite say that; there are some of "the songs in which we certainly do not possess "the right of performance." I said, "Can you point them out." He said, "I cannot."

2290. By the plan which I suggest the person who sings is saved the trouble of getting permission, because it is not worth getting permission if the fee is only 1*s.*, and in the second place, the fee being so small, in most cases the composer would not care to demand it, and if he does it is not a very hard tax to pay?—Yes; but I think that you will find a dislike on the part of amateurs, especially ladies, to sing, if they think that they are liable, after having sung a song, to having proceedings taken against them; they would not know to whom to apply for the right, and they might lay themselves open to a disagreeable correspondence.

2291. But surely there would be no disagreeable correspondence if a song having been sung 1*s.* was asked for?—I asked some ladies the other day, who heard of this case at Braintree. We told them that we would pay any fine which was inflicted; they said that they would rather not sing under the circumstances.

2292. (*Sir J. Benedict.*) Do you not think that that difficulty might be met if it was put on the copies published that the price would be 3*s.* with the right of performance, instead of 2*s.*, which higher price would imply the right of performance?—But how are you to tell that the person who bought that song bought the 3*s.* copy and not the 2*s.* copy? If a lady wanted to sing it, she would borrow the song.

The witness withdrew.

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