HENRY LITTLETON, Esq., examined.

H. Littleton, Esq.

25 July 1876.

2293. (*Chairman.*) I believe that you are connected with the firm of Novello's?—I am.

2294. (*Sir J. Benedict.*) You knew a great deal about international copyrights?—Yes, I have tried to learn as much as I can, but it is rather difficult sometimes to get to know.

2295. Have you any suggestions to make with regard to the present state of copyright, and the difficulties arising in guaranteeing an international copyright. I think there have been several lawsuits upon the subject?—No, I do not know that there have.

2296. I thought that there had been some questions with Monsieur Gounod?—No, that was an action for libel; it was not regarding copyright at all.

2297. Do you think that the present state of the law is such as not to warrant any alterations for the better?—With regard to foreign copyright, I think that it is unjust that the time for the entries is not the same. The French only have three months, whereas the Germans have twelve months. I think that they ought to be made equal.

2298. With regard to registration, do you think it advisable that the present arrangement for copyright should be maintained, or that the registration should be simplified, inasmuch as, perhaps, by an arrangement made with the British Museum, the certificate of registration would cover the copyright for a moderate fee?—I have always had a strong feeling that Stationers' Hall ought to be entirely swept away, and that the business should be brought to the British Museum. I think that it should be under Government, and that we should have somebody who would do the business properly, and not the present authorities at Stationers' Hall. We are asked by various foreign publishers to enter their works for them. They fill up their own forms and send them to us. We send them to Stationers' Hall, and the officers there say, "We cannot read this." We refer them to a printed copy of the music, but they say, "The printed copy will go away, and how can we read it then?" I think that the officials in an international copyright office ought to understand at least French and German. They had a very good man there, but they have got rid of him, and now we are frequently put to a good deal of trouble with these entries. We do this as an act of courtesy to our foreign brethren, as I may term them. We only charge them the 1*s.* which we pay. Unfortunately, I do not read anything but English, but if anything was written as plainly as these forms are, in my own language, I should have no difficulty in reading it.

2299. (*Chairman.*) Has it occurred to you that if the registration of foreign compositions took place in the foreign country instead of in England all difficulty would be removed?—I have that suggestion in my notes. I think that we ought to be able to enter on one list in England for all countries, at one office, and that they should do the same thing in foreign countries for England. I think that if we wanted a copyright in Germany we should take it to Stationers' Hall or the British Museum, whichever was the office, and that they should take charge of it, we paying a small fee, and that from time to time the proper officer should send those entries to all countries with which we have treaties.

2300. (*Sir H. Holland.*) Do you not think that that would lead to some difficulty, and would be rather a heavy responsibility upon the officer sending out those entries?—I do not think so.

2301. In your opinion, would it not answer the same purpose, and work more effectually if, when you registered your work in England, a certificate of registration was given you, and that then by the laws of the foreign States, and *vice versâ* by our laws as regards foreign certificates, those forms should be made *primâ facie* evidence that the registration had been duly and properly performed?—I think that that would be easier. Of course the foreign countries ought to have a copy of the work.

2302. It has been suggested to us that it would be quite sufficient if a French composition were registered in Paris, and a German composition at Berlin, and an English composition at the British Museum, and that copies should not be sent abroad?—That would only be giving one copy to each country. If these other countries give us copyright, I do not think that I should object to give them a copy, although we have too many copies now exacted from us in England.

2303. Then you would send a copy to each country with which we have an international convention?—Yes, through our own office.

2304. But you think it desirable that in all countries the certificate given by the local registration office should be sufficient in courts of law to establish the copyright?—I think that it would make it very much more simple than my suggestion of sending the form and getting another certificate.

2305. It strikes me that there might be some difficulty in putting upon an officer the sending of entries to all parts of the world?—I think not. They might get something out of us to pay the expenses.

2306. Take the case of an omission to send a copy of an entry, and then an infringement of the copyright in Germany, might not some difficulty arise in that case?—If they entered them properly in their books they would go through a regular form, and I do not see what accident could arise.

2307. (*Sir J. Benedict.*) With regard to the question which is now agitated as to fees or penalties, being asked for by the assignees of old operas, do you not think that it would facilitate matters considerably if the penalty of 2*l.* was entirely abolished, or replaced by one of moderate extent, so as not to do away with it altogether; but giving the composer and the publisher the right to exact it, putting it at a small figure so that it would be accessible to every performer and to every concert giver?—I think that no penalties should be claimed for singing or performing songs, duets, trios, or small selections from operas (this is very vague I know), or for printing the words of the same in books of words for concerts, the same as in the case of extracts in reviews. In reviewing a book, you are allowed to make extracts and so on, as long as you do not supersede the original. Of course I know that laws must be made so that they can be understood, and I know that I am a little vague here. I have another memorandum. I have been told that in performing an opera, sometimes even the words of a song get written by somebody else, and not by the librettist; so that, in case there is the right of performing an opera, they give 10*s.* 6*d.* to one man for the words of the song and a like payment to another man (there may be two interpolated songs), and they have also to pay for printing the words; so that at last it becomes almost unbearable. In some modern operas there is one writer of the words, and perhaps the author or the singer wants another ballad introduced, and they get another writer; but the music is by Wallace, and it gets established, and when people wish to perform this opera they have to pay the librettist, they have to pay the musician, and they have to pay all these further odds and ends for the introduced things.

2308. (*Sir H. Holland.*) But they get their consideration for what they have to pay: this introduced thing is a popular song?—They pay half a guinea for singing about eight lines. Then the question which was put to me was whether a small fee should be paid. I believe that that is done in foreign countries, and I believe that it is found to act reasonably; but the small concert singers in the country may do two dozen pieces. I think that you must be careful as to how much you put on, because some of them are very poor.

2309. (*Chairman.*) It has been suggested that this small fee might or might not be exacted at the will of the owner of the copyright?—If you give him the power to do it of course he may do it.

2310. (*Sir J. Benedict.*) Are you of opinion that very often it would be advisable to check the performance at an improper place, and are you aware

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that popular tunes are introduced in pantomimes, and that the music, being first vulgarised and being made not popular but vulgar, loses its value for the sale of the original; do you share that opinion ?—I should not object to our music being introduced anywhere; but I do think that the author ought to have the right to prevent its being unduly dealt with. I think that the more good music we can get even into bad places the better; it is preferable to their singing the trash they do; but I certainly think that they ought not to be allowed to cut it about in any way.

2311. (*Sir H. Holland.*) Would you not give the composer, so long as he keeps the right of representation in his own hands, the right of preventing the performance at any place ?—I would not like to do it. I think that it is a very bad thing for the publisher not to be the proprietor of the right of representation.

2312. That surely rests between the composer and the publisher. The publisher may say, "I cannot " publish your song without the right of representa- " tion" ?—It has been tacitly understood (and I know that I have forgotten to take it) that there is to be no interference with the right of performance unless it is a complete opera, and so on; so that we have never dreamt of it until the late proceedings by Mr. Wall. The right has never been called in question by the composer except in cases where we knew that we were not to have the dramatic right.

2313. Did you assume that you had the right, or did you believe that the right was in the author, who would not interfere except in special cases ?—I really thought that the right was with us. It is a new right altogether. If it is an opera or our own music, and if the original has been supposed to be composed by the author it is one thing, but in mere separate pieces it is otherwise. There is the case of Russell v. Smith; there it was very proper, because Mr. Smith was trading upon Mr. Russell in every way, and taking all his entertainments; but if anyone sang one or two of Mr. Russell's songs in a separate concert, I do not think that it should be stopped.

2314. Now that this question has been raised and decided, do you not think that it may be safely left to composers and publishers to make their contracts without special legislation ? — I have had all my forms reprinted, and have had it put that the right is to be with me. I was the publisher of Sir Julius's oratorio of "St. Peter;" I did not claim the acting right, but I think that Sir Julius would only be too glad to see it done, and if not he would be doing me a great injury. I charge nothing for it.

2315. All that goes to show that you may safely leave it as a matter of arrangement between the publisher and the composer ?—In some cases.

2316. (*Dr. Smith.*) But why not in all cases ?—Because if they have the right, and if they are not what I should call honourable, you stop the performance of these works, and stopping the performance of them is stopping the sale.

2317. Sir Henry Holland is speaking not of the past, but with reference to all future contracts ?—We now put into our contracts that we shall have the right of representation; of course, if we cannot have it, it will be struck out.

2318. (*Sir C. Young.*) Cannot you arrange that with the author ?—Yes.

2319. (*Mr. Trollope.*) There is no necessity for a new law to enable you to make these desirable arrangements ?—No. I am not quite sure whether having bought it we ought not to register the right of representation as well as the copyright (very few lawyers understand the law); but I think that they might very well go together.

2320. (*Sir H. Holland.*) You think that the right of representation might very well go with the right of publication ?—Yes; it would make it easier for me if, after I have bought it and stipulated for it, the one entry should be sufficient.

2321. (*Dr. Smith.*) You stated just now that you were dissatisfied with the system of registration at Stationers' Hall, can you state more particularly for what reasons you are disatisfied with it ?—In the first place, why should we, as Englishmen, pay 5*s*. while a foreign entry is made for 1*s*. ? That I object to; I object to paying 5*s*. In fact, we have to pay now in copies; we have to give one copy to the British Museum, and, if asked for within a certain time, we have to give copies to Cambridge, Oxford, Edinburgh, and Dublin. Now, I think that the country ought to register for nothing, or, if not, for a very small fee; always on the understanding that a copy is deposited at the British Museum, or any other copyright office.

2322. (*Sir H. Holland.*) Supposing that the necessity of giving copies, except one to the British Museum, was done away with, should you then object to the present fee ?—I think that the present fee operates to prevent people entering. We mark, "Entered at Stationers' Hall" on one side, and the price on the other, merely for sake of appearance on the title page; and that ought to be done away with.

2323. (*Dr. Smith.*) In your experience have you found that the entry has been carelessly made at any time, so as to interfere with your getting copyright ? —There is no doubt that that has been proved, and I believe that there is as much looseness about entries at Stationers' Hall as can be conceived.

2324. From your experience you do not feel sure that when you make an entry it will be a valid entry under the Act ?—I do not.

2325. (*Sir H. Holland.*) With whom does the form of entry actually rest, with the person who registers, that is to say, the author or composer, or with the officer at Stationers' Hall ?—The proprietor of the copyright must fill up the form and take it there; if he is the publisher, the publisher must do it; if he is the author, the author must do it.

2326. Supposing that you were the author and that you filled up the form wrongly, the officer at Stationers' Hall would call your attention to it, would he not ?—He probably would. It is more the foreign entries that I have to do with, for very few English things are entered.

2327. Then the difficulty with you has arisen from the foreign entries ?—Yes.

2328. Is the inaccuracy generally pointed out to you by the officer at Stationers' Hall, and then does he refuse to register unless the entry is put right ?— Yes.

2329. But, practically, the registration of the thing entirely rests with you ?—Yes; even after it has been pointed out that there is anything wrong, it, I think, rests with us; they will assume no responsibility.

2330. At all events they are not made responsible by law ?—No.

2331. (*Sir J. Benedict.*) You were for some time in America, and have an establishment there ?— Yes.

2332. Do you think that there is any chance of coming to an arrangement about a copyright with America ?—I was only a fortnight in America.

2333. But your son was there ?—Yes, he was there for some time; but it seems hopeless after the efforts which have been made by such men as Charles Dickens; he did a great deal to try to bring it about, but I am afraid that it is hopeless until they have something to lose.

2334. What do you mean by their having something to lose ?—They have nothing to lose at present, they have all to gain; they are taking from England and Germany and other countries; they have nothing to compare, either in literature or in music, with what is composed in other countries.

2335. You have an establishment of your own at New York ?—Yes, we have transferred it to a Mr. Peters.

2336. You do not think that it would answer ?— The duty is too high, that is a great thing; it is at least 25 per cent.

2337. (*Mr. Trollope.*) When you say that the Americans are composing nothing in comparison with other countries you, I presume, speak of music ?—I

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think that you might include literature, but perhaps I had better confine myself to music.

2338. (*Sir H. Holland.*) I understand you to say that you had some difficulty in knowing whether you ought not to register the right of representation?—Yes.

2339. You are aware, probably, that by section 22 of 5 & 6 Vict., c. 45, no assignment of the copyright of any dramatic piece or musical composition conveys to the assignee the right of representation, unless an entry be made of such assignment expressing the intention of the parties that such right should pass by the assignment?—I believe so.

2340. But it would seem that that enactment does not apply to a case in which merely the *right of representing* is assigned. Do you know the case of Lacy *v.* Rhys?—I have that book of Copinger on Copyright, but it is very difficult to follow it.

2341. In that case there was an assignment of the right of acting as well as of the copyright, and it was held that it did not follow that because section 22 required registration of an assignment of the copyright, and there was such an assignment there, therefore the assignment of the *right to represent* was in any way affected. I find it stated in Copinger that the enactment of section 22 does not apply to a case in which there is an assignment of the right of representing or performing?—If you are not bound to register the right of representation at the present time, and if it is not put on the title page, how are the singers to know what they are to sing, and what not? They cannot go to Stationers' Hall to find it out, if it is not entered, and they do not find it on the copy which they buy. At the Handel Festival, if a correct record was taken of their names, I am not sure that the whole 5,000 performers could not be fined 40*s.* each.

2342. You mean where there has been a legal assignment?—Yes, and if the thing was done without consent, I believe that every person would be liable to that fine. They are safe with Handel, but if they departed from him, 5,000 people paying 2*l.* each would be a very good thing for the common informer.

2343. Therefore you think that every assignment of right of representation or performance should be registered?—I think that people ought to have some means of finding out the fact, and I think that it should be put on the prominent copy; there are orchestral parts, and subdivisions of works, upon which it would be rather troublesome to put it, but on a song it should be done as on books, namely, put the words, "All rights reserved," or something of that kind. I think that people should have some means of knowing when they are going against the law.

2344. But the assignment may be made at any subsequent time?—Yes.

2345. You cannot, then, put such a notice, except on editions subsequent to the assignment?—If the singing or performing right is reserved, and if persons are liable to a penalty, I think that it should be so stated on the copy which they buy, and from which they sign. Supposing that the proprietor of the right of the performance leaves his right undisturbed, and never claims it for a certain number of years (I would say three years), I would suggest that he should forfeit his right, if he allows it to slumber for that time.

2346. (*Mr. Trollope.*) Is it your suggestion that the owner of the copyright should thus lose his rights?—The acting right; I think so, because if he had ever intended to assert it, he would have asserted it before that time; if there had been any invasion, at any rate.

2347. (*Sir H. Holland.*) Do you mean, that if a man writes a song, and if he does not within three years have it represented he shall lose his right?—That if he does not forbid the performance within three years, he shall not be allowed to do so afterwards.

2348. In what way would you suggest that he should forbid the performance; by public notice in the newspapers, or how?—My impression was that it would surely be performed, and that if he found it out he should assert his rights, and demand the penalties, whatever they might be.

2349. Then your suggestion is, that if a man did not enforce his rights, supposing them to have been infringed, within three years, he should lose the power of enforcing them?—Yes; but supposing that the song had not been sung during those three years, it perhaps would be awkward.

2350. (*Chairman.*) Is not that very likely to be the result of the proposed alterations of the law; namely, that people would know that after three years they would be safe in performing or singing, and that they would wait until the three years had expired?—But if the composer had asserted his rights he would keep them alive.

2351. How could he assert his rights? Do you mean by another term of three years?—No; my notion is that a great many of these copyrights are sold by authors who never intend to assert their rights, and I wish to prevent them from doing so, unless they have shown their intention when they first sold the copyright.

2352. (*Sir H. Holland.*) That does not answer the Chairman's point, which is that if the law were altered as you suggest, people would know that there was a song which after the lapse of three years might be sung and represented without any action, and would thereupon wait?—Perhaps it would get over the difficulty if on the copies which persons bought it was stated that they could not sing the song without permission.

2353. (*Sir J. Benedict.*) Without permission of whom; of the author or of the publisher?—Of either; whichever had the right.

2354. (*Sir C. Young.*) You would leave the performer to find that out?—I would have it put on "This "song must not be sung in public without permission "of the author," or "the publisher," as the case might be.

2355. You might put on "without permission?"—Yes, that might be done.

2356. (*Sir J. Benedict.*) Would you make it compulsory for every publication of copyright?—There should be no remedy at law without its being done; they might leave it out or not, as they thought fit.

2357. (*Chairman.*) Are there any further points to which you wish to call our attention?—I think that works which are not copyright should not be marked as copyright, or "Entered at Stationers' Hall." In America, I believe, it is an offence for any publisher to strive to make out that his work is copyright when it is not; he must put on "Entered according to the Act of Congress," and so on, and no person is allowed to do it unless the work is copyright; or, if he does it, it is at the risk of a penalty. I think that the words, "Entered at Stationers' Hall," or anywhere else, ought to be done away with, unless it is a fact. I think that you should not mark a publication "Entered at Stationers' Hall," unless it is so in fact; non-copyright works, and so on, have it on, and people must be misled by it. Any work which is really entered, and is properly entered, and is property, may have those words on; but, unless there is a justification for them, I think that they should not be used.

2358. (*Sir H. Holland.*) Would not your proposal of making this entry lead to compulsory registration?—With regard to registration, I rather think that if people did not register within so many months they should lose their rights.

2359. (*Mr. Trollope.*) Do you not think that that penalty would be too severe?—You might put a fine on it instead; but if the entries were made gratuitously, or at a very small price, as they are abroad, I think that we should get everything entered. In France I rather think that the Government publish a weekly list of things.

2360. (*Sir H. Holland.*) In France the registration is compulsory, and you are subject to a heavy penalty unless you register?—Yes.

2361. Do you see any objection to registration being made compulsory in England?—No, but then it ought

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to be either gratuitous or very cheap. We print a quantity of trifles for amateur authors, sometimes only a single page, but I suppose that we should be just as liable for those as for a great work.

2362. No doubt; but if the fee is very small, it is not of much consequence?—I think it a good thing to make the registration compulsory, with a small fee, or, better still, without any fee at all.

2363. (*Mr. Trollope.*) You send everything, I believe, to the British Museum?—Pretty well everything. We are on very good terms with the British Museum.

2364. Might not the deposit at the British Museum be considered as registration?—Yes, I think that that would be the best possible arrangement. There is one thing more which I have to mention, namely, with regard to the indexes in the books at Stationers' Hall. There is very great difficulty in finding a name. If, for instance, you want to find Schubert, you must look through 40 pages of the letter "S." I do not see why these indexes should not be divided and subdivided, wherever they are kept.

2365. (*Sir H. Holland.*) Is the index alphabetical?—Only so far as regards the first letter. You have to look through all the authors beginning with the letter "S."

2366. "Smith," and all?—Everything. In fact, Stationers' Hall does nothing for us.

2367. (*Chairman.*) You would suggest that all the works of one author should appear consecutively in the index under that author's name?—Yes, if it were possible. The British Museum have an office which they already call "copyright," but it is of no use having a copyright office unless it means something.

The witness withdrew.

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

Friday, 28th 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 JOHN ROSE, Bart., K.C.M.G.
SIR H. DRUMMOND WOLFF, K.C.M.G., M.P.
SIR JULIUS BENEDICT.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

J. P. Simpson, Esq.

28 July 1876.

JOHN PALGRAVE SIMPSON, Esq., examined.

2368. (*Chairman.*) You are the secretary to the Dramatic Authors' Society?—I am, and have been so for eight years.

2369. In that capacity you have, no doubt, bestowed attention upon the subject of copyright?—Naturally; it is a part of my duty to do so.

2370. (*Sir C. Young.*) You are also a dramatic author?—Yes.

2371. Can you tell the Commission how long the society has been in existence?—I think that it was instituted in 1832.

2372. Will you tell us generally why it was constituted, and how it works?—It is an association of authors to protect their own copyrights by joint agency, that is to say, joint legal agency and joint agency in the country, to protect each other mutually.

2373. Will you tell us generally the nature of your proceedings?—We collect the fees from London managers for pieces belonging to the society, and from country managers likewise, and from amateurs. London managers pay by a tariff so much for every piece that they play belonging to the society. In the country it was found that that system did not answer because there was continual evasion: and within the last 14 years we have had what is called a system of assessment, that is to say, the country managers pay so much a year, or season, or month, or week, as it may happen, for the privilege of playing the society's pieces; they are then obliged to send up their bills by their contract; and we then subdivide the receipts among the authors whose pieces have been represented, deducting for the expenses of the society ten per cent. from the moneys which we receive. That is in a few words the agency.

2374. Will you tell the Commissioners what an author has to do in order to join your society and what benefits he gets from it?—An author can offer himself as a candidate for election when he has produced a piece in a theatre of any consequence. Formerly it applied only to metropolitan theatres; but now we have admitted theatres of standing, such as the Theatre Royal Edinburgh, the Theatre Royal Glasgow, Liverpool, &c. Any author having produced a piece in such a theatre is allowed to offer himself as a candidate; he is then proposed and seconded and put up to ballot as a member. Few candidates are not elected unless there be something against their character.

2375. How do you draw the line between what you call the first-class theatres and others?—It is a matter of taste and will. We should not take the Theatre Royal Blackburn, nor Grimsby, as a theatre of sufficient importance.

2376. But if an author had a piece represented at Blackburn or at Grimsby would it not give him the privileges of the society?—The case has never occurred. I should say not; that is for the committee of management to say. When I mention these places I mean the smaller theatres. That is a matter which I do not decide, but it is decided by the committee.

2377. Will you tell the Commission why this society was originally formed. Was it from the difficulty which the authors experienced in getting remuneration for their pieces?—Yes; when the first Copyright Act was passed this association was immediately formed for the protection of authors mutually by their own agency, having a secretary to see after their interests.

2378. Is it a fact that the society puts forward a tariff for the country managers?—Formerly the country managers were desired to pay to the society so much according to the value of the piece acted; but we found that that payment was constantly evaded, and that it was utterly impossible either to get payment or to find even the right titles of the pieces performed, and a great change was made in the constitution of the society, inasmuch as it was determined that the managers should be, what we call, "assessed," that is to say, that they should subscribe according to certain terms for the privilege of using the society's pieces; and we have found it work so well, that whereas under the former system, when payment was evaded as much as possible, the income of the society never amounted to more than 800*l.* a year, if so much, it now varies from 4,000*l.* to 5,000*l.* a year under the new system.

2379. Under this new system have you any difficulty, generally speaking, in recovering the fees?—No; if a

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manager is duly assessed he has to pay previously by accepted bills for the privilege of playing the society's pieces; consequently we recover our moneys. The difficulties which we experience are with theatres which are not assessed, or, in other words, that do not subscribe to the society; they play our pieces without any permission from us, or remuneration to us, although the Act of Parliament strictly states that no dramatic work can be represented without a written permission from the author. This written permission we do not always exact; but the law stands in that shape, and penalties are provided by the Act of Parliament; consequently, if we find out that the manager of any theatre in the country has had acted one of our pieces without permission, we proceed against him for the penalties under the Act of Parliament, the penalty being 2*l.* for the performance of each piece.

2380. (*Mr. Trollope.*) Each night?—Yes, each performance.

2381. (*Sir C. Young.*) Have you any difficulty in recovering these fees from managers who are not authorized to play your pieces?—Yes, great difficulty under the present state of the law. Actions have to be brought either in the county court, or in a superior court, for the recovery of these penalties for the infringement of dramatic copyright; these proceedings cause great delay, and very generally fail of their intent, inasmuch as the proceedings have to be taken in the place where the infringement has been committed, and these people go wandering about, and before we can establish our proceedings they are in another town. We have to commence afresh, and then they are off again: so that under the present state of the law our chances of payment are perfectly illusory. We get nothing, generally speaking, inasmuch as these managers are usually in such a state of impecuniosity that when proceedings are taken, even if we get a verdict, we never get our costs or our money.

2382. (*Mr. Trollope.*) But still you do pursue them?—We do pursue them. We cannot allow these infringements to take place without taking notice of them: it would be a very bad practice to do so.

2383. (*Sir C. Young.*) This occurs, as I understand you, in the case of a travelling company?—Yes, chiefly.

2384. Have you any remedy against the proprietor of the theatre or the lessee?—No; the manager is the man who is responsible under the Act of Parliament; and, in the cases cited, he is often one of these wandering infringers of our rights.

2385. You allude to the manager of the travelling company?—The manager of the company, whatever it may be. Some of these companies are permanent, and they infringe the Copyright Act; they are more accessible, but still the law is in such a state that we find great difficulty in taking proceedings.

2386. Have you reason to believe that the Dramatic Authors' Society, and thus the dramatic authors, are great losers under the present system?—Most decidedly: they lose certainly at the rate of from 500*l.* to 600*l.* a year by these evasions, or more; I think that I have understated it.

2387. Have you any remedy to suggest?—The remedy could only be in a change of the law. For instance, if summary jurisdiction could be given to magistrates to enforce the penalties, the state of things might then be amended, and the law would be no longer, what it is, illusory. At present you must go to the county court or to a superior court; and difficulties are every moment in the way.

2388. You would, I suppose, find it easier to collect your fees if the lessee, or the actual responsible proprietor of the theatre, was the party who was liable?—Decidedly. At present the managers alone are responsible; but if the proprietor or lessee of the theatre could be made responsible, he is a man on the spot looking after his own property, and if he could be rendered liable for any infringement which took place in his theatre, which is not the case now as the law stands, great good might be done, because there would be the local man to proceed against. The law now only touches the manager. The words of the Act of Parliament are, whoever "represents or causes to be represented" a piece. The proprietor, when he is sued for penalties, answers, "But I did not cause "these plays to be represented; I am only the pro-"prietor," or lessee, "of the theatre; I know nothing about its management," so that we have nobody to fall back upon.

2389. (*Mr. Trollope.*) If you made the lessee of a provincial theatre responsible in such cases, would not it render it very much more difficult for a man owning a theatre to get a lessee?—No; it is a very simple affair. If the lessee of a theatre engaged a manager with a company, he would say, "Now I hold you "responsible for any evasion of the law," he has only to make his bargain with his man; it makes no difference to him. He might say, "You shall pay me so "much rent, and if you create any penalties for which "I am liable, I shall hold you good for them." In fact, he would put the responsibility on to the manager instead of taking it himself. In many cases the proprietor or lessee merely lets or sublets the theatre.

2390. (*Chairman.*) In some cases is not the lessee also the manager?—Yes.

2391. Where the manager is distinct from the lessee of the theatre, what is the ordinary period of his engagement of the theatre?—It varies continually from one week to a month, or a season, or a year; it is very frequently by the week. It is in those cases that all legal proceedings are perfectly futile.

2392. (*Sir C. Young.*) When you take these proceedings for the recovery of the fees are the suits ever defended?—Very seldom.

2393. Are any technical objections ever offered?—Yes. We must sue in the name of the author of the piece which is played; we cannot do it otherwise in the present state of the law; and they delay or prevent proceedings by saying that the piece is not by the author whose piece we represent it to be. If it were made compulsory upon the infringers on these occasions to state who is the author, and to prove it, we might avoid all this evasion.—I would throw the onus of proof upon the infringer.

2394. In that case they put the author practically to the proof of his having written the piece?—Now they do, thereby delaying proceedings and involving the whole matter in confusion, and there is an end of the proceedings because the delinquent has passed away somewhere else.

2395. Can your society sue as a corporate body?—Unfortunately not; we tried some years ago for a charter, but we did not get it because, although we were a corporate body, we sued for individual interests; that was the answer. Latterly we have been advised to apply for permission to be registered under the Friendly Societies Act of 1875. If we registered under that Act we might sue as a body, whereas at present each author is obliged to sue through an attorney in his own name. We laid the case, with an elaborate statement, before the Lords Commissioners of the Treasury, and we received the following answer.—"Treasury Chambers, 8th July 1876. Sir, "I have laid before the Lords Commissioners of Her "Majesty's Treasury your letter of the 24th ultimo, "applying for their special authority to register the "Dramatic Authors' Society under the Friendly "Societies Act of 1875, and their Lordships desire "me to inform you that they are unable to comply "with your request, inasmuch as it appears to them "that the purposes of the Dramatic Authors' Society "are sufficiently in restraint of trade to render it "capable of being registered under the Trades Union "Act of 1871, 34 & 35 Vict. cap. 31, and a portion "under the Amendment Act lately passed. I am, "Sir, your obedient servant, R. R. W. LINGEN. The "secretary of the Dramatic Authors' Society, 28, King "Street, Covent Garden, W.C." We have made no attempt to carry out the latter suggestion yet, the competent persons not being in the way, but it would be very desirable for the society that it should be able

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to sue as a corporate body. We might then receive all fees or penalties directly. We now find infringements of perhaps 10 pieces at one theatre in one week, and we have to sue separately for each author whose piece has been played, because we cannot proceed as a body. This position we look upon as a great hardship.

2396. Do you generally find out what is going on at all these provincial theatres?—We have agents in various important towns in England, but they are too few, and their scope does not go far enough. We have to use the theatrical paper, the "Era," which gives the performances more or less in the provinces, in order to find out what is done. We sometimes receive information from anonymous informants, who tell us that at such and such theatres such and such pieces have been played, those anonymous informants being frequently persons who have been aggrieved by the manager in some way or other, and find a pleasure in denouncing him to the society; but we have no other direct means of discovering what has been done. We have no power of compelling the managers of those theatres to send up their bills so that we can examine them, as we can do in the case of theatres which subscribe, or, as we call it, are assessed, and the managers of which are obliged by their contracts to send up their bills so that we may see what authors have been played and what portion of the receipts they should receive.

2397. Have you any reason to believe that various means are taken for concealing the pieces which are played?—Yes. Even the theatres, which pay us, constantly alter the titles of pieces which they are about to play, and it is very difficult to discover what author has been played under a false title. I have long thought that if the manager were legally compelled to place the author's name upon his play bills, which he does not do now, for every piece which was played, and if a change of title, obviously made for the sake of evading payments were made fraudulent by law, it would be a great point gained, a great deal of chicanery and a great deal of swindling would be put a stop to.

2398. (*Sir J. Benedict.*) There are, I believe, no musicians in your society?—I beg your pardon, we have composers.

2399. You have only one or two?—We have two now, namely, Macfarren and Balfe.

2400. Do you not think that a combination, such as exists in France, of authors and composers and publishers, would be a very useful combination?—You mean a society.

2401. Yes. Do you not think that such an organization would have a better chance of getting a charter than a separate one?—Possibly, but in France the association of authors and composers is perfectly apart from the French Dramatic Authors' Society.

2402. That is because they could not combine?—It is an association for devising how best to protect their own interests, but they have no legal power to maintain those interests as the Dramatic Authors' Society in France have. The French Dramatic Authors' Society's pieces are paid for nightly to the agent who goes round to collect the *droit des pauvres*, consequently they use a government order to claim their rights night by night, but that is a point perfectly apart from the the Association of Dramatic Authors and Composers, the intention of which I do not quite know

2403. Are you aware that that is the great remedy, namely, this right for the poor, and that it is to be abolished?—I do not know that it is to be abolished, that is for the French Government to see after.

2404. Supposing that such a combination as I have suggested could be formed, do you not think that it would be much easier to find agents to watch over their interests, as there would be music-sellers or booksellers who would belong, as it were, to the association?—That is a new point which I have never considered, and I cannot yet take in its scope, or give any decided answer as to what advantage it would be. I have not considered the subject at all; it has not come in my way in any manner.

2405. If there were several interests combined do not you think that there would be greater force in such a demand than in the exclusive application of dramatic authors?—That is very possible, but as I tell you I do not understand the matter as yet. I must have it put before me in another form, to consider it and consult about it. I do not see the scope of it as yet. All amalgamation would no doubt tend to strength.

2406. (*Sir C. Young.*) Do you find any difficulty with amateurs?—Less now than formerly. Amateurs formerly refused to pay at all. They were allowed to play all these copyright pieces, which were made copyright afterwards, without any payment, and they refused to pay. I have received insulting letters from amateurs, saying that they could not see by what right or by what robbery I could demand fees for the performance of a piece of which they had bought the book; they never having been instructed, and the law never having been clear, about the vast difference between a publishing copyright and an acting copyright. The two things have, by the Legislation, been so mixed up together that men's minds have become perfectly confused; and it comes to this, that a man having bought a book of a dramatic work thinks that he has the right to act it, the two matters not being understood to be perfectly apart, and to be different copyrights.

2407. Is it the case that you ask amateurs for fees when money is taken?—Necessarily that comes under the direct action of the law, that they must pay when they take money at the doors. It has even been decided by law that if amateurs, forming a society or a club, subscribe among themselves to get up a dramatic entertainment they are as liable to pay the fees for the authorship as if they received money at the doors. We have had the opinion of Mr. Brown, Q.C., upon the subject, which opinion is printed and sent out to amateurs. In one case we were resisted by the City Artillery, who used to give performances in their own drill shed, and give all the tickets away to their friends; it was decided that as long as they raised money among themselves to pay the expenses of their dramatic entertainments they had as much right to pay the author's fees as to pay their carpenters or scene shifters or scenic artists, or their orchestra, or the ladies engaged to play with them—that was decided.

2408. (*Dr. Smith.*) In a court?—I presume so.

2409. (*Sir C. Young.*) By a superior court, or by one of the county courts?—It was before I was secretary, and I do not exactly recollect where it was done.

2410. (*Mr. Trollope.*) Would it not be hard to draw a difference between one set of private theatricals and another?—I think not at all; a play is given perhaps by a gentleman or a lady, and there is no subscription to pay the expenses. The responsibility belongs to one person only.

2411. That may be so or not?—If a subscription were made by the guests who were coming, or by the actors themselves, to pay the expenses of the entertainment in a private house, those persons would be equally liable.

2412. But in the case which you mentioned, of the artillery, the difference seems to consist in this, that there was no subscription among the guests?—Not among the guests, but among the actors themselves; if the actors themselves subscribe to pay the expenses, they are just as liable to pay the fees of the author as to pay the other expenses.

2413. It seems to me that the actors must in all cases subscribe to pay the expenses?—Not where there is a management.

2414. (*Mr. C. Young.*) As to the colonies, what protection do the authors get in Canada and the colonies through your society?—They have the same right, by Act of Parliament, to protection in India, Australia, and New Zealand, as in England; it includes all the

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British dominions. The only way in which we can obtain it is by appointing agents. The agent whom we have appointed in Canada has as yet done nothing for us, and worse than nothing. In Australia for years our agent was most zealous, and brought us in a great deal of money; we allowed him 35 per cent. for his agency upon all the moneys received; this was Mr. Copping, a man of weight and a senator, who undertook this business for us. Latterly we have been involved in so many lawsuits that the receipts have been less. These lawsuits have arisen chiefly because the legal men in Australia have asserted that no assignment of a piece was valid without proof of registration; whereas the Act of Parliament specially says that registration is not requisite; however, upon this difference we have lost a great deal of money, and consequently our receipts have not been so large.

2415. (*Chairman.*) Do you mean that you have lost the suits?—We have lost the suits, the Australian lawyers decided against the English ones.

2416. When you say "lawyers" you mean the judges?—A legal opinion has been given by counsel to that effect, and this I suppose has had weight with the judges.

2417. The Australian decisions of course must have been arrived at by Australian judges?—Yes, definitely by judges.

2418. (*Sir C. Young.*) Is it the practice of dramatic authors to register their pieces at Stationers' Hall?—No; some people do it, but they find it perfectly futile, Stationers' Hall being in the most chaotic and ignorant state of any institution in England. You may go there and inquire "Can I register "this title, or not; will my registration be valid if I "register?" One clerk will tell you "Yes;" two hours afterwards to the same question the next clerk will say "No." They do not know their own business in any way whatever; you get contradictory answers time after time, you never know where you are, and what you can register and what you cannot register, or how far the registration will be valid. If there is any institution which really calls for regular reform, or to be entirely put down, it is Stationers' Hall, and to my mind it would be a great boon to literature in general, and to dramatic literature in particular, if a Government office of registration were established. The present state of registration at Stationers' Hall is worse than futile, it is foolish. I have felt this matter very strongly for years.

2419. (*Mr. Trollope.*) Has it ever occurred to you where the Government registration should be effected?—No; that is beyond me. That is for the Government to decide.

2420. All dramatic pieces are deposited in the British Museum, are they not?—I presume so, but that is an affair for the publisher; that is, again, apart from the acting copyright as it belongs to us; we have nothing to do with that.

2421. Has it occurred to you that that registration might be effected at the British Museum?—If it was under the direct control of the Government I do not know why it should not be; but that is another subject which I have not considered.

2422. (*Sir C. Young.*) As far as you are aware has an author a right to maintain the title of his work against anybody else?—It is very doubtful. That is one of the questions to which, if you inquired at Stationers' Hall, you would get three different answers in one morning.

2423 You have probably often seen among advertisements "Title registered," "Effects registered"?—Yes. It probably has been registered; but whether that registration is valid the parties at Stationers' Hall cannot tell you. It has occurred to me to have my title taken within three weeks after the piece has come out, and I was told that there was no law to prevent it. There may have been some change in the law since. I do not know that registering a title would give you a copyright in the title, nor are these people at Stationers' Hall able to tell you, for they tell you one thing one moment and another thing another.

2424. (*Dr. Smith.*) Is it necessary to register the right of representation before you can take legal proceedings?—No. The Act of Parliament expressly states that it is unnecessary. By the 24th section of the Act of 5th and 6th Victoria, chapter 45, it is provided that no proprietor of copyright in any book shall maintain any legal proceeding for the infringement of such copyright unless an entry has, before commencing that proceeding, been made at Stationers' Hall. That refers to the publishing part; but it is also expressly provided that this law is not to prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have under the Act of 3rd and 4th William the 4th, chapter 15, although such right may not have been registered. That is the very point of which I was complaining about the Australian legal decisions, that in the face of the Act of Parliament they say that registration is necessary to be proved.

2425. (*Sir H. D. Wolff.*) The dramatic authors are entitled to a fee every time their pieces are acted in the provinces?—Yes.

2426. In what way are they entitled; is it under Act of Parliament?—Yes, under the Copyright Act.

2427. How is the fee established?—In a London theatre a tariff is paid every time the piece is represented; but in the country theatres managers subscribe so much a week, month, or season, for the privilege.

2428. How is that tariff fixed?—According to the importance of the theatre.

2429. Who fixes it?—The Dramatic Authors' Society.

2430. What power have they of recovering it?—They can only recover it under the Act of Parliament through their solicitor. The way in which we establish our payments is this: when, for instance, we assess a theatre for a year we make the manager give us, before he gets our permission, bills at certain dates for the payment of this assessment; for example, if a theatre paid 100*l.* a year for the right of playing the Dramatic Authors' Society's pieces we probably should take four bills at varying dates to ensure payment.

2431. Who has fixed the amount to be paid?—The Dramatic Authors' Society by its committee.

2432. What right have you to enforce that payment against the theatre?—Because we sell our permission at such and such a rate, and they cannot play our pieces without our permission, and so it is for us to fix our own terms like any other tradesman who sells an article, he fixes his own price.

2433. What is your status as the Dramatic Authors' Society, it is not under Act of Parliament, is it?—We cannot sue as a corporate body; each individual author whose copyright is infringed is obliged to sue. We desire to be made a corporate body but have never been able to obtain that privilege.

2434. You arbitrarily fix your own price?—Yes.

2435. There really is no means of assessing what is the value of your permission, excepting what you choose to put upon it?—Exactly so. If we say that a theatre shall pay us 100*l.* a year for the use of our pieces throughout the year they either pay it or leave it alone; the sale is like that of a pair of boots which you cannot purchase without paying the price.

2436. Assuming that they do not pay your 100*l.* a year, and yet represent one of your pieces, you can only prosecute them for that one piece in the name of the author of that piece?—Yes.

2437. You have no means of enforcing the 100*l.* a year against them?—We enforce it by not allowing them to commence their season without giving us acceptances for the whole amount.

2438. I understand that; but at the same time if they did not choose to do that, and did choose to play one of your pieces, your only remedy would be to prosecute in the name of the author whose copyright was infringed?—Exactly so.

2439. When an author's copyright is infringed how

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do you establish the damage?—We sue for the penalty under the Act of Parliament.

2440. What is the penalty?—The minimum penalty is 2*l.* for each representation of each play.

2441. That is established by Act of Parliament?—Yes; but the Act of Parliament says, moreover, that the author can claim all the benefit derived from the representation of the piece. There is a minimum penalty of 2*l.* for each representation; but as it would be very difficult to prove the benefit derived, and as we cannot get at the manager's books to know the benefit which has been got from the performance of the piece, we have never gone for more than the minimum penalty. Mr. Coppin, in Australia, who is able to find out, having been a theatrical manager himself, usually goes for the benefit derived, which is generally 20 times or 100 times more than the minimum penalty of 2*l.* We have not the means of discovering what the benefit is, and we think it better to proceed for the minimum penalty of 2*l.* for each representation.

2442. You find that that system answers upon the whole, and is satisfactory to the authors?—Yes. I have already stated that when the managers in the country had to pay for the piece they were continually evading payment and changing the titles; and that the receipts of the society were then at the most 800*l.* a year, whereas they are now nearer 5,000*l.* than 4,000*l.* a year.

2443. How do you divide the profits among the authors?—At the end of their term the managers have to send us their bills; we have to enter the pieces played, and the authors who have to be paid. The pieces are rated according to their value; a one-act piece being worth, say two shares, and a two or three act piece being worth four shares, and a five-act piece worth six shares. We enter in a book the pieces played, and the value of the shares. We then count up the number of the shares; say that there are 367 shares, we divide the money received by those 367 shares, to see what each share is worth, and then work it all back again. Mr. So-and-So has had a piece, say, of the value of six shares; we give him the payment for six shares, and then we enter it. It is a very elaborate process.

2444. How do you detect an infringement; have you any organisation for that purpose?—Yes; I have already stated that we have agents all about the country, but they are not sufficient, and we are sometimes thrown back upon the "Era" newspaper, which is supposed to give all the pieces that have been played in the provincial theatres, in order to detect these infringements. At the same time I ought to say that the agents of the "Era" who send these notices from the country are frequently bribed or cajoled by the managers not to send the names of the Dramatic Authors' Society's pieces. The editor of the "Era" has frequently had a letter sent him, begging him not to put down the names of the Dramatic Authors' Society's pieces, but, as a man of honour, he repudiates any suggestion of the kind. The unassessed country managers try every method that they can to infringe.

2445. You pay your agents; I suppose that you only pay them a small sum?—We give them 10 per cent. on moneys collected.

2446. Therefore, if a manager's bribe is worth more than the 10 per cent. they will take it?—But they are not the same people; our agents are not the correspondents of the "Era."

2447. Am I to understand that you are satisfied with the present organisation, and that you would not like it altered, and do not wish for any legislation?—We want a great deal of legislation; I have already mentioned what I should like done.

2448. I mean with regard to your special society?—We want facilities to enforce the Act of Parliament. For instance, I have already mentioned that, at present, actions having to be brought in the county courts and the superior courts, in a case where an infringement has taken place, these proceedings are inefficacious on account of people moving away, and we have to begin all over again, and we never get anything. I have suggested that summary jurisdiction should be given to magistrates to enforce these penalties, because now the law is perfectly illusory.

2449. (*Sir C. Young.*) We understand you to say that you desire to see your society incorporated?—Yes, that is the main point for which we have been striving for years. If we obtained it we could sue as a body and not through each individual person.

2450. You write stories and novels?—Yes, I have done a great deal in that way.

2451. Has it ever occurred to you to have any of your novels and tales dramatised without your permission?—Yes; at present, as the law stands, anybody can take the whole subject of a novel and use it as a dramatic work with impunity. There are some very curious instances of that having been done. When I first came to live in London, wandering along the streets, I saw a bill at the Surrey Theatre with the title "Roland the Rider;" I looked at the bill and saw all the characters of a tale of mine in this drama. I immediately wrote to Mr. Sheppard to say, "You have no right to have this drama, which is derived from my tale, played without coming to some agreement with me." He wrote me a polite letter, but repudiating any right on my part, saying that the law did not protect me, that everybody had a right to dramatise a tale, but that he should be very happy to give me a box to come and see the first representation.

2452. (*Sir H. D. Wolff.*) Did you take any advice upon that matter?—Yes, and was told that I could not take any proceedings. The same thing was the case as to the title of a work; but I am told that some amendment has been made. One curious instance with respect to dramatising was in the action of Reade *v.* Conquest, where the defendant was the manager of the Grecian Theatre. Mr. Reade published his "Never too late to Mend;" Mr. Conquest dramatised it at the Grecian Theatre; Mr. Reade brought an action against him for piracy and lost it. There was no law to protect him. A man may take all the subject from a tale and embody it in a play. Mr. Reade remembered, however, that previously to writing "Never too late to Mend," he had given at Drury Lane theatre a piece called "Gold," which was somewhat on the same subject, out of which he had taken matter inserted in his novel "Never too late to Mend." Portions of the same dialogue had been used, and he proceeded against Mr. Conquest for taking the dialogue out of the play of "Gold," and won his action.

2453. Can a dialogue be transferred word for word from a novel to a play?—Yes, that is one of the great grievances which want mending.

2454. (*Mr. Trollope.*) And the plot can be taken? Yes.

2455. Scene by scene?—Yes; that is one of the most crying evils now existing as regards copyright.

2456. I think that at the present moment the law has been altered and that the title cannot be taken?—You will find that the authorities at Stationers' Hall differ upon that subject, if you ask them any questions.

2457. (*Chairman.*) But they are really no authorities?—No, they constantly display great ignorance of their own business. There is a general idea that if the title is registered it is copyright. My view is that the title can still be taken, but it is doubtful.

2458. (*Mr. Daldy.*) You mean for representation, not for publishing?—The publishing copyright is a thing perfectly apart; that is going out of my sphere.

2459. (*Sir C. Young.*) As secretary to the Dramatic Authors' Society do you know anything of a play called "Aurora Floyd"?—I know it perfectly.

2460. Does that belong to the society?—Some of the versions do; several versions of it go about the country; two of them belong to the Dramatic Authors' Society, and they claim for them.

2461. Do you know whether those pieces have been done with sanction?—Certainly not. I have heard Miss Braddon complain of it.

2462. Those pieces are very popular?—Yes; "East Lynne" is another.

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2463. Consequently, if there had been any protection for novelists, it would have been a source of great profit both to Miss Braddon and Mrs. Henry Wood?—Yes; but they have no power to interfere unless there has been any change of the law since those works came out. I believe that as the law now stands, "East Lynne," or "Aurora Floyd," may be performed all over the country without any interference on the part of the novelist.

2464. (*Mr. Daldy.*) Is "East Lynne," or "Aurora Floyd," printed in a dramatic form and sold?—Yes; some of the versions are. All these plays which are derived from novels, which are popular, have about three or four versions; I should say that at Mr. French's you would find one version of each of these pieces, but I cannot say positively. There is one version of "Lady Audley's Secret," which belongs to the society, namely, by Mr. George Roberts; it is not published except for the purposes of the society.

2465. (*Mr. Trollope.*) Was it written without Miss Braddon's sanction?—Possibly an arrangement may have been made; but she derives no remuneration from it now.

2466. (*Sir C. Young.*) That is to say, as far as you know?—Yes.

2467. (*Mr. Trollope.*) Is it very common for permission to be given to dramatise without remuneration?—I have only known it to have been done in the case of Mrs. Gore.

2468. Did not Walter Scott do so?—That was before copyright days altogether, as far as regards the drama.

2469. Do you not think it a grievance which ought to be met, that this power is assumed without asking the permission of the original author?—I decidedly think that the law should so stand that no person should be permitted to take anything out of any novel without the permission of the author; it is a crying defect in the law.

2470. (*Sir H. D. Wolff.*) Supposing that there is this kind of piratical adaptation of a novel, and that it is printed, surely the author of the novel has a remedy against the republication of it, has he not?—I believe not. The only one that I know about is "Lady Audley's Secret," which is printed, but not published; it cannot be obtained in a shop, nor can it be sold. When managers require "Lady Audley's Secret," we have copies to send them, but we do not take any money for them.

2471. (*Sir C. Young.*) Do they return those copies to you?—No.

2472. (*Sir H. D. Wolff.*) Then they might be read by somebody to the prejudice of the author?—Decidedly. It is a crying evil.

2473. (*Sir J. Benedict.*) Do you know how the law is in France upon that subject?—Yes, it is very strict in favour of the novelist. Nobody can take a novelist's story and make a drama of it. It is illegal. When a piece is dramatised, not only must the dramatic author obtain the novelist's permission, but he is bound to put the name of the novelist on his playbill along with his own name, even although that novelist has not touched the drama at all. What the penalties are I do not know; but that is the state of the French law.

2474. (*Sir H. D. Wolff.*) The list of members of the Dramatic Authors' Society contains a certain number of dramatic authors of England?—Yes, much the greater number; there are only a very few who do not belong to the society.

2475. What do the authors who are not members of the society do to recover their fees?—The law is as good for them as for us, but they use their own agency.

2476. Do they practically use it, or do you mean that they can use it?—They can use it, and in some cases do use it. They do not belong to the society, because they are bound by no tariff and no rules, and no strict regulated payment; they can ask what they please, and they can get it. Mr. Boucicault would be very foolish to belong to the society; he makes infinitely more by not belonging to it, by charging his own prices.

2477. It gives him a great deal of trouble, does it not?—Yes.

2478. But it is more remunerative?—Yes; Mr. Gilbert is of the same opinion, and no longer belongs to the society; and Mr. Halliday and Mr. Burnand.

2479. That I suppose is because, for the time, they have very great popularity?—Yes; they think that they make better prices through their own agency than when they are bound by rules in the society.

2480. Among your members have you any musical composers?—Yes, Macfarren and Balfe; Madame Balfe as the executrix of her husband.

2481. What do those composers who do not belong to your society do in order to get their fees?—They use their own agency.

2482. They practically do use it?—I suppose so.

2483. If you had an incorporation with extended powers more persons might come into it?—Yes, decidedly; every composer of any value, just as with the members of the present Dramatic Society, if he thought that he should get any advantage, would then be a member immediately.

2484. Do you now enforce any penalty for persons singing songs of composers irrespective of a piece?—Both Mr. Macfarren and Madame Balfe have requested us not to enforce penalties for the singing of single songs; they say that it is to the disadvantage of the sale of the music if we do so; but they take their fees by a regular tariff for selections. If selections of any pieces from an opera are given, then they claim remuneration, but they beg us to waive the rule in favour of single songs.

2485. Have you ever turned your attention to the question of single songs?—No, except so far as regards the singing of the society's music.

2486. Would you like to give an opinion upon the question as to whether it is desirable that a tariff should be fixed for the singing of a song at a concert or not; in the interest, I should say, rather of the composer than of the publisher?—In the interest of the composer certainly it ought to be paid for; but if the composer says at the same time, "No, it will "injure the sale of my work, and it will do my name "and fame harm," then it had better not be done. The direct interest of the composer would be to claim a fee for any single song out of an opera, and it can be done under the Act of Parliament as the law stands.

2487. But it would impede the singing of the song?—Yes. I only gather this from hearsay from composers; it has no direct bearing upon my business.

2488. (*Sir C. Young.*) A dramatic author has no remedy, has he, if a portion of his drama is recited at a penny reading or anything of that kind?—No; if songs are sung at those penny readings the author may claim either fees or penalties; but a man may get up and recite long passages from a play, and the law does not touch him. If two persons come together and recite a dialogue the law is available, even if there be no scenery and no dresses or anything of the kind; but one man may recite a portion of a copyright play with impunity.

2489. May he recite the whole of a play; take for instance a farce?—Yes, one man may do it as the law now stands.

2490. (*Chairman.*) Do you propose any alteration of the law in that respect?—It ought to be made obligatory upon everybody who does it to pay if money be received.

2491. (*Sir H. D. Wolff.*) Are you satisfied with the length of the term of copyright?—That is another subject which I have scarcely considered. It is made available for the lifetime of the author. There is one point that is doubtful in the Act of Parliament which is worth speaking about. Copyright exists for the author's life, for 42 years, and for seven years afterwards for his heirs and assigns when the pieces are given to them "for love and affection,"

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J. P. Simpson, Esq.

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which I think are the words in the Act of Parliament; the Act of Parliament is not clear as to whether those seven years are to be added on to the 42, or whether they are simply after the author's death to be available. It is now doubtful whether if an author produced a piece and died two years afterwards his heirs and assigns would have not only the remainder of the 42 years but also seven years beyond; the wording of the Act is obscure.

2492. (*Mr. Daldy.*) Is there any doubt about it. There is a doubt which occurs to us continually.

2493. (*Sir H. D. Wolff.*) The Act says "And be "it enacted that the copyright in every book which "shall after the passing of this Act be published in "the lifetime of its author shall endure for the natural "life of such author, and for the further term of "seven years commencing at the time of his death, "and shall be the property of such author and his "assigns: Provided always, that if the said term of "seven years shall expire before the end of 42 years "from the first publication of such book the copyright "shall in that case endure for such period of 42 "years"?—That is clear; but the question has arisen quite lately in the "Hunchback" of Sheridan Knowles, whose widow still lives; the 42 years expired about a year and a half ago. I write for the fees in favour of the widow, and am told "No, the "copyright has expired." I then urge that the widow has the right for seven years more, and I am told No.

2494. (*Mr. Daldy.*) Has Sheridan Knowles been dead seven years?—No; they refuse it upon this point, that the copyright has run out in the 42 years independently of the seven years. We have taken a legal opinion upon it and we can get no satisfactory answer; they say that the wording of the Act of Parliament is obscure.

2495. You have suggested that the lessees of theatres should be made liable for the penalties?—Yes, the proprietor or the lessee.

2496. In what way would you enable the lessee to know what were the circumstances?—If such a law existed he would be told, through our agents, that he was looked upon as being responsible.

2497. Would you impose upon the lessee the duty of finding out who was the author of anything which was played at his theatre, and also whether the fees to that author had been paid?—I want an arrangement to be made between the proprietor or lessee of the theatre and the manager to whom he lets his theatre, in such a way that he should say to the manager, "If you infringe the law you shall pay me so much, because I shall be liable."

2498. Would not it impose upon the proprietor of the theatre the duty of informing himself as to the parties to whom these copyrights belonged, and what fees should be paid?—No; I think not. A great many proprietors and lessees of theatres now habitually write to us of their own accord, when companies come to them, asking us, "Are these companies assessed to play your pieces or not?"

2499. That would apply to all, whether members of your society or otherwise?—Certainly. Every manager or proprietor of a theatre has the Dramatic Authors' Society's List, and knows what pieces are liable for fees, and what are not.

2500. Practically you do not think that the proprietor would have much difficulty in finding out whether or not those fees had been paid?—No.

2501. (*Sir C. Young.*) He might take an indemnity?—He might take an indemnity from the manager of the company.

2502. (*Sir H. D. Wolff.*) It has been suggested to us by one or two witnesses, that registration in one country with which there is a convention should hold good in the other country, without any repetition of registration, what is your opinion upon that point?—It is one of the best things possible.

2503. You are of that opinion?—Perfectly.

2504. You think that it would act sufficiently well?—How it would turn out I cannot tell; but it decidedly ought to be done.

2505. If any fresh legislation were introduced to protect authors from dramatic representation of their works you would protect the foreign author also?—Certainly.

2506. (*Sir C. Young.*) Have you anything to say to the Commission as to the existing relations between England and America?—There being no international copyright the copyright is lost on the English side unless the work of an English dramatic author is represented first in England. Now a manuscript might be surreptitiously obtained from an author and sent over to America and played there, and the dramatist here would lose all copyright in his own play, it having been first played in America. A great many of Mr. Boucicault's plays have no copyright in England; "Colleen Bawn" and others are played all over England without payment, there being no copyright. Mr. Tom Taylor sold his piece, the "American Cousin," to an American, and it was first played in America; consequently there is no copyright in that piece at all in England. When it was first played with success in England Mr. Buckstone made the author a present, I was given to understand, but was not bound to do so. It seems to me a great hardship that an English author should lose his copyright in this country by having his piece first performed in America. I have put a strong case in saying that the manuscript might be surreptitiously obtained; but the author would be robbed not only in America but in his own country if the play were first represented in America.

2507. (*Sir J. Benedict.*) Has it not sometimes occurred that shorthand writers have taken down a piece which has been performed in England?—Yes; but that is not the subject on which I am; it is done every night, I am informed, with a new piece; I am told that there are American shorthand writers in the theatre who take down the piece, and send it over to America; but we have no remedy, because there is no international copyright.

2508. (*Mr. Daldy.*) Would you suggest that although a play was first acted in America it should be protected under the English Act, whether performed in England or not, and if so what limit would you suggest?—What I would suggest is that although a piece by an English author should be first represented in America he should still have a copyright in it in his own country when it was represented here.

2509. Would you place any limit as to the time which he must represent it in his own country in order to acquire the copyright?—I should give an unlimited time within the Copyright Act, that is to say, within the 42 years.

2510. Then you wish to protect him in England; although he does not represent his play in any way in England he is to have the benefit of the English copyright law?—Yes, certainly; it should be his property here entirely.

2511. (*Sir H. D. Wolff.*) Provided he registers it in England?—Then we want the registration altered before it can be made valid. My drift is simply this: I think that it is a pity that the English dramatist should not be protected in his own country because the piece has been produced first in America.

The witness at the request of the Dramatic Authors' Society handed in a petition which had never been presented, but which contains a resumé of sundry evils to which dramatic authors are subject, and then withdrew. *A copy of the petition will be found in the Appendix p. 354.*

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JOHN HENRY PARKER, Esq. examined.

J. H. Parker, Esq.

28 July 1876.

2512. (*Chairman.*) I believe that you are now no longer connected with the publishing business?—No, I gave up my business some 12 years ago. I was in business for 30 years.

2513. During your career as a publisher, you gave, I believe, very considerable attention to the subject of copyright?—I did.

2514. And you have still continued to give attention to it?—The subject has always interested me.

2515. Will you explain to the Commission any views which you wish to state to us on the subject of copyright?—My view has always been that our present copyright law, which was made by Judge Talfourd in my youth, was an author's made law, and as such a one-sided law; and as commonly happens where people make laws for themselves, it overshot the mark; it was over-protectionist. With a view to International Copyright I do not think that any foreign nation would ever agree to such a lengthened period as our law gives. The speech of Judge Talfourd was one of the ablest speeches ever delivered on one side of the question, but it was on one side of the question only. The Bill was popular with the House of Commons because it was understood to be for the special benefit of the family of Sir Walter Scott, whose copyright was about to expire under the old law, and was renewed for their special benefit, but my belief is that the law being for the benefit of one in a thousand, it is to the injury of all the rest; the effect of it being to make the prices of books in this country so much higher than they are anywhere else; and I myself believe it to be more injurious than beneficial to the authors themselves and injurious in many ways to others. Before that time it was the custom of a gentleman to consider a library as part of the necessary furniture of his house; but if you go into any gentleman's house in the country now you will find a library formed in previous generations, but with no additions since the passing of the present copyright law because of the exorbitant price of books. The consequence is the existence of Mudie's and other circulating libraries, which have been produced by the copyright law. The copyright law has made the fortunes of foreign printers, Baron Tauchnitz especially, and Belgian and American printers to a large extent, at the expense of English authors and English printers, by the law being over-protectionist. I think that there should be a fair protection but that a very much more limited period would be much more beneficial to the authors themselves and much more likely to be agreed upon by foreign countries. My idea is that International Copyright should be carried on upon the same principle as international postage, namely, to a mutual advantage. There is a new system of stereotyping used almost universally in America, but not so much in this country, although it is being used by publishers. When you know that the speeches in Parliament are all stereotyped and that one printer prints for a dozen newspapers you can understand the great facility which exists. The new system first introduced in France is to use paper moulds instead of plaster ones, the paper being wetted and driven into the type with a brush; it does the type no harm and produces a perfect impression and it is readily dried. Those paper moulds may be, and sometimes are, sent by post to America. Therefore, an arrangement might be made by an author with a printer or publisher in this country to print editions for any number of countries that he pleased. My idea is that you might make an international contract of that kind, both with America and with Australia and with Canada and the Dominion. I think (I am not quite sure about this) that the American plan of paying an author by a royalty on the copies of his work would be the preferable one; that he should sell his copyright for this country for a certain number of years to an English publisher, and his American copyright to an American publisher, and should have the power of making arrangements with his English printer and sending the casts to the other countries, which would be to his advantage; I believe that the printing could be done at half the cost.

2516. (*Sir H. D. Wolff.*) Would you allow an edition published in America to be brought back to England?—I think not; but my idea is that the editions would be the same.

2517. If they were the same it would necessitate the price being the same?—That would be almost necessary, but I think that it would be a great advantage. The present system is very speculative; it is a nominal protection, but private libraries in England have Tauchnitz editions, and the colonies make laws for themselves. They will not admit our copyright; they are reprinting our books as fast as they can, to give employment to their own people.

2518. Tauchnitz editions cannot be imported into England wholesale?—No, but they continually come.

2519. If they were allowed to come in wholesale, of course it would bring down the price of the same book in England?—Of course it would; but what I observe is that the immediate effect of the expiration of the copyright is that the same book, with the same type and paper and everything, is sold at one third of the price at which it was sold before; which shows that the public have been paying three times the price during 40 years that they need have paid.

2520. Do you not think that to a certain extent that is owing to the system of circulating libraries?—Circulating libraries have been created by the Copyright Act, and the result is that people do not buy books, but they hire them from the circulating libraries. Perhaps some of the ladies buy them second hand the following year, to be waste paper the year after We used to have standard books printed expressly for gentlemen's libraries, but that system is entirely obsolete.

2521. In former days were not books dearer than they are now?—Paper and everything was dearer; they were not dearer in proportion. At the time of the great war taxes were so high that everything was necessarily dearer.

2522. Are you aware that in France the duration of the copyright is for the life of the author and 50 years afterwards?—I have heard so; I think that it is a mistake. It is upon the same principle of over protection; but I object to the copyright law of France altogether. I think that the practical working of it in France is very bad. It is a common practice in France for an author to publish a book at his own house, and people apply to him by post, the result of which is that very few copies are sold.

2523. Are not books in France cheaper than they are in England?—Yes, but other things are cheaper also. I do not think that there is any particular advantage in it; there are extremes both ways.

2524. The fact of the duration of copyright in France being longer than it is in England does not seem to affect the price in the way in which you consider that the length of copyright in England affects the price of English books?—That is true; it does not.

2525. Are you aware at all of the profits made by writers in France; do you think that the average profits made by writers in France are equal to those made by writers in England?—I am hardly prepared to answer that question. I fancy that, the same as here, certain popular writers get large sums, but that writers who are not popular get nothing. The booksellers are the people who suffer. Unless authors who are not known write in periodicals they cannot get a publisher to publish their books.

2526. The fact of books being cheaper in France than in England produces a sale to the public without the intervention of circulating libraries, which probably remunerates the author as much as though the books were published at a higher price, and were circulated through the libraries?—As far as I know of publishing in France I should say that the circulation of books is very small; and I have found this great inconvenience, that books published in the provinces

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are frequently unknown in Paris. I have known a very good book published in Bordeaux which has been perfectly unknown in Paris. I think that the old system in England was the best in the world; it has been cut up of late years, but it is far better than the German or the French system. I am more acquainted with the German, although I have been more in France. In Germany the system is to send out all the books for inspection; at first sight it seems to have an advantage, but the practical result is most injurious, both to publishers and to authors.

2527. (*Dr. Smith.*) I understand you to say that the other countries would not be likely to adopt the period of 42 years, which is the term of English copyright?—I am talking of English-speaking countries; I do not care what France or Germany do with our books. I speak of the United States of America, and Canada, and the colonies.

2528. Are you aware of the term of copyright in the United States?—I am aware that it is very long. The Americans have not yet seen the folly of the protection system.

2529. Are you aware that the term of copyright there is the same as in England; namely, for 28 years, which can be renewed for 14 years more, which make 42 years?—I know that it is the same as in England.

2530. If it is the same as in England the objection which you make does not seem to apply, does it?—You will find that they will not agree to an international copyright at all, because they protect their own authors as we protect ours.

2531. I was not speaking of international copyright; you were saying that you thought that the term of copyright was too long in this country?—That is is my impression, that it is injurious in every way.

2532. You say that it is too long in this country. Taking the three other greatest countries of the world; in the United States it is the same as with us; in France it is longer, it is for life, and 50 years afterwards; in Germany it is for life and 30 years afterwards; are you aware of those facts?—I have heard them before.

2533. Then your argument that copyright is too long here would seem to imply that copyright in this country ought to be shorter than it is in the United States, France, and Germany?—I want, if possible, to have a copyright extending all over the English-speaking countries, and I think that neither the colonies nor America will consent to such a lengthened period.

2534. Is it your opinion that copyright in this country ought to be shorter for books produced here than it is for the United States, France, and Germany, for books produced there?—I do not see any particular reason, one way or the other, why it should be so, but I still think that it would be an advantage to have it so. At all events, from long experience as a publisher, I am quite certain that an author who sells his copyright gets no more for a copyright lasting 50 years than for a copyright lasting five years. No publisher can speculate upon the chances of what a book may be worth at the end of five years. If he cannot get his money back in five years he cannot get his money back at all.

2535. When Mr. Longman and Mr. Murray were examined before the Commission, they stated that it is a very rare thing for them to purchase the work of an author; that it is their practice to divide profits, and that in the case of many books at the end of 30 or 40 years, taking such works as Hallam's works, and also works of which the copyright has run on for a very long period, such as Mr. Grote's History of Greece, they divide annually very large sums with the authors, so that it seems to me that in reality they do give a great deal more for a copyright of 50 years than for one of five years?—Yes, but that is in the case of a successful author, who has not sold his copyright.

2536. If you shortened the period of copyright would not those authors be deprived of a very considerable sum which they are now in the habit of receiving?—A few successful authors undoubtedly would, but I think that for the benefit of the less successful authors there should be a better chance given.

2537. You think then that the successful author ought to be mulcted in favour of the unsuccessful?—I think that that is putting it rather strongly; that is not exactly the view which I should take. You rather surprise me by saying that both Murray and Longman state that their *usual practice* is to divide profits; my impression was that they bought copyrights to a large extent—they are just the persons who benefit most by the long copyright. It must depend upon circumstances; but authors are commonly poor, and if a book is worth money they will sell the copyright out and out. My own practice was to publish on commission.

2538. If you published for an author on commission he would derive more profit from a work for which the sale continued for 12, 15, or 20 years, than from one for which the sale was for a shorter period?—Certainly; but in the meantime the public are paying a much higher price for the book in consequence of its being copyright.

2539. Do not they pay a high price to a manufacturer who manufactures his goods?—A manufacturer has a patent for five years, but not for 50 years.

2540. I am not speaking of a patent?—It seems to me that a patent and a copyright are much the same thing.

2541. I am not speaking of a patent at all. Why should you make a particular exemption as regards literary property more than as regards any other property. On what grounds would you compel an author to part with a portion of his property when you do not compel another person to part with any other property?—My idea is that a copyright is very much the same as a patent, and should be limited like a patent. There are books which are extremely rare books of genius, and the greater period which you can give in those cases the better, but a vast number of books are as much manufactured articles as anything manufactured for sale. A patent is restricted to a certain limited time, and the public have not to pay the price of the patent for any great length of time.

2542. (*Chairman.*) Have you any further view which you would like to state to us?—I think that the system of tying up a book for such a length of time, increasing the price of it to that extent, is injurious in many ways; it prevents the formation of libraries, and it is a detriment to publishers to a great extent; they have not the opportunity of pushing a book in the way that they could otherwise do.

2543. (*Mr. Daldy.*) I think you told us that the effect of the copyright law was considerably to keep up the prices?—To a very great extent indeed; books in this country are very much dearer than in other countries.

2544. Are you aware that novels and popular books of that class are generally reduced in price according to their popularity after a number of years, even whilst the copyright is in existence, and are distributed through bookstalls and other agencies?—That may be the case because there is no demand for them at a higher price.

2545. I think you have said that they will not accept our copyright laws in Canada. Are you aware that a new law has been made in Canada within the last 18 months?—No, I was not aware of that.

2546. You have suggested that in an international copyright with America we should send over moulds to them?—That is an arrangement of the printers and the authors. I suggest that it would be a natural thing to do, to save expense to all parties, if there were an international copyright.

2547. Are you aware that the last committee appointed on the subject in America made it a *sine quâ non* that the book should be entirely reproduced over there, including not only the re-setting of the type, but also the production of the engravings?—No, I had not heard that.

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2548. (*Sir H. Holland.*) I did not quite catch what you said about Canada; did I rightly understand you to say that, as regards Canadian copyright, you thought that the Canadians would not approve of the principles of the English law?—I have understood that they would not. I have understood that in Canada they use entirely American books, and that English books are not used at all.

2549. Those books come into Canada under what is called the Foreign Reprints Act, but are you not aware that the English Copyright Act runs in Canada?—Yes, nominally, but I do not think that it is enforced anywhere.

2550. (*Chairman.*) Are you not aware that it also runs in all the colonies, in Australia, and so on?—Yes, nominally, but I do not think that it is enforced or can be enforced.

2551. (*Sir H. Holland.*) As a proof that it has been enforced, I would refer you to the Foreign Reprints Act. If the English Act had not been enforced there, foreign reprints would have been sent in without the Foreign Reprints Act?—My impression was that it was not enforced.

The witness withdrew.

Adjourned to Tuesday, 7th November, at half-past 2 o'clock.

Tuesday, 7th November 1876.

PRESENT:

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

The Right Honourable the EARL OF DEVON.
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR LOUIS MALLET, C.B.
FARRER HERSCHELL, Esq., Q.C., M.P.
EDWARD JENKINS, Esq., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
J. LEYBOURN GODDARD, Esq., Secretary.

JOHN HOLLINGSHEAD, Esq., and AUGUSTUS WILLIAM DUBOURG, Esq., examined.

J. Hollingshead, Esq., and A. W. Dubourg Esq.

7 Nov. 1876.

2552. (*Chairman, to Mr. Hollingshead.*) You are an author, a journalist, and a theatrical manager?—I am.

2553. Your attention, of course, has been attracted practically to the subject of copyright as affecting the drama?—And literature as well, for some years past; 12 or 14 years past.

2554. Are you able to give the Commission your views as to the protection which English authors who first publish their works abroad now receive under the existing law?—I think they have no protection in England as far as my experience goes. To take the drama (which I suppose I can speak about more than anything else), if a drama is first represented (which is equivalent to publication) in the United States, an author who is an English subject loses his copyright in this country. Mr. Boucicault found that to be the case with the "Colleen Bawn" and other plays which he produced first in America; and there is a lawsuit now pending with reference to the "Shaughraun," I believe, which was also first produced in America and afterwards in this country.

2555. With the United States you are aware that we have no copyright convention?—No.

2556. But take the other countries with which we have conventions, does your answer apply to those, or merely to the United States?—I am only speaking of the United States now. The common law in the United States and the practice in the United States seems to me to be more just to the author than it is here. For example, had Mr. Boucicault first produced the "Colleen Bawn" in this country and not printed it as a book, he would have been held under the United States law not to have dedicated that work to the public, and his copyright in the United States would have been secured to him, although the piece would have been first performed in England. But as he first played it in the United States he lost his copyright in it in this country. We have no theory or practice here about the dedication or non-dedication to the public. That is the phrase which they used, I think, in a judgment which was given in the United States in Palmer *v.* De Witt. It was held that the book not having been published,—not having been printed,—it had not been dedicated to the public, and was still the private property of the author. The printing of it puts it upon another basis altogether, according to he American view. I should like to see something like this established in this country for the benefit of authors.

2557. (*Mr. Trollope.*) That is not the English law at present?—That is not the English statute law as expounded in a decision of Vice-Chancellor Page Wood's in the "Colleen Bawn" case.

2558. (*Sir H. Holland.*) What actual benefit would you gain by having the American law adopted here, and representation not being held to be publication?—In the case of a play like the "Colleen Bawn" you may be dealing with a property worth 50,000*l.* Probably Mr. Boucicault from first to last has received from 50,000*l.* to 60,000*l.* for that piece—not for the play alone—but for the play and his acting in it together.

2559. (*Mr. Trollope.*) You mean that an English author who had written a play and had had it acted in America first, and the play not having been printed or published, would, if your recommendation was acceded to, still retain his copyright in England?—Yes; and by giving him that advantage you would be doing nothing more than the Americans do for you.

2560. (*Mr. Herschell.*) Then do I understand you that "Colleen Bawn" had not been printed or published before it was represented in this country?—I do not know whether it had been printed in the United States or not.

2561. It had not been published except in the sense of having been represented?—No; I believe not.

2562. (*Chairman, to Mr. Dubourg.*) Will you state your opinion on that question?—It is very hard, it seems to me, that your own country should take away your copyright because the play has been represented in the United States, or in any other foreign country.

2563. (*Mr. Jenkins, to Mr. Hollingshead.*) As a fact, supposing that a piece is first dramatically represented here, you can get a copyright for it in France, can you not?—You can get a copyright for it in France.

2564. If, on the contrary, it is represented first in France, having been written by an English author, could you then get a copyright for it here?—I do not know; that question has never arisen, I think. I think Vice-Chancellor Page Wood said that the object of the Copyright Act was to secure to this country the benefit of first representation: that was the phrase used.

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J. Hollingshead, Esq., and A. W. Dubourg, Esq.

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2565. In your opinion, is that a fair thing on principle; do you, in fact, support the principle of Vice-Chancellor Page Wood, as laid down in that case?—No, I do not think I do.

2566. It would be important for us to get reasons for that; perhaps you can say why you do not?—I think it is an injury to the author, who loses valuable property.

2567. Does it occur to you that there is any practical benefit to this country in enforcing that principle; does it occur to you that what Vice-Chancellor Page Wood lays down as a principle, that the object of the copyright law is to secure first publication in England, really is a consideration which ought to be taken in view in making copyright law?—I do not think it is of much consequence to the country whether it is first produced here or there.

2568. Then, looking at it from the author's point of view, you have not any question about it, as I understand you?—It is an injury to the author, certainly, to deprive him of copyright on the ground of foreign publication.

2569. Then there is another question. It arises out of that phrase 'not dedicated to the public." Would you advise that we should have the same distinction here as they have in the United States with regard to that?—I think so; I think it is a very good distinction.

2570. How would that work out in practice, what is the practice now with regard to plays. The manuscripts, I suppose, are handed over to the proprietor, or to the stage manager, or whoever it may be that takes them, and they are not published; no other copies are made?—They may be printed; the printing is not a publication if the copy is marked "private," and stated to be the private property of the author. These actions in America were brought on printed copies, but they were only printed for the purpose of stage work; not published in the full sense of publishing,—not sold to the public.

2571. Then there are some cases which I have before me, those cases in which Russell, the song-writer, sued one or two men, the cases of Russell *v.* Bryant, and Russell *v.* Smith. In those cases I apprehend that there had been a previous publication of the song in print?—Yes.

2572. Then if a man publishes a song in print, is it not to be taken that the public generally may use that,—may sing it?—No; under our law the right of representation does not go with the purchase of the printed copy.

2573. Is it not necessary, therefore, that there should be a rule laid down with regard to that?—Probably yes. There is much litigation going on now on that very point, I think, in connexion with concerts and music halls. People buy a song and think that they thereby get the right of singing it.

2574. Is it not the fact that if you buy a song, you have a right to sing it in private rooms, but you have not the right to sing it or perform it in public?—Yes.

2575. Is there not again a difficulty that arises out of the question of the definition of what is a public place of entertainment?—Well, I suppose it is a place where money is taken for a public performance of some kind.

2576. Could you suggest any mode of more accurately defining the distinction between buying a song simply for the purpose of singing it privately, and representing a song at a public entertainment which has been printed and published for general use?—I think the dramatic copyright law affords full protection.

2577. But the question I wanted to ask was simply whether the definition of a public place of entertainment was now sufficiently clear to enable a judge to tell whether the law has or has not been infringed. Are there no difficulties about that now?—I do not know enough of the letter of the law to answer that question. I should say that there are no difficulties in defining a place of public entertainment. It must be a place licensed either for music or the drama. Either the 25th of George the Third, cap. 36, or the 6th and 7th of Victoria, cap. 68, would stamp the place either as a concert room or a theatre.

2578. (*Sir H. Holland.*) I understand that you object to the representation of a play being treated as a publication; that is your objection to the English law?—Yes, for international purposes; the representation of a play in America being treated in England as publication.

2579. There must be some publication of a play; what act should you consider a publication of a play?—The Americans evidently consider the printing of it as being a dedication to the public—a publication of it.

2580. (*Mr. Trollope.*) Do you mean printing or publishing?—The printing and publishing of it; printing for sale, publishing as we call it.

2581. (*Mr. Herschell.*) The representation of a play as regards dramatic copyright is analogous to the printing and publishing in the ordinary sense as regards a book?—In the wording of the Act in England it is held to be equivalent to that; representation is publication.

2582. You would suggest really a distinction between the law as regards the drama and the law as regards books, because if the representation be the mode in which the drama is published, then you would not permit that to deprive the man of copyright, although the prior publication of a book would?—The prior publication of a book would.

2583. (*Dr. Smith.*) If I understand you aright you complained of the great hardship to the dramatic composer, in the fact that Mr. Boucicault's play when performed in America deprived him of copyright here?—Yes.

2584. But I want to ask you this question; was it any greater hardship upon him than would be experienced by an English author printing his book in America first. If an English author prints his books in America first he loses his copyright here, does he not?—Yes; but I think that ought to be altered.

2585. I mean that there is no greater hardship upon an English writer of a play having it performed first in America, than there is upon an English author printing his book first in America, is there?—None whatever.

2586. I thought you mentioned that as a peculiar hardship upon dramatic authors?—I mentioned that, because it leads up to a decision of the American courts. We have never, I believe, raised such a question about the first publication of a book in America. I suppose if a book is printed and published there the copyright is lost here. But while Mr. Boucicault, by his first representation of the "Colleen Bawn" in America, lost his copyright in it, Mr. Robertson's assignees retained their copyright in "Caste" under the decision of the American law-courts, notwithstanding the first representation of it here.

2587. Do you mean to say that an Englishman had the power of retaining copyright in America?—The American law-courts held that, inasmuch as "Caste" had not been printed and dedicated to the public, the fact that it had been played for nearly two years at the Prince of Wales' Theatre here did not deprive Mr. Robertson of his American rights, that it was his own private property, and that that was what he sold to his assignee, and Mr. Palmer retained his rights as being the assignee of Mr. Robertson.

2588. (*Mr. Herschell.*) In fact they would seem to have adhered to what was formerly considered the law here and was altered, or, if not altered, set at rest by the statute?—I can hardly say set at rest. The American decision was given, I believe, under the common law of the country.

2589. (*Dr. Smith.*) Then the American law in relation to dramatic performances must differ from the American law in reference to books?—It must.

2590. (*Mr. Trollope.*) I suppose you mean to say that the damage arising to an author from this matter

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is more likely to occur to a dramatic author than to a merely literary author ?—It seems so.

2591. It is, I presume, more likely that an English dramatist should take his play to be acted in New York than that an English writer should take his book to be published there ?—Yes, or more likely that he should sell his play to be acted in New York after producing it here.

2592. His play is as valuable to him in New York as it is in London; whereas we know that his book is not so valuable to him; is not that so ?—Yes.

2593. (*Dr. Smith.*) If that is the state of the case it is a great temptation, is it not, to an English dramatic author never to print his play in England? They rarely do; no English dramatic author ever prints his book now—at least for some time. Mr. Byron and all dramatic authors now print their plays for private circulation or rehearsal, but seldom publish them.

2594. And is one reason for that, that they will obtain the copyright in America by not so publishing? —Yes. This system has so satisfied the American managers that immediately Mr. Byron, for instance, produces a play at any theatre, he gets a telegram from America offering perhaps a thousand pounds for the right of representing that play. They do not wait to see it; the moment they know its title, and that it is going to be produced, they send the telegram. Mr. Byron got a large sum from America for the comedy of "Our Boys"; he got it immediately on its production two years ago.

2595. So that it is a complete discouragement to publishing dramatic literature in this country ?—It is; it operates in that way now. Lord Lytton, if he were alive now, instead of publishing "Richelieu," and other plays of his, would print them for private circulation and not as literature; at any rate not for some time.

2596. (*Chairman.*) I will ask you to pass on now to the question of the dramatisation of works of fiction. Are you of opinion that the existing law is satisfactory on that head, or would you suggest any alteration ?—I have an opinion that it is very unsatisfactory, and I should like to see the English law in this case assimilated to the American law and the French law. The American law protects novels from being dramatised without the consent of the authors. The French law also secures to the French novelist what I believe the law calls the fruits of his labour, and in consequence no novel can be dramatised in France without the consent of the novelist. I think the general feeling of the literary world is with me on that point. I do not know whether you would take any abstracts of letters or not, but if you would I would hand some in as part of my evidence. They are abstracts of letters from George Eliot and others. (*The paper was handed in, vide Appendix.*) I got these letters at a time when I was testing this question. Some years ago, when I was connected with literature, with "Household Words," and other journals, I was also connected with "Good Words," and by the desire of the late Dr. MacLeod I wrote a story in "Good Words," which was so arranged that it could be produced almost verbatim on the stage. We both had our objects in this, which I need not now mention; but the story was so arranged that it could be produced bodily on the stage without the alteration of ten lines. This story in its dramatic form was sold to Mr. Toole, who undertook to produce it in Edinburgh, but he felt nervous about it and delayed the production, and at the same time some people connected with the dramatic profession heard of this story, and directed a piratical author, as the phrase is, to the original source, who turned it, as of course he could do, in a few hours, into a one act drama, and while Mr. Toole was hesitating, this piece was produced with great success all over the country. We brought an action against Mr. Younge, the proprietor of this piratical copy, to see if we had any copyright in it. The case came on in the Court of Queen's Bench before Lord Chief Justice Cockburn, and he ruled that a novel once published in this country (it was equivalent to that) was dedicated to the public, and any dramatic author could go to that novel, to the original source as he called it, of the fiction, and make any play that he liked out of it in defiance of the novelist. That was the law, he said; he did not make it; he was only there to say what it was. We appealed; we got a rule *nisi*. It was very ably argued by Sir John Karslake, and we got it out of Chief Justice Cockburn, I think rather against his will; and when it was argued again in Banco, Chief Justice Cockburn, being one of the three judges, of course we were defeated again. We did not appeal to the Exchequer Chamber. It has cost us about 500*l.* to try the question, but we got the decision that a novel once published in this country is the property of everybody for the purposes of dramatisation. Toole v. Younge was the name of the case, and it is quoted in the law books. It was in 1874.

2597. (*Mr. Trollope.*) But I believe that the fact is now so well acknowledged that nobody questions that such is the law ?—Nobody questions it now, I should think. This case made it clearer, because it was not the mere case of a novel being taken and dramatised. If I take such a novel as one of Scott's I have to put a great deal of original work into it to make a drama out of it, and probably I am entitled to some copyright in it even without the consent of the novelist. But this was a story which it was only necessary to take as it stood. It was put in such a dramatic form that the man really had only to copy it from the magazine to make a play of it. You yourself, I believe, have a grievance on this very point, a novel of yours having been, by a mutual friend of ours, turned into a play. I thought at the time it was with your consent, but you were away in Australia at the time it was done. Then there was a letter the other day from a lady who writes in the "Times" under the *nom-de-plume* of "Ouida," with reference to a play founded on a novel of hers called "Strathmore." She was abused for faults in the play which she said did not exist in the novel.

2598. (*Chairman.*) Is the converse of the proposition true, that any drama may be turned into a novel? —No, not if the drama is published; in the case of a play also they must not print. If they print the play that they found upon the novel, and you can find 10 lines in that printed book that are in your novel, of course you get a remedy under the Copyright Act, for "multiplication of copies," as the phrase is; but as long as they only adapt and have their work copied for purposes of rehearsal, it seems that they have the right of representing it in defiance of you.

2599. (*Sir H. Holland.*) You seemed in one part of your evidence to draw some distinction between dramatising a novel like one of Scott's, where a good deal of original work would have to be produced, and dramatising other stories which are themselves so framed as to require very little alteration in order to be dramatised; but I presume you would not have that distinction made in the law ?—No. I merely mention that *en passant*, because a thing like this in "Good Words" never occurred before probably, and never may occur again.

2600. (*Mr. Herschell.*) The distinction which you have drawn might affect particular cases where you publish a play, because there might be a play founded on a novel which was yet so independent a work that it would not be an infringement of the copyright ?—Yes; only a slight infringement. The French law protects the novelist in the way I want the English novelist protected, and the American law also protects him.

2601. (*Chairman, to Mr. Dubourg.*) Would you like to give any evidence upon this branch of the question ?—My case, I think, illustrates very strongly the present unjust state of the law. The story of "Vittoria Contarini," published during the present year, is taken from a play of the same title which has never been acted. According to the present law, any-

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body might take that story and dramatise it, and, like Mr. Hollingshead's story, it is written almost in dramatic form. In the present state of the law, therefore, it would be legal for anybody to adapt a play almost verbatim from a story, the dialogue of which story is in great measure identical with the very dialogue of the author's own play. I have done all I can to preserve my dramatic rights in my story. I have printed and published the play; but I am told that there are still doubts as to whether I have secured myself legally against the production of a dramatised version of my story which, as I have already stated, is in effect the original drama itself. This is a point on which there is a great difference of opinion. In any event, my efforts to secure a doubtful protection have obliged me to incur the cost of printing and publishing the play; but this print, owing to the many alterations that would necessarily be made in the text during rehearsal, is practically useless; thus I have been put to the expense of printing and publishing a MS. not ripe for press, and I am by no means certain that I have thereby succeeded in preserving my rights in the dramatic form of my idea.

2602. (*Sir H. Holland.*) You are not quite sure that a play may not be made out of it?—I am not quite sure that a play may not be made from my story although I have published the play from which the story was taken.

(*Mr. Hollingshead.*) Chief Justice Cockburn held that although an author may have dramatised his own story still that did not debar the public from dramatising it if he had not produced his play—if he had not had it represented.

2603. (*Mr. Jenkins, to Mr. Hollingshead.*) They could not dramatise it in exactly the same form; they could not use the same words, could they?—They might use every incident, every character, every name, every word on the stage, as long as they do not publish it. I may mention that the late Mr. Dickens's grievance on this point was very great, because he found, publishing in a serial form, that when he had got to about 15 numbers out of 20, the dramatist at the Surrey Theatre took the liberty of finishing his novel in his own way as a new drama three months before Dickens had finished it himself.

2604. (*Sir H. Holland, to Mr. Dubourg.*) Do you entirely agree with what Mr. Hollingshead has said on this subject?—Entirely. And, in addition, I contend that an author, if there be a law of copyright, is entitled to the full fruits of his creation, and that he ought to have the right of shaping his ideas either into the narrative or book form of expression, or into the dramatic form.

2605. (*Chairman.*) In the event of the protection which you suggest being given, would you attach any period to it during which the original author should have the right of dramatising his work?—I should take the ordinary law of copyright.

(*Mr. Hollingshead.*) The practical operation would be this; if there were this protection the dramatist would have to ask the consent of the novelist, and would do so; arrangements would be made between them, and that would not prohibit adaptation.

2606. (*Mr. Trollope.*) Is there any reason why an author who writes a novel should not retain the right of dramatising that novel as long as he retains his copyright?—No.

2607. (*Chairman, to Mr. Dubourg.*) Therefore, in the event of the original author declining to have his novel dramatised, in your view that prohibition should be co-extensive as to time with the copyright?—That is my view.

2608. (*Mr. Jenkins, to Mr. Hollingshead.*) Then I should like to ask you on what principle you can defend that. Supposing that the object you have in view is simply to protect a certain right, namely, the author's right, the author's right is only valuable if he wishes to use it for the purpose of dramatisation, or to let another person use it for the purpose of dramatisation; but what injustice can there be in imposing upon the author certain limitations with reference to the exercise of that right?—It may injure the novel, as in the case the other day of Ouida's novel. She considered that her novel was injured by the production of the play.

2609. Do you not think that that case would be amply met, supposing you were to fix a period, say 5 or 10 years, within which the novel should be protected, and that afterwards it should be open to anybody to use it for general purposes?—On principle, I might say no; but as a matter of expediency, I might say yes. I am always, in matters of legislation, in favour of getting half a loaf if I cannot get a whole one.

2610. (*Mr. Trollope.*) Do you not think that a novel might be made ridiculous by being dramatised?—Yes.

2611. And do you not think that the author of a novel should be able to protect himself from that evil?—Yes. Your book, for instance, which Mr. Reade dramatised, was accused of obscenity; you said that the obscenity did not exist in the novel; and that question has never been settled to this day.

2612. Do you not think that the author of a novel should have the power of choosing in some degree the dramatist who is to represent his work, so that he should be able to reject this or that artist, even if it be only with the object of having the work done by someone else in whom he may put greater trust?—Certainly.

2613. (*Mr. Jenkins.*) Do you think it is the business of the law to protect an author from having his works made ridiculous; would not that apply equally to criticism as well as to dramatisation?—I think if you grant copyright at all you should grant it as perfect as you can; either take it away altogether or make it as perfect as you can; and there is no reason why England should be behind France or the United States in matters of copyright equity. I do not know the letter of the law in America, or the letter of the law in France, but I believe the power over the novel in both countries runs on all fours with the copyright.

2614. (*Sir H. Holland.*) In America the authors may reserve the right to dramatise or translate their own works?—Yes, and in France the right is reserved to them.

(*Mr. Dubourg.*) I was informed at the French Dramatic Authors' Society that there is no law in France against dramatising a work of fiction, but that full protection is afforded to authors under the law of French copyright, which assures to an author the fruits of his creation, whether in literary or dramatic form.

2615–6. (*Mr. Jenkins, to Mr. Hollingshead.*) I see from a book before me that in the case of Reade *v.* Lacy, Vice-Chancellor Wood decided that the author of a play who afterwards turns it into a novel does not forfeit his right to prevent piratical imitations of the play, although no action may lie for dramatising a novel as decided in Reade *v.* Conquest. I understand you to say that supposing a man dramatises his own novel and publishes in it certain words exactly as they are in his novel, nevertheless another man may reproduce the very same words and the same conversations in another play?—If he publishes the novel first. In the case in question the drama was produced before the novel.

2617. Yes. I was taking the converse case. But supposing that I write a novel which I dramatise, and that many of the scenes and words in the play are a reproduction of scenes in the novel, and that I publish it, do you mean to say that then it would be open to any other person to reproduce the drama in almost exactly the words of my dramatic piece, because the same words happen to have occurred in the novel?—Yes.

2618. Can you give us any case to support that?—The case of Toole *v.* Younge, and the judgment of

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Chief Justice Cockburn, who said that the original source is always open to anybody, and that the fact of the author of a novel or story having dramatised it does not debar anybody else from dramatising it, and using anything he can find in it.

2619. But in that case, I understand the author had not dramatised the piece himself, and had not published that drama?—But Chief Justice Cockburn went outside that fact; he laid it down that a novel once published was open to all the world to be dramatised under the existing law.

2620. (*Dr. Smith.*) Even if the author himself had dramatised it?—Even if he had; he was only one of many who might have dramatised it, and it does not follow that the author of a novel will make a good play out of it.

2621. (*Chairman.*) With respect to the existing copyright convention between England and France, are you satisfied with it, or do you suggest any alteration?—I think it may be extended and improved. I do not see why the copyright between England and France should be limited to five years, why it should not run for the full period of English copyright; and I do not see why French music is protected in this country for 42 years, while the French words which go to the music are only protected for five years. For example, take a play like the "Grand Duchess," which is not only an opera bouffe but a comedy in itself; the copyright in that play as a comedy has expired in England, it is open to anybody, but you must not play a single note of the music for 42 years; as a play you can use it to-morrow.

2622. (*Mr. Herschell.*) And you can set it to other music?—Yes; but the original music is protected for 42 years, and I cannot see the distinction.

2623. (*Mr. Trollope.*) What do you recommend?—To have one copyright for music and words, and extend the five years, which is the term which exists between France and England now, to 42. Give them the full benefit of English copyright law, and probably we should get reciprocity on the other side in exchange. And then there is another mechanical point. During the time that the late convention was being altered, and beneficially altered, by the repeal of that clause authorising what are called "fair adaptations," I was a good deal in communication with Mr. Calcraft and other gentlemen of the Board of Trade, and I suggested with reference to plays, that the onerous duty of publishing within six months of the first representation a perfectly worthless literal translation in order to secure the copyright, should be got rid of. If a play is produced in France, I think within three months you have to register, and within six months you have, if you wish to secure the copyright, to print and publish a literal translation of that play. This translation costs you probably 20*l.*, and is utterly worthless; but it is necessary for the purpose of registration, to secure the copyright. You have to sell or give away two or three copies, and deposit one at Stationers' Hall, and then the copyright in that work is supposed to be secured; but not before you have published this worthless literal translation, which involves trouble and expense, and does no good. It seems to me that it could be done by a much simpler process; however, that provision was not struck out.

2624. (*Chairman.*) Would you state the simpler process which you would recommend?—A mere registration would be sufficient, I suppose.

2625. (*Mr. Trollope.*) Is it necessary that that translation should be published?—Yes.

2626. And put up for sale?—You must sell or give away two or three copies. You must go through a form of publication.

2627. (*Chairman.*) I understand you to say that it must be legally published?—Yes; and then that literal translation is useless, because having bought from the French author the right of adapting his play, you have to begin *de novo*, and an adaptation is a very different thing from a literal translation. There are not probably five per cent. of the plays produced in France which are fit for England, or would be of any value in England; but if you were to buy them all, you must publish these literal translations of them all, and the result is that you may spend some 700*l.* or 800*l.* in translations before you really secure the one play that is of any value.

2628. And if those translations were really published, there probably would be a great outcry on the score of morality, would there not?—Yes; they are privately published.

2629. (*Sir H. Holland.*) You would propose with M. Gavard that a certificate from some recognised authority that the requirements of the local law had been complied with should be sufficient to secure the copyright here, and *vice versâ*?—Yes.

2630. And that is, I think, the state of the law as between France and Bavaria, and a great many other countries, that a mere certificate is sufficient to secure the copyright?—No doubt it is much simpler than ours. I am not at all astonished to hear that it is what you say.

2631. In fact a publication of that translation is, as I understand, only necessary if the author wishes to reserve to himself the right of translation?—I am speaking of plays, you must understand, in connexion with that regulation. I believe with novels it is different. I think with novels you have to exercise the right of translation partially within a year, and wholly within three years, and I think in novels you get 28 years copyright.

2632. For a foreign author to secure a copyright in his book, it is not necessary for him to publish any literal translation?—No, I believe not; no preliminary and mechanical translation.

2633. But if he wishes to secure to himself a right to translate that book, then he has to publish a translation within a certain time?—Yes. I think his right to his French work in this country, as a French work, is secured for 42 years. If you do not translate out of the original language it runs the whole term of the copyright; if you do, then your translation of the words (I am now speaking of plays) is only protected for five years; but your music, which is part and parcel of those words, is protected for 42 years.

2634. (*Chairman, to Mr. Dubourg.*) Have you any observations to make upon this part of the subject, or do you agree with Mr. Hollingshead?—I agree with what Mr. Hollingshead has said, and have nothing to add.

The witnesses withdrew.

Tom Taylor, Esq., examined.

Tom Taylor, Esq.

2635. (*Chairman.*) I think you did not hear all Mr. Hollingshead's evidence?—No.

2636. The first part of it related to the case of a first performance of a dramatic work in America, and I think it is upon that subject that you wish to give evidence?—Yes, that is one point.

2637. Will you give us your view upon that?—By the legal construction of the 19th section of the International Copyright Act, which declares "that "neither the author of any book, nor the author or "composer of any dramatic piece or musical com-"position, nor the inventor, designer, or engraver of "prints, nor the maker of any article of sculpture, or "of such other work of art as aforesaid, which shall "after the passing of this Act be first published out "of Her Majesty's dominions shall have any copy-"right therein respectively, or any exclusive right to "the public representation or performance thereof, "otherwise than such (if any) as he may become "entitled to under this Act," it has been held that

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although we have no copyright relations with America under that Act, the first production of a piece in America destroys copyright here. I think it is difficult to imagine that that was the intention of the framers of the statute; but that has been so held by Vice-Chancellor James in the case of Boucicault v. Delafield. I derive no benefit from performance of "Our American Cousin" in this country, because it was first brought out in the United States.

2638. (*Sir H. Holland.*) Because our law holds that representation is publication?—Yes; but Vice-Chancellor James said this: "Although it is not for " me to comment upon the act of the legislature, it " seems possible that exact justice would be completely " meted out if this excluding clause had been ex- " tended to all nations with whom such negotiations " had been entered into;" that is to say, if the clause had been confined to nations having copyright relations with England under the Act. But since it has been held to be perfectly general the result is that if I publish my play in America first, I mean if I sell it to be performed there, my copyright here is destroyed. Now, I could perfectly well make bargains with the American managers for my play independently of the copyright altogether, by private arrangement; but so long as my copyright here is destroyed by a first performance in America, of course I cannot safely do that.

2639. (*Mr. Trollope.*) If your play were performed here one day before its performance in America then your copyright would be complete?—Yes, but that is often impossible to secure. The only way of avoiding the effect of this clause of the Act is by simultaneous performance, and that is practically impossible to arrange, so many things may prevent the performance of a play on a particular night. You might secure it in certain cases, but you could not rely upon it. Literally, the effect of that clause is as if the legislature had enacted a modification of the old proverb, that no bread is better than half a loaf; that is what it comes to. The importance of producing your play first in America is this, that you thereby give the American manager such a right as it is worth his while to pay for. If your play is first produced here, the American agents are on the alert to take surreptitious copies of your play, or to secure such copies through copyists, or other unauthorised persons, and they sell that copy, often an imperfect one, to the American managers. In the case of every successful play that is brought out there is an advertisement issued in America of certain agents ready to sell copies. Though my plays are constantly being performed there, so that I ought to derive as large an income from America as from England, or larger, because there are more theatres there, and on the whole plays are better paid for, I now receive nothing.

2640. But if the law were altered as you propose, still no copyright would be obtained in America?—I do not want copyright in America; all I want is the power of making a bargain there without destroying my copyright here. I could make a very good thing out of America by such bargains, even without copyright.

2641. (*Chairman.*) That you would obtain by altering the law here, and not necessarily through any convention?—No, purely by limiting that clause of the International Copyright Act to countries having copyright relations under the Act, as in justice and reason I think it ought to be limited.

2642. (*Mr. Trollope.*) Your play might be acted at one theatre in New York with your authority, and yet be brought out at any other theatre in New York without your authority;—might it not?—No, the American manager could defend himself. In the case of a play of mine, which I sold to an American actress, though it had been acted here, the American actress to whom I sold it, Miss Bateman, brought an action against an American manager who played it without her consent, and sustained her right.

2643. Then American managers must have some right to dramatic works superior to that which American publishers have in literary works?—That I do not know. I only know the fact in the case of Miss Bateman, that she did defend her right in regard to a play which I had sold to her, not to a manager at all. She was herself acting in my play. The right of exclusive acting in my play was a valuable right to her.

2644. If a manager of a New York theatre brings out a play of yours without purchasing it from you, but getting it in that piratical manner which you have described, would he be protected from other managers bringing out the same play?—I apprehend not, because he has acquired no right. In the other case there was something the owner of the play had paid for and so acquired a common law right to. At any rate I know, in the case of Miss Bateman, that she protected herself, for she sent me the papers and communicated the fact to me.

2645. (*Mr. Jenkins.*) I think that was not decided upon the statute law but upon the common law right?—Yes, the common law right of property.

2646. I wanted to ask you whether you saw any reason in principle or public policy why we should insist upon first publication or first representation in England at all in order to obtain a copyright?—It is held that first representation is first publication.

2647. I ask, is there any reason why we should insist, with regard to Englishmen, that first publication or first representation should take place in England in order to give an Englishman a copyright, when as regards authors of all the countries with which we have conventions it is quite the other way?—I do not myself see any reason.

2648. (*Chairman.*) Did you hear the evidence of the previous witnesses on the subject of the dramatisation of novels?—I heard the greater part of it.

2649. Do you generally agree with what you heard?—Quite. I think that the right of dramatising should go along with the other incidents of copyright.

2650. (*Dr. Smith.*) For how long a period?—For as long as the copyright lasts. I cannot conceive why it should be limited.

2651. If the author refuses to have his work dramatised, in what way would he be injured, while the public might be benefited, by the work being dramatised by another person?—Because his work may be made ridiculous, and its whole grace and beauty destroyed by dramatisation. I know an instance of a very distinguished author who has set her face entirely against dramatisation of her works, and that is Mrs. Lewes—George Eliot; she conceives that the qualities which give her works their chief value are not such qualities as could be conveyed in a dramatic representation, and therefore she refuses altogether to allow the dramatisation of her works.

2652. (*Sir H. Holland.*) You have said that the right to dramatise should be confined to the author. Take the converse case; supposing a person publishes a play and has it represented, would you give him the right to prevent anyone writing a novel upon that play?—Certainly; I have myself given leave to authors to do that with plays of mine.

2653. (*Mr. Trollope.*) That prohibition exists at present does it not?—I do not know that the point has been decided.

2654. (*Mr. Jenkins*) I want to ask you a question or two about that principle. Do you think that it is consistent with the objects of the copyright law to protect an author from having his works made ridiculous?—It is the object of the copyright law to protect an author from having his rights infringed in any way, and being made ridiculous is such an infringement, as it seems to me.

2655. Is it not simply and solely the object of the copyright, for the purpose of encouraging literature, to protect the man's rights for a certain time in a statutory property?—And one of his rights, I take it, is not to be made ridiculous, except by his own act or consent.

2656. But if it is simply the object to protect property, do you think that the law should go any further than endeavouring to protect it, and that it should

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Tom Taylor, Esq.

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deprive the public, for instance, simply because it is a man's feeling that he would not like to have his work dramatised, of an opportunity of dramatising a work that might be a very dramatisable work?—I certainly think so. The value of the author's work in his eyes, and, it may well be, in those of the public, depends upon its not being made ridiculous, and he has a right to protect himself against the injury to his work, the injury to his market, and the injury to his reputation, which would follow from unauthorised or unskilful dramatisation.

2657. (*Mr. Trollope.*) Is there any reason to suppose that the money value of a copyright is the only point which the law of copyright intended to defend?—I am not aware of any such limitation. It is a right of property, like any other right of property.

2658. (*Chairman.*) With respect to the existing regulations as to registration of works of foreign authors, have you any opinion to offer to the Commission?—I entirely agree with Mr. Hollingshead, that the less trouble given to the foreign author in that respect, beyond what is necessary to secure legal evidence of his authorship, the better; and that the conditions which support his copyright in his own country, and the evidence which is held to prove his copyright in his own country, should be sufficient to prove it here. I go entirely with what Mr. Hollingshead has said about the impolicy and futility of requiring deposit of a translation, and so on.

2659. And with respect to the translation of foreign books without the author's permission, can you express an opinion on that subject?—It seems to me in its nature very much like dramatisation. If the author, having a property in his book, has a property in the ideas which are conveyed there, he ought to have the power of choosing his own translator and agreeing with him, so long as he retains the copyright of his book. I would not limit that right as to time, and I would not require the deposit of a translation and the other oppressive formalities of the International Copyright Act any more in the case of a book than in the case of a play.

2660. (*Dr. Smith.*) A foreigner is not the best judge oftentimes of the language into which his work is to be translated; and may not this case occur, that a very bad translation of the book may be made, and the author is thus protected in this bad translation for 42 years, and the public are debarred from a good translation?—That is an inconvenience, but I am not aware that publishers are any more infallible judges of good translations than foreign authors are. One would not think so, to judge by many translations now published.

2661. But if publishers and authors have made mistakes, if a publisher has published a bad translation and an author has published a bad translation, there are means by other publishers and by the general judgment of the public of rectifying it at the end of five years?—I think if the author felt that his interest in the translation of his work was a valuable property, he would take pains to get a good translator. I think it would tend to encourage good translations, if you protected the author's right in this respect and freed him from all burdensome formalities and conditions.

The witness withdrew.

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

Wednesday, 15th November 1876.

PRESENT:

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

SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR LOUIS MALLET, C.B.
SIR JULIUS BENEDICT.
FARRER HERSCHELL, Esq., Q.C., M.P.
EDWARD JENKINS, Esq., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

The Rev. Canon FARRAR, D.D., examined.

Rev. Canon Farrar, D.D.

15 Nov. 1876.

2662. (*Chairman.*) I believe that your attention has been called practically to the operation of the existing law of copyright with respect to one or two works of your own production?—Yes.

2663. Will you tell the Commission how you find yourself affected by the existing international relations on the subject of copyright between this country and the United States?—I believe that books of mine have been published in American editions. I know of some which have been so published, certainly two, and I have heard of others; but I have hardly received any acknowledgment at all from America, and never any for an edition published without express leave.

2664. Have any overtures been made to you on the part of any United States publishers?—Yes; I received one not long ago from a firm of publishers who, seeing a new book of mine announced, wrote to me to ask whether I was willing to negotiate with them for its reproduction in America. They were said to be the only publishers in America who advocate international copyright. They have dealt very largely with leading English authors, and I believe always with satisfaction to the authors.

2665. Are we to understand that previously to the receipt of that application, other United States publishers had brought out editions of your works without your sanction?—Yes, of one book of mine, and I have reason to believe of several. I always find it very difficult to obtain information about American editions; I never can get to know the facts accurately.

2666. (*Sir H. Holland.*) Is it fair to ask what was the nature of the application; I do not ask you to put in the letter, but was it that you should allow them for a certain consideration to publish your book?—This application was for a new book which they saw advertised in my name, which is not yet written; seeing that it was advertised, their agent in England wrote to ask whether I should be disposed to negotiate with them for its republication in America, entirely reserving American rights in any bargain with the English publisher.

2667. Then did they wish to secure another copyright in your book?—No.

2668. Did they merely wish to get the priority of publishing it?—That is all, I imagine; that is all that appears in this letter.

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2669. (*Mr. Trollope.*) They could not, I believe, have got any copyright?—No, I suppose not at all.

2670. (*Sir H. Holland.*) Are you aware of cases where terms have been arranged between American publishers and English authors, whereby, in consideration of a certain sum of money, the American publisher has had the priority of publication in America, and has had the sheets sent to him and been able to publish in advance of other publishers?—Yes; I believe that that is a very frequent arrangement. This letter says that the writer has been in treaty with another author for a book, that he reserves his American rights, and that the consequence is that he gets nearly 800*l.* profit from America. The writer of this letter says, "Your 'Life of Christ' should have brought "you in from the United States some hundreds, if "not thousands, of pounds already;" it has brought in 50*l.* The book which I now produce is a pirated edition, which I know from other sources has been sold very largely, and I have never received a single farthing for it, although I actually wrote to the publishers.

2671. Was the 50*l.* which you have mentioned received from an American publisher?—Yes. My publishers say, "Preparatory to the issue of the Eng-"lish edition of Dr. Farrar's 'Life of Christ,' Cassell, "Petter, and Galpin by their agent in America com-"municated with some of the leading publishing "houses there, to try to make arrangements in the "usual way for the supply of 'advance sheets.' This "is the general, and indeed the only, means by which "the owner of copyright in England can practically "obtain in the United States any remuneration for "his work worth mentioning. But no American "publisher was found willing to undertake the risk. "The only arrangement that could be made was with "Mr. Dutton of New York, who undertook to pur-"chase from Cassell, Petter, and Galpin printed sheets "at a percentage upon the cost of paper and print, "the American publisher by this arrangement saving "the cost of composition, and hoping thus to be able, "by selling the book at a low price, to keep off com-"petitors. In this, howev , he did not succeed, for "a pirated edition appeared, published by Wendall of "Albany" (that is the edition which I have here), "over whom, of course, neither Cassell, Petter, and "Galpin nor the New York publisher could exercise "any control whatever. The sale of the pirated "edition has, it is understood, been large. It should "be mentioned that Mr. Dutton, when Cassell, Petter, "and Galpin suggested that he should send some "voluntary recognition to the author, did forward "Dr. Farrar the sum of 50*l.*"

2672. You have said that the publishers who applied to you are the only publishers in America who are in favour of international copyright; is Mr. Putnam a partner in that firm?—I do not know that; my only authority for that statement is this letter.

2673. (*Mr. Trollope.*) Does the letter contain a statement that the writers are the only American publishers who are in favour of international copyright?—Yes.

2674. Have you any objection to saying from whom the letter is?—The writer is a perfect stranger to me.

2675. Have you heard of the house of Messrs. Osgood, of Boston?—Yes.

2676. Are you aware that they are in favour of international copyright?—No; I merely quote this statement. This letter was written in October last year, and it contains the statement I have mentioned.

2677. Was that letter written by an agent?—It was written by a friendly agent. He says that he knows them very well, and occupies, as a friend, the position of literary agent in England.

2678. (*Mr. Jenkins.*) Messrs. Cassell, Petter, and Galpin are, I suppose, your publishers here?—Yes.

2679. When the "Life of Christ" was sent over, and negotiations were entered into by them, your name, probably, was not known in the United States?—It must have been known, at least I have had numbers of letters from America about different books.

2680. Taking the statement as it is given in the letter of the publishers, they were not able, on the strength of your name, to negotiate with any American publisher?—I expect that that was because at the same time a book of exactly the same kind, and with the same title, was being published by Dr. Beecher, which has since stopped short.

2681. But now you would not have any difficulty, I suppose, in negotiating?—Not the least.

2682. If you wished to make arrangements with American publishers upon the understanding that early proofs were to be sent, you could very easily get a royalty upon any book which you chose to write?—You must reserve your rights specially with an English publisher, if he has a house in America, which several English publishers have.

2683. Supposing that your English publisher has no rights in America, and that you have no engagement with him which involves American rights, you would be perfectly free to make arrangements in America with any American publisher?—Yes, for the early sheets.

2684. And you could make fair arrangements?—I never had the experience, and therefore I cannot say.

2685. For instance, do you know what the percentages are which the American publishers pay upon early sheets?—No. I have reason to believe that some English authors receive very high sums from America, but I have not made special arrangements; I am totally unacquainted with the whole publishing business.

2686. Have you any reason to think that there is any practical injustice done to you in the existing state of the arrangements?—I think that there must be injustice, because I know that, for instance, my "Life of Christ" is very largely circulated in America, probably bringing in a profit to somebody of thousands of pounds, and all that I have received is 50*l.*

2687. (*Mr. Trollope.*) You have been asked by Mr. Jenkins whether you do not think that you could make fair arrangements. Have you ever had in your mind any idea of what would be fair arrangements?—No. I have never written with the primary object of gain, and therefore I know nothing about it.

2688. You have said that you have heard that other authors have received very large sums from America?—Yes.

2689. Have you any idea of the percentage upon their English profits which they have received?—No. When the secretary wrote and asked me to give evidence, I told him that practically I was entirely ignorant of the whole matter, though of course I was willing to come if the Commissioners wished me to do so.

2690. If you heard a popular author had received 1,000*l.* for a book here and had received 200*l.* for the book in America, you might think that that was a fair arrangement?—I am not in a position to say at all. I do not know anything about the American trade and the profits which they make.

2691. You probably know that there are as many readers in America as in England?—I should have thought that there were more.

2692. And you know that books are sold in America to a greater extent than they are sold in England?—Yes, I have often heard so.

2693. Therefore would not you think that the profit to the writer of a book coming from America should be as great as his profit coming from England?—The books in America, I suppose, sell at a different price, and may not sell at so remunerative a price as in England.

2694. If the article was sold in a free market in one country and in the other, and if the demand for the book in one country was as great as in the other, you might expect that the profit would be the same?—At present there is a free competition in America,

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so that I suppose that they publish at the lowest possible remunerative price.

2695. (*Chairman.*) At what price is that pirated edition of your work sold in the States?—I am afraid that I do not know. I was told that it was sold at a good deal less than the English edition, but what the price is I do not know.

2696. (*Mr. Jenkins.*) Supposing that we took the rate adopted by American publishers as a royalty of 10 per cent. upon the retail price, do you think that that would not be as large a profit as you would get from any English publisher?—I am afraid that I am not in a position to answer that question. I do not know enough about it to do so.

2697. Have you formed any estimate of what percentage upon the selling price of your books you get from an English publisher?—No; I have generally published books by receiving a certain sum.

2698. (*Mr. Daldy.*) Have you had any experience in lectures which you may have given, which have been taken down and published without your consent?—Yes, both lectures and sermons, but they have never been taken down very accurately.

2699. They have not been taken down so accurately as if they had been issued under your own eye?—Not nearly so much so. I do not think that any lecture or sermon of mine has ever been published in a book or pamphlet form, but only in papers.

2700. Have you felt any difficulty in not having the power to control that being done; has it been done in cases in which you would rather that it should not have been done?—In the case of sermons it decidedly has been done. Sometimes a person has come to me after I have delivered a sermon, and has said, "Will you lend me the manuscript, I have taken it down, but it is very badly done," and knowing that it will be published in a bad shape if one does not lend the manuscript, to save one's self one lends it.

2701. It is practically extorted?—Yes.

2702. (*Chairman.*) Do you see any difference in principle between a sermon being reported, and reported perhaps inaccurately, and a speech delivered by a public man being reported?—It has always appeared to me that you cannot claim a copyright in sermons, that they are addressed to the public.

2703. (*Mr. Jenkins.*) Would you go further than that and say that you do not think that it would be expedient to have a copyright in such discourses?—I think that one ought to be able to have a veto upon the publication of a sermon, if one did not wish it to be published.

2704. In your opinion would the case be met, supposing that you chose to give notice beforehand that you did not wish the sermon to be taken down, and supposing that was to be held in law to be sufficient notice to everybody not to reproduce it?—I think so. As it is, as there is no law upon the subject, I have always assumed that anybody has a right to take down a sermon and print it if he likes to do so; but I think that it would be fair to be able to say beforehand that you did not wish it taken down and published, particularly as it is very often taken down extremely inaccurately.

2705. And you would be contented with that, without going to the full extent of saying that every sermon should be copyright?—Yes. I think that I should not go so far as that.

The witness withdrew.

ROBERT ANDREW MACFIE, Esq., examined.

R. A. Macfie, Esq.

2706. (*Chairman.*) I believe that for some years past you have paid attention to the questions of copyright, and patents, and designs?—I have as to patents; I have not gone deeply into the copyright subject.

2707. You have been good enough to furnish each member of this Commission with a copy of a book partially on the subject of copyright?—Yes.

2708. And I think that on the 296th page of that book you give a scheme of your own on the subject of copyright, containing the proposals which you would wish to see substituted for the existing law?—I do. (*The scheme will be found in the Appendix marked A.*)

2709. Do you wish to supplement that scheme by any further observations or arguments of your own?—I have not for a very long time read this scheme, and therefore it would be better that I should look it over to see whether there is any supplement or correction to be made to it. Having now looked at it, I have no doubt that some important modifications in detail could be introduced, but in principle I adhere entirely to what I see before me.

2710. Do you take that scheme as substituting what I see in the next page you call "the royalty principle" for the existing law?—Yes. Perhaps it is right to say that I regard this as a compromise, not unfair, and in present circumstances, expedient. It is possible that one might convince one's self by argument, that on the whole the interests of the public would be promoted by abolishing copyright; that, I believe, was Mr. Cobden's opinion; he told me he was against copyright; but I cannot say that that is the opinion which I at this moment entertain. I believe, however, that the abolition of the monopoly principle in copyright, and the substitution of the principle of a royalty,—that is to say, liberty to republish, accompanied with a remuneration to authors, in proportion to the number of copies printed for sale,—would be advantageous.

2711. At what figure would you fix the remuneration to authors?—It appears to me that five per cent., which I put in this scheme, would suffice. That is a matter of detail; some people might think that more might be given. I observe that in the various colonies, even 15 and 20 per cent. is spoken of, but that is 20 or 15 per cent. on a valuation, or upon the wholesale price. What I contemplate is five per cent. on the retail price; and one advantage resulting from that way of taxing a book is that it would induce some publishers, at least, to publish cheap editions, as they would have a less tax to pay; and in that way the great bulk of the population, the poor, might be supplied with books, who at present never see a new book.

2712. Are there any other conditions to which you would subject publishers under your proposed system, beyond that fixed payment of 5, or 10, or 20 per cent. royalty?—I have already indicated, in the page to which your Lordship has referred, that I think that no alterations should be permitted by a republisher, and I think that every transaction of this kind should have a very formal character. I think that books allowed to be reprinted on the system should be printed only by licensed printers, persons whose word and accuracy might be depended upon, so that if they said that they were going to print 1,000 copies, they would not print 1,200. I also think that there ought to be regular national registry offices; for instance, a registry office in Great Britain, another in the United States, a third in Canada, a fourth in Melbourne, and so on, where a person could negotiate the republication without requiring to correspond with the author or his assignee, the publisher, in Great Britain. I think it quite necessary, in laying down a principle of this kind, to make provision for exceptional cases; there may be, special cases now and then, such as costly books, books illustrated by costly engravings, or perhaps prepared by very expensive elaboration owing to their nature. I should be willing that there should be a special provision for these cases; the author should be able to say, "This book has cost "me so much, and it appears to me that I ought "to have a guarantee that the competition will not "commence until I am repaid a certain sum, or until "the edition which I am going to issue is worked off "by the publisher."

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R. A. Macfie, Esq.

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2713. Have you thought out to what body or to what official should be delegated the duty of deciding what these special works should be?—For my own part I should be perfectly satisfied with a commissioner selected by the Government, but that is quite a matter of detail. I think that anything would be better than the present absence of system; any means by which the public could be assured of cheaper copies and of a supply of books which they desired to read within a reasonable term of months or years at a moderate price.

2714. You would procure, as I understand you, that greater cheapness by inducing a competition between the publishers?—Precisely; and I think that the knowledge that the first publisher was exposed to competition would generally prevent actual competition from arising; he knowing what he was exposed to, would himself bring out at an early period a cheaper edition; he could do so with greater promise of advantage than any rival because he would be in possession of his stereotype plates, which, I suppose, he would take care to make. I should like, at this stage, to say that if we could cheapen books, we should, of course, greatly extend their sale, and therefore make it worth while for a publisher to stereotype every book. In the next room I have, in case the Commissioners desire to see it, although I do not think it necessary to trouble them with it, McCulloch's Commercial Dictionary, with a table of the cost of producing a book; in the first place 500 copies, in the next place 750 copies, and thirdly 1,000 copies. Now, to me, it appears absolutely ludicrous, when we know that the daily press issues hundreds of thousands of copies, that we should have fractions of a thousand for books. I have no doubt that if we had competition introduced, with such a system of royalties as I concur with others in favouring, we should have an increase in the sale of books such as we have had in the sale of newspapers by the changed system of that trade. In a great measure it is a change of system of trade, as much as legislation, that I contemplate; but I believe that this necessary and philanthropic change of trade will never be developed, and will never be sought by the parties most interested, unless there is a change in the law.

2715. Having told the Commission what conditions you would, generally speaking, propose to place on the publishers, have you any proposals to make as to increased facilities to be given to them?—I have just one or two things bearing upon that, which perhaps I may be allowed to mention. The first is this. I for very many years have desired to see introduced into this country a parcel post, and I believe that such accommodation to the public would be of immense benefit to them in the receipt of literature and books from London. At present they must go by the regular book post, and that is too expensive. I have no doubt, however, that even under the book post publishers, if they conducted their business as other commercial people do, would find it their interest to consult the public. I think that there is no business in which the interests of the public and the tastes of the public are so little met as in the publishing trade. To this day there is scarcely a book published with cut edges; in America it is done, but not much in this country; every person has the trouble of cutting the edges, thus spoiling the appearance of his book, and it being likely to catch dust on his shelves, besides tearing the leaves. One thing which I think the Government ought to do in the interests of the reading public, or rather the non-reading public, in order to make them readers, is to reduce the book postage upon the heavier books, or upon parcels of books, even although they do not establish a general parcel post. It is almost impossible, for instance, in country parishes and in distant parts of the kingdom, to get books; and unfortunately, as this country is geographically situated, the whole book trade is in the extremity of the island, in London; Edinburgh is losing its book trade, and Dublin I suppose has lost it. While speaking of Dublin, let me say that in the memory of persons now living, there has been a great change, to the injury of Ireland. Formerly, a Dublin publisher could reprint, and the Irish people could get English books free of the monopoly charge in this country. In consequence of the Union, and in consequence of legislation which is only 40 years old, artistic copyright being then introduced, the people of Ireland are much worse served than they were; and, although I perhaps am now deviating and becoming rather dogmatic, it appears to me that when that extension of area was given to publishers and authors, some terms might have been judiciously made on behalf of the public. However, to return to the postal question, I contemplate that if there was due competition in book-publishing as in other trades, we should have much thinner boards, and perhaps no boards at all, but merely paper, and we should have cut edges, both of which things would greatly lighten the weight of a book, and we should have a narrower margin. All these things would enable a book to be published cheaper; first, because less paper would be required; secondly, because costly printing and gilding would be saved; and thirdly, because the postage would be less on the books reaching country booksellers, or reaching families or individuals living in the country. I made a calculation last night, before leaving home, of the reduction which would be effected in the weight, and I find that by that means about two-sevenths could be taken off the weight, so that two-sevenths of the paper would be saved, and two-sevenths of the postage would be saved. I can furnish the Commissioners at leisure with the details of my calculation. The Commissioners will see from that, that the question of postage has a bearing upon what I presume is the great object of this inquiry, namely, how best to serve the public, and how to carry out the legitimate object of copyright, which is the encouragement of learning for the benefit of the people. If the Commissioners will allow me, I will mention one or two other particulars which, to me as a commercial man, appear to be faults of the publishing system. There are the fixed prices, those prices being fixed unduly high; there are the long credits; there is the want of variety in the form in which books are published; and there are the heavy stocks which under the present system are kept, much often remaining unsold. Now, with reference to the last of these points, I think that if we had a very large sale, such as we might contemplate under a royalty, publishers would not require to keep heavy stocks, by merely having stereotype plates; and with regard to variety of cost to suit different classes of readers there easily could be variety with these stereotype plates, from using different kinds of paper and having different modes of getting up; and there is as much reason for having classes in literature as for having classes in railway travelling; there are first, second, and third classes of railway carriages for the benefit of people with differing purses, or of different grades in society; and it certainly appears to me that there is no reason why you should not have the same with regard to books. If we had freedom of trade in books I think that it is not a ridiculous thing to expect that the sale of books would be increased fiftyfold; the export trade in books, which is now miserable, would become large, education would practically be very greatly developed; philanthropists, teetotallers, and others would be delighted by having a wholesome employment and entertainment for the people in their evenings. Altogether I think great good would ensue. I do not know any question of the age that has such important bearings on the welfare of the people, and on uniting the two sides of the Atlantic together, as this question of copyright, and the question of the mode of publishing.

2716. (*Mr. Trollope.*) Is not the free trade which you advocate already in existence?—I think not. It appears to me that the state of trade now is very much as if one potter said to another, "I will go in for cups "and saucers, you will go in for dinner plates, and a "third will go in for bedroom pottery," and as if the same man that sold plates should not be allowed to

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sell bedroom pottery, and the man who sold bedroom pottery should not be at liberty to sell cups and saucers. It is very much the same as if in the case of an invention a patentee should say, "I alone am at "liberty to make the articles specified in my patent, "and you are to be at liberty to make the articles "specified in your patent, but nobody else shall do so." In copyright one man alone has the right to publish such and such a book, and another man has the right to publish such and such another book; the result is there is practically no competition. There is a difference between one book and another, in its actual use, just as there is between one kind of pottery and another; but the idea of limiting potters to one kind of pottery would be quite ridiculous. It appears to me to be something the same to legislate so that a particular book may be published only by one particular bookseller.

2717. (*Sir H. Holland.*) You would entirely do away with the fact that the book is a property which is vested in the author by statute, and which he may deal with as he likes?—If that has been the impression conveyed to your mind, I should like to remove it. I hold, and every book which I have consulted tells me, that copyright has been entirely originated by the State. But the copyright or property may be in two forms; it may be payable either by an annuity, which I propose, or by investing the party with a monopoly. I think that for the benefit of the public the State, in rewarding and honouring authors, ought to choose the annuity or royalty principle rather than the monopoly principle. I still recognise, not as a matter of absolute right, but as a matter of expediency and fair play, that the author should be remunerated.

2718. You recognise that he has a certain right granted him by statute, but you do not recognise that he has the power to deal with that right as any other man has with his own property?—Certainly not.

2719. You say, "For the good of the public I must "interfere with his mode of dealing with his pro- "perty"?—Yes; but in the first place my conviction is that he would be quite as liberally treated as all servants of the Government are, military, naval, or civil; or whatever be the service under the Government; these are not paid so well as authors would be under my system. But secondly, my conviction is, that under the system which I propose authors would receive a great deal more money into their pockets than they do now.

2720. That I can understand to be your conviction, but at the same time you can understand a person who has a property saying, "I am much obliged to "you for your belief that by altering my rights I "shall gain, but I prefer that matters should remain "as they are, and that I should continue to deal "with my property as I think best"?—Yes; but we at once cut his legs from under him by saying, "We do not recognise it as property." The Government of this country has never recognised it as property.

2721. But you must be aware that the Act has distinctly recognised copyright as property?—It has made it property.

2722. I will not go into the question whether there was a common law property before any Act passed, which may be argued to any extent, but at all events the Act has given the author a property, and has done so to afford greater encouragement to the production of literary works of lasting benefit. You do not deny that there is a property vested in the author in his book?—Certainly.

2723. And under the Act he has the power to make a free contract with respect to that property?—Yes.

2724. But you propose to take it away altogether? —I would allow him to publish a first edition on any terms he liked, provided that he did not make the price excessive.

2725. But you do not say that that edition shall run for so many years; the moment that he has published it, you allow any man to walk into the market, and, upon the payment of a royalty, to publish the book. You do not propose that a man shall publish one edition, and be allowed, say, 10 years for that edition before anyone else can publish the book; but, as I understand you, you propose that if a man publishes, then, with his consent or against his consent, any man may publish an edition of that work. Am I to understand you to give him a year for the first edition to run?—It appears to me that the question which you point at is one of detail. I should be quite willing that the subject should be considered as to the form in which some protection to the first edition should be granted. In the paper to which reference has been made, the grant of a year's advance seems to have been in my mind. At this moment I would rather favour a modification of that view. I would rather favour this plan, that a person going to publish a book for the first time should go to some competent officer at the Stationery Office or elsewhere, and say, "Here is an estimate of the expense which I am about "to be at, or have been at, in producing this book. I "have added a considerable remuneration for the "author's time occupied in preparing it; the whole "amount is (say) 2,700*l.*, and I claim that I shall not be "interfered with till I sell an edition sufficient to repay "me this sum." The officer would say, "Well, I have "no objection to your principle, provided you make "your original selling price reasonable, and moderate, "and fair;" and that I have no doubt would follow as a matter of course. Then after that I would allow competition to come into play. However, these are details which I think the publishing trade themselves could better take up than I could.

2726. Of course you call them details, but when you are dealing with a man's property the details become very important. You now seem to think that you might rely upon publishers, but you have been rather preparing an indictment against publishers up to this moment. Do you propose to trust to some officer to see whether an author publishes what in his opinion is a sufficiently cheap edition?—At present we trust. If we should trust for the first edition in the future there would be less danger to the than the present system involves.

2727. There is no trust now placed in any single person; it is a mere matter of arrangement between the author and the publisher, and they both naturally look to see what is the best bargain which they can make for themselves?—I have in the next room documents with which it is hardly necessary to trouble the Commissioners; for instance, I can show you Mr. McCulloch's statement in his Dictionary, that he thinks that books are published twice too dear, or something like that; so at present there is complaint on the part of competent parties against the way in which books are published. (*The statement will be found in the Appendix marked B.*)

2728. (*Mr. Herschell.*) According to the scheme which you have just sketched out, would you allow the author to fix his own remuneration, because if so, he might fix so large an amount that his copyright would last for a very long time before he reached it? —I think that the probable expense of manufacturing and bringing to market, upon the basis of actual experience, should be stated in a table, and that to those expenses should be added, for authorship, a fair estimate for the value of the man's time. If he was a clergyman, and was occupied for six months in writing his book, it could not be wrong to say that he was entitled to 200*l.* or 300*l.* for that; then supposing that his compensation and the mechanical and commercial expenses came to 2,700*l.*, I think that after an edition was prepared and sold which would bring that amount with a sufficient profit to the publisher, the re-publication should follow. But you will remember that while I have stated all that, I have been preparing an immense residue or reserve of pecuniary emolument for the publisher and the author, because this first edition would be an advertisement for the future; after it was sold, it being a meritorious work, there would be for 42 years, or for a very long period, a continual yearly revenue, probably of hundreds of pounds, from the five per cent. royalty coming in to the

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author and the publisher, to be divided between them according to their mutual contract made beforehand.

2729. (*Dr. Smith.*) I should like to understand, in reference to the question which Mr. Herschell put to you, who is to be the judge of what is a fair remuneration for the original edition?—At present there is no judgment exercised at all; it is entirely hap-hazard; indeed there is no attempt to do it; it is left entirely to the discretion of the publisher. I would have some competent officer, who, however imperfectly he discharged his duty, would be entitled to see whether or not the price was reasonable. I think that under the law as it stands now power is given to certain parties to reduce the price of books if it is excessive; certainly such a power existed some few years ago. But I should be very unwilling that much stress should be laid on the point we are discussing, viz., protection for a first edition on the basis of a pecuniary estimate, because I could get quit of it altogether by giving the author a proper start, and letting him take his chance.

2730. Then if I understand you aright, you would propose that there should be some public officer who should fix what would be a fair price to be paid to the author for the first edition?—By no means. I think that the fact of there being a public officer who could control prices if they were manifestly excessive would prevent the danger of books being issued at too high a price. But if that should appear to the Commissioners a difficulty in the system, I would rather eliminate it altogether; I am so anxious to see a new system introduced.

2731. (*Chairman.*) Does not it occur to you that this proposal of yours would interfere more with trade than the present system?—It would interfere with trade, but then it would be with one side of the trade only. I have elsewhere stated, on the authority of a parliamentary return, that the export book trade is one so small that it may be said to be non-existent. I have no great acquaintance with general commerce, but I believe I may say that the merchants of Liverpool and London receive orders for hats, for inkstands, for candles, for cloths, and so on, but they scarcely ever receive from the colonies, or from foreign parts, orders for books, because the book trade is so insignificant and so shrivelled up that what ought to be one of the most important trades of the country, one benefiting not merely readers, but benefiting bookbinders, printers, papermakers, and others, is really ludicrously small as an export trade.

2732. (*Mr. Trollope.*) If the author were to begin by demanding what he considered to be fit remuneration for himself, which I think is your plan, would you propose to put a limit to his claim?—Quite otherwise; though, no doubt, if manifestly exorbitant in the estimate, the appointed officer might reduce it to reasonable proportions. I have suggested that for the first edition a fair round sum might be put in (I do not care how liberal it is), and that after that he should throw himself upon the merits of his work. It would be so well known, that there would be a large sale, and on every copy he would be receiving five per cent. upon the retail price.

2733. Before you come to the five per cent. the author might be entitled to claim, say, his 10,000*l.*?—I did not contemplate any claim at all; that was a matter which was to be arranged between him and his publisher. All I said was that the extent of the edition, that is to say, the number of copies which should be sold before competition came into play, and the retail price, might be regulated on the basis of a statement presented by his publisher, which statement would contain two different classes of items, first, the actual expense of production mechanically, and secondly, a liberal estimate of the value of the time or talents (the time at any rate) bestowed on the work.

2734. You would admit that the author should be held to be justified in putting a price upon his own labour, in the same way that any other producer does?—Certainly.

2735. Then there can be no limit to the sum which he may claim for his work, and there can be no beginning of the time which you propose to fix for this commencement of five per cent.?—I am very much afraid that my introducing this unfortunate item has taken away your attention from the main object which I suppose you have in view; but still I may trouble you with this explanation of the details of my views. I would not merely confine the estimate which I suggest to the actual expenditure, so much for paper, so much for typography, and so on, but I would allow a fair estimation of the time of the author; and let it be double or treble, if you like, what a colonel in the army receives, or the captain of a ship receives.

2736. Almost equal to what is received by a barrister, perhaps?—Let there be some guide. I have merely suggested that as one way in which the first edition might be made a protected one. Publishing the first edition is the difficulty, because until the merits of the book are known, there will be no second publisher, but after they are once known, if there is then a competition, everybody will be wishing to reproduce the book. I say that there should be no competition of that kind until the original publisher, who has run so much risk, has been remunerated. You will find, in Chambers' Encyclopedia, that according to the law of Scotland when it was a separate kingdom, and probably of England too, copyright did not at all touch the question of remuneration for authors; it entirely concerned itself with the protection of the printer from unduly early and severe competition. The law contemplates that men write for the good of their species, and for the gratification of their desires, and it is not for their sake, according to the old law, that copyright was introduced, but for the sake of the printer. I am afraid that I am too didactic. I hope that the Commissioners will excuse me.

2737. (*Sir H. Holland.*) I do not know where the statement which you have made is to be found in any book?—It is in the article on "Copyright" in Chambers' Encyclopædia. (*The article will be found in the Appendix marked C.*)

2738. That is Mr. Chambers' view of the case?—I suppose that he takes it from the fact.

2739. That is merely his view, namely, that copyright is intended not for the benefit of the author, but for the benefit of the printer?—I can present to the Commissioners Lord Dreghorn's work on copyright. I think that is there stated also. (*Extracts will be found in the Appendix marked D.*)

2740. It is not the view of the English law?—I have understood it to be so.

2741. (*Mr. Trollope.*) Have you read the article on "Copyright" in the Encyclopædia Britannica?—Yes, in the former edition, not in the new edition.

2742. That is not the view given there, I believe?—That article is one in which I do not agree, nor do I agree with the views of Mr. McCulloch in his Dictionary; he there attempts to show that there was something like copyright in ancient times. I have turned up two or three of the authors whom he quotes, and I can see no trace of it, nor of anything analogous to it, in the ancient authors.

2743. What you quoted just now as to the law of copyright is simply an opinion, and not the view of copyright expressed in the law?—I understand that it is more than an opinion, that it is the fact; but if the Commissioners will allow me, when I go home I will make an extract and transmit it to the secretary.

2744. (*Sir H. Holland.*) Is there any country in the world where your principle of royalty exists; we know that copyright exists in most countries, but is there any country where the principle which you are advocating has been instituted and worked?—I think that I have read that the Italian law has some recognition of it. You will find at page 326 of my book on patents a list of the colonies where it exists with reference to importations from the mother country.

2745. There is no system of royalty in the colonies except as regards the importation of foreign reprints into a colony, which is quite a different thing?—I hope that the Commissioners will understand that the

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thing can be done with perfect ease; therefore there should be no difficulty upon that score. I am quite convinced that I can show the Commission (but I think that it is not necessary) that with perfect accuracy and simplicity and economy the principle of a copyright royalty could be worked.

2746. (*Mr. Trollope.*) But it does not exist in any other country?—I am not aware of it.

2747. (*Sir H. Holland.*) In Italy it is at the end of 40 years that the second period begins?—Yes.

2748. (*Mr. Trollope.*) In Italy that is an additional right given to the author over and beyond what the author enjoys in England, and not a lesser right?—Quite so.

2749. (*Mr. Jenkins.*) What do you take to be the object of the Copyright Law?—The title, I think, of the existing Act says that it is for the encouragement of learning; but I understand that the object of it, as of all legislation, is fair play to interests and the benefit of the population.

2750. Can you point out specifically in what respects you think that the present system of Copyright Law runs counter to the main object which you have just laid down as the root principle of a Copyright Law?—By making property it prevents competition; by preventing competition the prices are kept too high, the sale is limited, and the public therefore do not receive literature when it is fresh. I know that in the circles in which I move the purchase of new books is a very rare thing; people get books by borrowing from libraries, and that only answers in towns; it does not answer, or at least equally well, in the country; and as to the poor, they never see a new book.

2751. But is that the necessary consequence of the system, or is it not merely the result of a method of carrying on trade?—It has been the actual case in this country, and the publishing trade has got so much into ruts, that I do not think it can be lifted out of those ruts without introducing the royalty principle.

2752. Are you not aware that under a copyright law in France and in Germany, and in the United States, they have the advantage of cheap literature without resorting to the system which you suggest?—With regard to the United States, I never have been over there; but what I apprehend is this, that such a large portion of their books are a reproduction of what is published first in this country, that the contrast between books published at the prices which prevail in Great Britain and these cheap reproductions would be so great that it would be offensive, and that therefore the habit of republishing English books keeps down the price of native literature.

2753. Do you know that in France books are published with paper covers very cheaply, and that they have no circulating libraries there to speak of, and that they have all the advantages which you would claim for your system?—I do not know it, and I have seen books published in France which have been pretty dear.

2754. But still you know that books are sold very cheaply in France, and sold in original editions very cheaply?—I accept it from you.

2755. If that is so, ought we not to regard any evils which you may presume to exist in our present publishing system as being distinct from copyright, and as being due, not to the Copyright Law but rather to the manner in which the publishing is carried on?—It is quite possible that it is so. All that I contend for is this, that by a royalty system you would be certain of receiving the benefit which I think so important for the public.

2756. Then the way in which you would put it is this, that when you find that under one system the object can be evaded by what you may call a trades union, it would be legitimate to change the system for the purpose of securing the real object, namely, the public object?—If I understand your question, I would say decidedly yes.

2757. You have mentioned as abuses and causes of the present state of things to which you object, heavy stocks, long credits, and fixed prices; you would not suggest that any law should interfere with those matters, would you; even under your system those may exist?—I certainly would not. I would have the utmost freedom; but I think that the present state of the trade is one of stagnation under the influence of a most pernicious monopoly.

2758. Do you think that the evils are so incorrigible that the only mode of correcting them would be to change the law?—That is unquestionably my opinion. I have lived long enough in connexion with business to know that during my lifetime there has been a complete transition in the way of doing business from a moderate extent of sales and a large margin, to the principle of a very large extent of sales and a small margin. The principle now is that if you can get what is called a feeling off a transaction at all, however small that feeling may be, you go on selling. That is a principle altogether unknown in the bookselling trade, so far as I am aware; the bookselling trade seems to me to stand alone in that respect. All other manufacturers look for remuneration by the largeness of their operations and the frequency of their returns.

2759. Is there anything to prevent what they call in America an enterprising bookseller from starting upon a system of cheap publications?—I really cannot answer that question; all I say is that as a matter of fact we do not find it, and it is not the state of matters existent.

2760. (*Mr. Daldy.*) Do you propose under your system to limit the number of copies which any publisher may issue in the first edition of his book?—Not at all. I think that he might issue as many as he chose. Allow me to say that when you speak of "your" system, I cannot take the credit of its being my system; I might say that the late Mr. Watts, the Chief Librarian of the British Museum Library, pointed out to me that he had advocated in the Mechanics' Magazine forty years ago, as you will find stated in this volume of mine, something identical in principle.

2761. Do you propose to limit the time which the publisher may have in which to sell his edition?—In the scheme to which reference has been made I did propose to give him a year's start; in the amended or alternative system which I have respectfully submitted to day I have not contemplated any limitation of time, I have thought that any author might arrange with his publisher to issue a good large edition, and that until that edition was exhausted the principle of competition should not come into play.

2762. You propose that he shall have in fact a monopoly of the first edition as at present, and that he is not to be interfered with while that edition is on sale?—Yes.

2763. If he likes he may print a sufficient number of copies to last for 40 years?—I think that he should be at liberty to print a reasonably large edition.

2764. Do you think that the result of your proposal would fall upon authors or upon publishers; I mean the result of the change. You wish, if I understand you correctly, to control the mode in which the publisher is to conduct his business, and also the remuneration which he is to pay to the author. I wish to ask you, as a gentleman connected with commerce, whether the publisher would not take that into his consideration in his arrangements with his authors, and, in consequence of any limitation imposed upon him, pay less for their productions?—I certainly think that every limitation which interfered with profit would be taken into account, and ought to be; but my expectation is that the change which I would introduce would greatly contribute to the extension of trade, and to the profit of both publisher and author; and if I am allowed by the Commission, I will state a peculiar reason why I contemplate that.

2765. Is there anything in the present state of things which prevents an author and a publisher from combining and issuing a work on that principle, and announcing that anybody may reprint it by paying a royalty of five per cent.?—Nothing whatever.

2766. Then, notwithstanding the fact that that principle has been before the publishing trade for 40

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years, and has not been adopted, you still think it worth while to impose it upon them?—I am not proposing to interfere with the relations between publisher and author; the interference which I contemplate is that after the first edition is exhausted the principle of competition shall be brought into play in such a manner as to contribute a profit, on each separate copy printed, to the author or his assignee, the publisher.

2767. You do not deny that your alteration would interfere with the benefits accruing to the author, but you say that in your opinion, under the new system, those benefits would be made up to him in another way?—I have no doubt that they would be more than made up.

2768. You say that this proposal, or an analogous one, has been before the public for 40 years, and was mentioned in the Mechanics' Magazine, and that publishers and authors are now at liberty to adopt it if they like, but you cannot point to any instance in which it has been adopted; therefore you wish to bring in the aid of the Legislature to compel its adoption; is that so?—I do not know that that exposition is in correspondence with my view. I would leave the utmost freedom.

2769. Where is the difference?—All that I would say is this, that I would introduce the principle of competition, which does not exist now until 42 years are past and during the lifetime of the author if it is more than 42 years.

2770. You are not aware of the existence of competition between publishers as to obtaining a book from an author?—That is not the competition which I refer to.

2771. You speak of a competition of manufacture?—Yes.

2772. But the author's right is involved in it as well, and you wish to regulate that author's right?—Yes. I think that I apprehend your meaning; as I understand it, it is this, that there is now a competition between publishers, on the basis of the present monopoly, as to which publisher shall give most to the author. I contemplate the other side; that by abolishing the monopoly, and throwing trade free, you would make a competition between publishers as to who should serve the public best and most cheaply.

2773. But you are not able to point to any instance in which an author has thought it to his advantage to try that experiment?—I never heard it.

2774. (*Chairman.*) Are there any further observations which you wish to make?—I have two observations to make, the first of which is this: I am perfectly convinced that as long as authors and publishers in this country endeavour to persuade the United States to introduce the monopoly principle into literature internationally, they will fail; but if there were presented to our cousins in the United States the offer of a copyright system founded on royalty, and if everybody had liberty to reproduce a work who was willing to pay a royalty to the author, I am persuaded that they would jump at it. In place of the 32 millions of population which there are here, there would be 74 millions, namely, 32 millions here and 42 millions there. The 42 millions in the United States are much more readers than the 32 millions in this country. Our 32 millions are happily increasing yearly, but the 42 millions are increasing more rapidly; so that if you could make terms now with the United States on the basis of a royalty, it would very soon work tremendously in favour of British authors; that is my humble conviction.

2775. (*Sir H. Holland.*) You state that you are firmly convinced that that offer would be accepted by the United States. Are you aware of Senator Morrills' report to the Senate there in 1872 or 1873?—I am not; but I had a conversation with Canadian publishers, and they were satisfied that this system was a good one. My second observation is this: I have made some calculations which I will just go over with the utmost rapidity; they are on the advantage which is effected by increasing sales. I will take the table in Mr. McCulloch's Dictionary, which gives the expense of publishing 500 copies. I find that for the printing alone the cost of only 500 copies would be 2*s.* 8½*d.* per copy. If the number were increased to 1,000 copies the printing per copy would only cost 1*s.* 4*d.* and one-third of a penny; if increased to 30,000 copies it would only be $\frac{51}{100}$ths of a penny; showing how much the cost of books would be reduced if we could increase the area for sale. Then, advertising is put down in the same table at 30*l.*: that comes to 7*d.* and one-fifth of a penny per copy if 1,000 copies are run off; but if 30,000 copies are run off it will be less than a farthing per copy. Then I would state, with regard to copyright, that we got up in Glasgow about 40 years ago a scheme for prize essays on behalf of Christian missions to the heathen. I was not so well alive to the question of copyright then as I am now, and we agreed to give half the copyright to the successful author. Dr. Harris carried off the first prize. We sold the right to produce 6,000 copies for 750*l.*; this was half-a-crown for every copy; the book was made, to the extent of half-a-crown, more costly to the publisher for every copy, thus, in the trade practice of doubling outlays, raising the retail price by 5*s.* Here were we with the one hand trying earnestly to get a book to influence people on behalf of Christian missions, and on the other hand by selling the copyright we reduced the sale, so that I do not believe that 4,000 copies were ever disposed of, and although 40 years have elapsed no more have been printed. Ward and Company, who were the publishers, do not exist as a publishing firm; Dr. Harris is dead; and after all the trouble which we took to get that book produced, (and a splendid book it is,) it has almost altogether failed in its object, just owing to copyright. And that is what we frequently see; it prevents the circulation of admirable books; the parties sell the copyright, and thereby defeat the ends for which they wrote these books. I am quite sure that the selfish principle, or I will say the self-regardful principle, is enshrined and glorified by means of copyright, in a way which is most dangerous; and I should be most thankful if we could get quit of it, or get it curtailed by means of the royalty system. I could go on for a longer time with illustrations, but I should weary you.

2776. (*Mr. Daldy.*) Was there anything to prevent your issuing the book which you have just mentioned on the royalty principle which you have proposed?—Nothing whatever, but it was about 38 years ago, and I was not so well informed on the question then as I am now. I certainly should not do such a thing now as surrender or compromise for money the full freedom to control form, price, and supply.

2777. (*Sir H. Holland.*) Supposing that this system of royalties was adopted, and that an edition was published which was defective or which curtailed the original book, the author would have no control over that edition as long as he got his royalty. How would you propose to deal with that question?—I would make it penal to issue any book with any alteration or abridgment which was not sanctioned by the author. Might I venture to make a further suggestion; it is one of a practical character, altogether apart from the subject now before us; and that is that the Royal Commission should recommend that no privileges should be given at Stationers' Hall to any book which did not contain an alphabetical index at its end. I continually, on taking up a book, cannot find time to read it through, and wish to know the page where I shall find a particular point referred to, but cannot ascertain it.

The witness withdrew.

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

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Wednesday, 22nd November 1876.

PRESENT:

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

The Right Honourable the EARL OF DEVON.
SIR HENRY T. HOLLAND, Bart., C.M.G., M.P.
SIR JOHN ROSE, Bart., K.C.M.G.
FARRER HERSCHELL, Esq., Q.C., M.P.
DR. WILLIAM SMITH.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.
J. LEYBOURN GODDARD, Esq., Secretary.

PETER LE NEVE FOSTER, Esq., (Secretary of the Society of Arts,) examined.

P. Le Neve Foster, Esq.

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2778. (*Chairman.*) I believe your attention has been a good deal directed to the operation of the Act of 1862, affecting copyright in fine art generally?—I had a great deal to do with the introduction of that Act originally. It arose out of the action of the Society with which I am connected, and it was after a consultation with a very large committee, formed of artists and others (at that time Sir Charles Eastlake was the chairman of the committee, and Mr. John Lewis, the President of the Society of Painters in Water Colours, was the deputy-chairman), and after a great number of meetings of that committee, that the Act of 1862 was brought before Parliament.

2779. Are you of opinion generally that the Act as it was passed and now stands carries out satisfactorily the objects of the committee to which you have referred?—I ought to commence a little earlier than that Act. Our first idea was, and the first idea of the committee was (in 1860, I think), to have a perfect consolidation of the laws of art copyright, as well as to obtain a copyright, which did not at that time exist, for paintings, drawings, and photographs. A Bill was brought into the House of Commons after consultation with the Attorney-General, then Sir Richard Bethell, upon it, but the Bill did not pass. In a subsequent year (I think Sir Richard Bethell had then become the Lord Chancellor), we consulted with him as to the re-introduction of the Bill, and he said then, "By all means; it is very necessary. I will "do what I can for you; but you must cut the Bill "down, and go in only for those points which really "are blots at the present time, namely, that there is "no copyright to a painting, drawing, or a photo-"graph. Go in and get that remedied—leave out "everything else; make it imperfect." As he said, the genius of English legislation is always to do things imperfectly. We took his advice, and we brought the Bill in. It was brought forward by Sir Roundell Palmer, who was then the Attorney-General, and he carried it successfully through the House of Commons, and Lord Westbury afterwards carried it successfully through the House of Lords. That is the origin and history of this Bill, which dealt only with a portion of the subject; it did not deal with the copyright in sculpture, or with the copyright in engravings. Those were provided for by other Acts of Parliament, and although imperfect, we thought it best to leave them out and get if we could a recognition of a new right. That we obtained from the Legislature. Sir Roundell Palmer apparently agreed with Lord Westbury's policy; for, when the Bill had passed through the House of Commons Committee, and stood for the third reading, there were a great number of imperfections still to be found; verbal alterations were wanted which would have made the Act very much clearer than it is. I wrote to Sir Roundell Palmer at that time about it, and he said, "Pray, do not let us "have any amendments or you will jeopardise the "passing of the Bill; pass it imperfectly as it stands; "get the right recognised, and then at a future time "an amending Act may be passed, and a general con-"solidation of the law obtained."

2780 So far as you know, have those verbal imperfections, during the period of time which has elapsed since the passing of the Act, operated prejudicially to the owners of these fine art copyrights?—The principle of the Act is in my opinion sound, but there are sundry points, particularly in that first clause of the Act, which got altered in its passage through Parliament, I do not know whether in the House of Lords or the House of Commons; various words got put in, and it reads in a somewhat confused way. I think if the cases were taken up to the higher courts, there might be some considerable difficulties, and doubts raised as to the rights of parties in many instances under it.

2781. Perhaps it would be convenient if you could point out to the Committee some, at any rate, of those mistakes?—The fault is rather in the confused manner in which the Act is worded; take the first section. It says that the copyright shall belong to the author for his natural life and for seven years after his death; "provided, that when any painting or drawing, or the "negative of any photograph, shall for the first time "after the passing of this Act be sold or disposed of, or "shall be made or executed for or on behalf of any "other person for a good or a valuable consideration, "the person so selling or disposing of or making or "executing the same, shall not retain the copyright "thereof, unless it be expressly reserved to him by "agreement in writing, signed, at or before the time "of such sale or disposition, by the vendee or assignee "of such painting or drawing, or of such negative of a "photograph, or by the person for or on whose behalf "the same shall be so made or executed, but the copy-"right shall belong to the vendee or assignee of such "painting or drawing, or of such negative of a photo-"graph, or to the person for on whose behalf the same "shall have been made or executed;" and then it goes on (it is perhaps hardly English), "nor shall the "vendee or assignee thereof be entitled to any such "copyright unless, at or before the time of such sale or "disposition, an agreement in writing, signed by the "person so selling or disposing of the same, or by his "agent duly authorised, shall have been made to that "effect." The result of that is, that unless on a sale you have got those two writings passing the copyright, it belongs to neither of the parties, the copyright is gone.

2782. (*Mr. Herschell*). Are you aware that in a case arising with reference to Miss Thompson's picture of the Roll Call there was considerable criticism by the Court of Queen's Bench on the way in which this section was framed?—I am not aware of the case to which you allude, not being in practice myself at the present time, and it not having come before me. I may add that that particular clause beginning "nor shall the vendee," was added to our original clause when it was passing through Parliament, by whom I forget now.

2783. (*Chairman.*) Are you able to give us the terms of the original clause as your society wished it to stand?—I have not got it with me. I have been looking to see if I could find the original print of it. My impression is that it stood as it is in the statute, with the exception of that last proviso.

2784. (*Mr. Trollope.*) You think that that clause could be amended?—I think it requires to be amended, to be made clear, more particularly after what has been said with reference to Miss Thompson's picture.

2785. (*Chairman.*) Are you of opinion that if the final paragraph of that section was omitted, the section itself would satisfactorily represent what ought to be the state of the law?—I think it would, reading it as a piece of writing. Whether it would stand legal criticism or not, I am not prepared to say.

2786. I think you have already told us that one of

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the objects of your committee was to obtain a consolidation of the law?—It was subsequently.

2787. But that failed?—That failed.

2788. Perhaps you can tell the Commission why it failed, and why you are of opinion that it would be a good thing to obtain now consolidation of the law?—Some years after the Act of 1862 was passed, we acted upon the advice which was given us, both by Lord Westbury and also by Sir Roundell Palmer, to go to Parliament to get a consolidation, to get the whole of the law of art copyright consolidated and put upon one intelligible principle generally; and thereupon we, that is, the Society of Arts, prepared a Bill, and it was placed in the hands of Lord Westbury, who took charge of it, and it was brought into the House of Lords. It was there referred to a Select Committee; and I do not wish to speak irreverently of the House of Lords, or of any of the members connected with it, but they, like any other gentlemen who have never given any attention whatever to the subject, came to it with the most crude ideas and strange notions, and all sorts of amendments on matters which really had been discussed over and over again before our committee, and thrown aside as good for nothing; and they proposed to make a considerable number of what seemed to us strange amendments to the Bill. On consultation with Lord Westbury afterwards, we decided that it would be far better to withdraw the Bill, and keep everything in its present imperfect state rather than have it amended as the House of Lords then proposed to amend it; and that was the end of it. If you like, I will put in a copy of that Bill, which shows what we were proposing to do; and at the same time, I should like to add a paper (for there is a considerable amount of information in it) which was drawn up by a gentleman who is dead now, who had a large acquaintance with this subject, perhaps larger than any other man in Westminster Hall. I refer to Mr. Roberton Blaine. I was working with him to a great extent, and he at that time wrote, for circulation amongst the members of the House of Lords, and amongst other parties interested in the question, "Reasons" why the Bill was requisite, and there he enters very fully into the difficulties which arose upon the other Bill, and the difficulties which arose from the utter want of principle as affecting all works of fine art. (*The witness handed in the Bill and the "Reasons." Vide Appendix.*) You have got an Engravings Act, one thing, a Sculpture Act another, certain remedies for one thing and certain remedies for another, and they are not all applicable.

2789. Then you are of opinion that not only should the law be consolidated, but, in the cases which you have mentioned, assimilated?—Yes. I have brought with me a pamphlet which Mr. Roberton Blaine wrote at the time of the getting of the Act of 1862. This is the only copy I know of now in existence, and it belongs to our library, or I would leave it with the Commission.

2790. (*Sir H. Holland.*) I think the greater part of that pamphlet is substantially embodied in this other paper which you have just put in, is it not?—A great deal of it, but some portion has been remedied by the Act of 1862.

2791. (*Mr. Trollope.*) There have been Bills with regard to engravings and sculpture passed since the Bill of 1862, have there not?—Not that I am aware of.

2792. Are they not protected at all?—There are Sculpture Acts, and they are also protected under the Designs Act. The Engravings Acts are the 8th of George II., the 7th of George III., the 17th of George III., the 6th and 7th of William IV., and the 16th of Victoria, chapter 12.

2793. Do I rightly understand you to say that there was no protection for pictures before 1862?—None whatever.

2794. Though there was for sculpture?—Yes.

2795. And there was for engravings?—Yes.

is it the fact that English sculpture can be registered by the Registrar of Designs?—Yes.

2797. Now, I believe, the Commissioners of Patents have that office?—Yes.

2798. But the copyright in foreign sculpture must be registered at Stationers' Hall; is that so?—Yes.

2799. Do you think that is a convenient separation between them?—Certainly not. It has been thought that the Sculpture Act alone (I scarcely know why at this moment) does not give sufficient remedies to the owner of the copyright; but that if he registers it in addition at the Designs Office as a design, then he gets a remedy, which he did not get before, and that it is necessary now for an English sculptor, if he wishes to get full remedies, to register it at the Designs Office.

2800. That being so, do you know at all why the foreign sculpture has to be registered at Stationers' Hall?—I imagine that to have taken place under the conventions that we have entered into with foreign nations. We have entered into conventions to give copyright here to foreigners in, I think, 13 different States.

2801. (*Sir H. Holland.*) Do I rightly understand that you find fault with the present system of registering foreign sculpture?—Well, it is all in a jumble; you register first at one place for one thing, and then at another place for another; you have registering at the Designs Office, and you have registering in Stationers' Hall.

2802. But for foreign sculpture, do you register at Stationers' Hall?—Yes.

2803. Under the terms of the convention?—Under the terms of the convention, I apprehend that to be.

2804. Then you would propose, I assume, that the registration should be at one place?—I would give the foreigner, under the convention, precisely the same rights as the Englishman would have, and to go through the same forms and the same ceremonies.

2805. The same right as the Englishman would have in the other country, do you mean?—No, in our own country.

2806. In our own country registration is at one place, under the Designs Act?—Yes.

2807. And you would therefore propose that registration at one place should be sufficient?—Yes.

2808. But can you tell me whether in foreign countries sculpture has to be registered?—I cannot say. I do not know.

2809. Supposing that it should turn out to be the case, that a sculptor has to register his work abroad, should you be prepared to waive the necessity of his re-registering in England, and to allow a certificate of that registration abroad to be sufficient?—If you registered that certificate so that there would be notice to parties in this country that it was a copyright work.

2810. Probably, it would be a simpler thing to have a register of the certificate of registration abroad than to re-register here?—It might be.

2811. (*Chairman.*) Are you satisfied with the description of the registration which, under section 4 of the Act of 1862, has to take place, or would you propose any amendment?—I have had no practical knowledge of how that acts at Stationers' Hall. I have been told (Mr. Blaine used to tell me) that the registration there was not of a very perfect character; that it was not of a character which was very readily accessible, so that it could be got at to ascertain whether things were registered or not.

2812. But assuming that the machinery of Stationers' Hall was in a satisfactory condition, do you think that the terms of the registration as set forth in that section of the Act require amendment or are they satisfactory?—I think you will find that there is a great deal of amendment required in the whole form and methods of registration. A very complete system for it was drawn out, and formed part of the schedule of the Bill which we could not pass through the House of Lords. I think by reference to that you will find better particulars than I could give you off-hand.

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2813. (*Earl of Devon.*) In order to secure copyright for a piece of sculpture, I think it is necessary to put on the name of the artist, and the date, is it not?—Yes.

2814. Does that apply also to plaster casts?—Well, it appears so; they appear to be included under the same clause.

2815. (*Dr. Smith.*) And to photographs also?—Yes, and to photographs also. Many foreign countries which are enumerated here in Mr. Blaine's "Reasons," give a very much longer copyright than anything we proposed under the Act of 1862. In the Bill which we brought forward we asked to have the author's life and 30 years after his death instead of seven; but upon that point we were not strong at all, we only wanted to have a certain number of years after his death. The main reason for it would be, that as we undertake to give to foreign nations protection here, the protection here should be something like an equivalent to that which a man got in his own country. If a man got 30 or 50 years in his own country, it was hard, when he came here, that he should have only seven.

2816. (*Mr. Trollope.*) When you say you were not strong with regard to the prolongation of copyright, we are not to understand, are we, that you think that that application for 30 years should be withdrawn?—We should not have pressed it in the House of Lords, if there had been any desire to cut it down at all.

2817. I mean, what is your individual opinion?—I think practically seven years after death is quite sufficient.

2818. I presume the copyright is the same as that for books, it is 42 years, or seven years after death?—No, it is totally different from the copyright for books, it is seven years after death absolute.

2819. Then you think that that is sufficient?—I think that that is sufficient. I think the principal if not the only reason we had for asking for more was, that foreigners have more, some of them, in their own countries.

2820. Is it not the case that pictures may come to their great fame, and to their highest value, at a period more than seven years after the death of the artist?—That is difficult to say.

2821. Would not all the knowledge we have of pictures tend to show us that it is so?—We do know that a large number of the pictures of modern artists are sold at very high prices during their lives, and during the seven years after their death they certainly do sell at increased prices.

2822. Would not a picture of Sir Edwin Landseer's sell for more now than it would have sold for 20 years before his death?—Perhaps it would. There is a greater tendency to buy pictures now, and to give high prices for pictures now more than there was at that time.

2823. Then might it not be well to protect the property of the heirs of an artist in the right of his picture or sculpture for a longer period after his death?—It is difficult to say; it is difficult to lay down a distinct date, whether it should be seven years, or 14, or 21; there is no magic in a date.

2824. You are aware, probably, that the Germans give 30 years after death for literary copyright?—Yes, in Prussia and Saxony, and the German States, they give the author's life and 30 years after his death; in France 50.

2825. And in England seven years?—Yes.

2826. Does not seven years seem very short in comparison with the times of the other countries?—It is in that sense very short.

2827. (*Chairman.*) It is shorter, is it not, than the term for sculpture, for busts?—That is an absolute term of 28 years.

2828. (*Mr. Daldy.*) Do you think that it would affect the value of the copyright of a picture if it only had seven years to run after the artist's death. I wish to know, because it occurs to me as just possible, if an artist sells his picture, or it is sold on his death, the value of the copyright consists, does it not, substantially in the right to engrave it?—Yes, with regard to many pictures, but not by any means to all.

2829. If that right be only protected for seven years, do you consider that it would be as valuable for sale as if it were protected for a longer period?—Certainly not, if it was sold after the artist's death.

2830. In point of fact it would be more valuable to the artist if he had a longer period?—Assuming that the picture remained in his possession at the time of his death.

2831. (*Dr. Smith.*) Does it not take a very considerable period to engrave in steel a large painting?—Certainly.

2832. And therefore, if there is only a copyright of seven years, practically speaking the engraving would only have a copyright of four or five years?—It might or might not. It would be so if the picture had not been sold beforehand, assuming that it was painted near to the time of the author's decease.

2833. But suppose this case, that an eminent artist produces a great picture in the last year of his life, and that it is sold; it would take two or three years to engrave the picture?—Certainly.

2834. Then the copyright would only have in reality about four years?—But you would have an engraving copyright under the present Acts, which would last you for 28 years afterwards. You would have a copyright in the engraving totally distinct from the copyright in the picture. It would not prevent somebody else engraving that picture, but they could not from your engraving.

2835. But they could engrave at the end of seven years from the original picture?—Certainly.

2836. (*Mr. Trollope.*) And does not that tend to make you think that seven years is rather short?—In exceptional cases it might be. I should prefer individually to see a longer term, having sympathy with artists and their works. The question is, what is the best for the public, what is the right compromise to make? I do not know whether the members of the Commission are aware why we took the author's life for that, why we did not state when the copyright should commence. The difficulty of stating when copyright in a picture or in a work of art should commence is very great. Some said it should be the date of publication. The question is, when is a picture published? There is no certainty about it, and therefore we were obliged to take the author's life, and thus we have a determinate period, from which we may count the remainder of the term. We cannot count it from the publication of the picture, as has often been proposed.

2837. (*Chairman.*) That difficulty would not apply to the case of an engraving or photographs?—Not so much.

2838. Would it apply in the case of sculpture, or not?—Hardly; it would not apply so much, because the sculpture rarely leaves the artist's studio till it is complete; a picture does sometimes.

2839. (*Sir H. Holland.*) As I understand, there is now no protection to a sculptor against having engravings taken of his monument or figure, or whatever it may be?—I think there is.

2840. There is no protection against drawings or engravings, is there?—I think so.

2841. Under which Act would you say that there is protection? The seventh section of the 13th and 14th Victoria, chapter 104, "An Act to extend and "amend the Acts relating to the Copyright of Designs," provides "that if any person shall, during the con- "tinuance of the copyright in any sculpture, model, "copy, or cast which shall have been so registered as "aforesaid, make, import, or cause to be made, im- "ported, exposed for sale, or otherwise disposed of, "any pirated copy or pirated cast of any such sculp- "ture, model, copy, or cast, in such manner and under "such circumstances as would entitle the proprietor "to a special action on the case under the Sculpture "Copyright Acts, the person so offending shall forfeit "for every such offence" a certain penalty. That would not prevent a drawing or an engraving being made?—I am not sure about that, but apparently not.

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2842. Assuming that a protection is not afforded to the sculptor against drawings or engravings of his work, should such protection, in your opinion, be given ?—I think certainly it ought to be. I was under the impression that it was given.

2843. You are of opinion that if an engraving was badly made it might injure the sculptor's fame ?—Certainly, that is one of the great principles running through the copyright law.

2844. A sculpture is a single thing, and remains in some particular place, whereas the inferior engravings may be multiplied a thousandfold and go all over the world ?—That is so.

2845. (*Dr. Smith.*) By the Act of 1862 are photographs placed on the same footing as engravings ?—Not so. The Act of 1862 gave a copyright in paintings, drawings, and photographs, objects which had no copyright in them whatever previously to that Act. The engravings are under other Acts, though a summary remedy for piracy of engravings is given by a few words incorporated in the Act of 1862.

2846. If I understand you right, by that Act photographs are put on exactly the same footing as paintings ?—Precisely, and if I may be allowed to add a word, of course it was a matter which was taken up by the House of Lords at the time when our Bill was before them; several gentlemen said, The idea of giving a copyright in photographs, a thing so evanescent altogether, for the author's life and seven years after his death, is absurd. The thing is gone, lost, long before that period arrives. The answer to that is this, (and perhaps it is stronger now than it was then) that a large quantity of the photographs of the present day can be and are absolutely as permanent as engravings, for they are made very much in the same ink that the engravings are themselves, and they are absolutely as permanent as the engravings. And to show you the value which attaches to the negative of a photograph, there was a photographic negative sold by public auction within the last two months, and that negative sold for 185*l*. It was the negative of the Prince of Wales in his masonic costume, and it sold for that amount, although there had been an enormous sale of copies already throughout the country of those copies. That shows you the value of a photographic copyright.

2847–9. When there is copyright in an engraving can a photograph of it be taken ?—Legally it cannot. The summary remedy given by a clause which was not in the Bill as originally drawn, but was inserted during the passing through the legislature.

2850. (*Chairman.*) Is it your opinion that in any amendment of the law that case should be provided for ?—I think certainly it should; there is still a hardship.

2851. (*Sir H. Holland.*) Have you thought over what form the amendment should take ?—Do you mean the precise form of words?

2852. No, not so much the precise form of words, but what practical form ?—I think the person aggrieved might not only take the same remedies as you have, under the Act of 1862, against piracy of a painting, or drawing, or a photograph but should have further summary proceedings before the magistrate, to meet this difficulty; sometimes a man sells a lot of these pirated things at the corner of the street, or he takes them into some of the public offices and sells them. Your remedy is to summon him before a magistrate; but long before you can summon him, he has disappeared, and you do not know what has become of him or where he is; and the proposal by our Bill that we brought before the House of Lords was, that a man doing that sort of thing should be liable to be taken into custody and taken before a magistrate, at the risk of the party so doing.

2853–4. (*Mr. Trollope.*) In that case, who would have the power of taking him up ?—The party would say "You are pirating my photographs; I will fetch a policeman."

2855. Then anybody, under such a law as that, might commission any policeman to take a man up ?—Yes. I admit it is going a long way. It would only be by the person who is aggrieved. He says, "You are "robbing me; you are a holder of stolen property; I "take you up."

2856. But in that state of the law, it would be simply necessary that the man complaining should state himself to be the owner, and then he might cause anyone to be taken up ?—It is like any other case of taking a man up upon certain grounds.

2857. You would give the man injured the power of taking up the injurer, without going before a magistrate at all ?—No, he should be taken before a magistrate.

2858. (*Mr. Daldy.*) I think you said that photographs are protected by the same Act as paintings ?—Yes.

2859. Will you please tell me who is the author of a photograph ?—The man who makes it.

2860. Then is it necessary, under the present Act, to execute the transfers which are necessary in the case of a painting, before copyright in photograph passes ?—Yes, precisely in the same way.

2861–2. And if that has not been done, the copyright in the photograph is lost ?—Yes, in certain cases, on the original sale.

The witness withdrew.

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

Wednesday, 29th November 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 JOHN ROSE, Bart, K.C.M.G.
Sir LOUIS MALLETT, C.B.
J. FITZJAMES STEPHEN, Esq., Q.C.
FARRER HERSCHELL, Esq., Q.C., M.P.
Dr. WILLIAM SMITH.
J. A. FROUDE, Esq.
ANTHONY TROLLOPE, Esq.
F. R. DALDY, Esq.

J. LEYBOURN GODDARD, Esq., Secretary.

T. H. Farrer, Esq.

29 Nov. 1876.

THOMAS HENRY FARRER, Esq., (Permanent Secretary to the Board of Trade,) examined.

2863. (*Chairman.*) The Commission are aware that you have paid very great attention to the subject matter of their inquiry, and, perhaps, it would be convenient if I were to ask you in the first instance in what order you would wish to state your views to the Commission ?—There are a great many questions of detail respecting amendments in the existing statutes, which have been raised before this Commission, and which have also been raised previously by attempts at legislation in this country, by applications to public departments, by communications from foreign Governments, and otherwise, but which are matters which do not raise any serious discussion as to the principles of the law of copyright. I propose to take these questions first. Then, secondly, there are the questions of colonial copyright; Canadian copyright

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