

**COPYRIGHT LAW REFORM: AN EXPOSITION
OF LORD MONKSWELL'S COPYRIGHT BILL,
NOW BEFORE PARLIAMENT WITH EXTRACT
FROM THE REPORT OF THE COMMISSION OF
1878, AND AN APPENDIX CONTAINING THE
BERNE CONVENTION AND THE AMERICAN
COPYRIGHT BILL**

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Copyright Law Reform: An Exposition of Lord Monkswell's Copyright Bill, Now before Parliament with Extract from the Report of the Commission of 1878, and an Appendix Containing the Berne Convention and the American Copyright Bill by J. M. Lely

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J. M. LELY

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WITH

Extracts from the Report of the Commission of 1878,

AND AN APPENDIX CONTAINING

THE BERNE CONVENTION

AND

THE AMERICAN COPYRIGHT BILL.

BY

J. M. LELY, Esq., *Barrister-at-Law.*



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PREFACE.

IN the following pages I have endeavoured to describe in popular, but, it is hoped, not inexact language, the scope and object of Lord Monkswell's Bill "to amend and consolidate the law relating to copyright," which now awaits a second reading in the House of Lords.

With this view I have briefly stated the leading heads of the existing law, pointed out its more harmful defects, and summarised the remedies proposed by the Bill. I have also printed the material parts of the all-important Report of the Commission of 1878, on which the Bill is mainly founded, not omitting Sir Louis Mallet's dissentient Report; and have briefly touched on the "Manners Bill" and other measures which were submitted to Parliament though not discussed by it, between 1878 and the present time.

As one of the members of the Copyright Committee of the Author's Society, I had some little share in directing the progress of the present Bill before it was entrusted to Lord Monkswell. May I be permitted to state that the utmost care was taken by that Committee to represent and give effect, so far as was reasonably practicable, to the views of all whose interest was likely to be involved?

J. M. LELY.

The Temple,
February 9th, 1891.

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I.

THE LAW, THE MISCHIEF, AND THE
REMEDY.

I.

THE LAW, THE MISCHIEF, AND THE
REMEDY.

The Existing Law.*

Meaning of "Copyright."—The term copyright means the sole and exclusive right of printing or in any other way multiplying copies of books, pictures, statues, musical scores, lectures, or any other subject to which the term is applied.†

History.—The first Copyright Act was the act of Anne (8 Anne, c. 19.), passed in 1709, which applied to "books and writings" alone, and gave to authors of books then existing a copyright for 21 years, and to authors of books to be in future published a copyright for 14 years from publication. Whether any and what copyright existed before this Act is a much-vexed question which has never been authoritatively settled, and probably never will be. The effect of the Act, however, was beyond doubt to substitute a fixed statutory right for an indefinite common law right, whatever that pre-existing right was. So it was decided by the House of Lords in 1774.‡

The preamble of the Act of Anne is noticeable. It recites that, "printers, booksellers, and other persons

* See the Digest of Sir J. Fitzjames Stephen, Q.C. (now Mr. Justice Stephen) appended to the Report of the Royal Commission of 1878, hereinafter referred to as "Steph. Dig."; *Copinger on Copyright*, 2nd ed., A.D. 1881; *Shortt on Literature and Art*, 3rd ed., A.D. 1884; *Scrutton on Copyright*, 2nd ed., 1890.

† See Act of 1842, s. 2.

‡ In *Donaldson v. Becket*, 2 Brown's *Parliamentary Cases*, 129.

“ have of late frequently taken the liberty of printing, reprinting, and publishing books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriment, and too often to the ruin of themselves and their families,” and then proceeds to give the 14 years’ copyright, “ for preventing such practices for the future, and for the encouragement of learned men to compose and write useful books.” This shows that the Act was not merely intended to be for the benefit of authors, but for the benefit of the public also, being in fact partly based upon the policy of the first Patent Act, commonly called the “ Statute of Monopolies,” which, in the reign of James the First, had conferred a 14 years’ monopoly upon the true and first inventor of new manufactures within the realm. The interest of the public, moreover, was specially safeguarded by the curious provision, soon afterwards repealed, that the Archbishop of Canterbury, sitting in consultation with the Lord Chancellor and the judges of the land, should have power to settle the prices of books upon complaint, made good, that unreasonable prices were exacted—a provision which is the origin of the existing restricted enactment, by which the Judicial Committee of the Privy Council may, after the death of an author, license the republication of books which the proprietor of the copyright refuses to republish.

Between 1709 and 1842 the following Acts were passed:—*

In 1735, 8 Geo. 2. c. 13., giving copyright in engravings.

In 1739, 12 Geo. 2. c. 36., to prohibit the importation of British books reprinted abroad, and repeal so much of the Act of Anne as empowered the limiting of the prices of books (repealed).

In 1767, 7 Geo. 3. c. 38., to render the Act of 1735 more effectual.

* One or two Acts of small importance are omitted from our list.

In 1777, 17 Geo. 3. c. 57., to render the Acts of 1735 and 1767 still more effectual.

In 1798, 38 Geo. 3. c. 71., giving copyright in busts and new models (repealed).

In 1801, 41 Geo. 3. c. 107., extending copyright in books for 14 years more, if author still living at the end of the first 14 years (repealed).

In 1814, 54 Geo. 3. c. 56., giving copyright in every kind of sculpture.

In 1814, 54 Geo. 3. c. 156., extending copyright in books to a term of 28 years certain, and the residue of the life of the author (repealed).

In 1833, 3 Will. 4. c. 15., giving author of play sole liberty of representation.

In 1835, 5 & 6 Will. 4. c. 65., to prevent the publication of lectures without consent.

In 1838, 1 & 2 Vict. c. 59., the first International Copyright Act (repealed).

The preamble of the Act of 1842, 5 & 6 Vict. c. 45. recites that, "it is expedient to amend the law of copyright, and to afford greater encouragement to the productions of literary works of lasting benefit to the world." This Act is sometimes called Talfourd's Act, from its being founded on a Bill first introduced in 1837 by Serjeant afterwards Mr. Justice Talfourd, the author of "Ion." It was in fact piloted through the House of Commons by Lord Mahon, who, as Lord Stanhope, was more than 30 years afterwards appointed chairman of the Copyright Commission, but died before the Commission had held any sittings. The House of Commons debates furnish very instructive reading on the subject. Talfourd had proposed, in 1841, that the copyright term should be the life of the author and 60 years after the death of the author; but though he professed himself willing to accept a term of life and 30 years, his Bill, brilliantly and vigorously opposed by Macaulay, was rejected. Lord Mahon's proposal was for a term of life and 25 years, but Macaulay suggested and carried a term of 42 years or life, whichever should be the