me then with the other Judges, that there was sufficient on the record to show that the rate had been made by all those who constituted what has been called "the minority." Of course, as I **[814]** did not hear the case argued at your Lordships' bar, I give no opinion at all upon the case, and should have taken no part in it, had it not been that my noble and learned friend Lord Brougham, who did hear this case, but was compelled by ill health to quit London before the matter came under final decision in your Lordships' House, requested me to say that having, by the courtesy of my noble and learned friend, seen the opinion that he was about to give, in moving the judgment of your Lordships' House, he entirely concurs in the whole judgment, with, perhaps, that same qualification which I have stated. He added, that the doubt he expressed as to that point, rather adds to the force of this judgment in respect of the main result, because it excludes the notion of coming to this conclusion upon any other ground than the general ground that the rate must be made by the majority, and that no other rate is valid.

Judgment of the Exchequer Chamber, and Judgment of the Court of Queen's Bench, reversed.—Lords' Journals, 12th Aug. 1853.

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[815] CHARLES JEFFERYS,—*Plaintiff in Error;* THOMAS BOOSEY,—*in Error* [February 16, 17, 20, June 29, August 1, 1854]

[Mews' Dig. iv. 459, 484, 546. S.C. 24 L.J. Ex. 81, 1 Jur. N.S. 615; 26 L.J. Ex. 354; 15 Jur. 540. As to position of foreigner, see *Routledge* v. *Low*, 1868, L.R. 3 H.L. 111; 33 Vict. c. 14, s. 2; the International Copyright Acts, 1844-1886 (7 and 8 Vict. c. 12; 15 Vict. c. 12; 49 and 50 Vict. c. 33); and the Berne Convention, 1886; *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q.B. 347; *Baschet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73. As to assignment, see Copyright Act, 1842, s. 13. See also *Boucicault* v. *Chatterton*, 1877, 5 Ch. D. 276; *Caird* v. *Sime*, 1887, 12 A.C. 343; *Tuck* v. *Priester*, 1887, 19 Q.B.D. 54, 640; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association*, 1889, 40 Ch. D. 434; *Walter* v. *Lane* (1900), A.C. 539.]

Foreigner—Copyright—Assignment of Copyright.

The object of 8 Anne, c. 19, was to encourage literature among British subjects, which description includes such foreigners as, by residence here, owe the Crown a temporary allegiance; and any such foreigner, first publishing his work here, is an "author" within the meaning of the statute, no matter where his work was composed, or whether he came here solely with a view to its publication.

Copyright commences by publication; if at that time the foreign author is not in this country, he is not a person whom the statute meant to protect.

An Englishman, though resident abroad, will have copyright in a work of his own first published in this country.

B., a foreign musical composer, resident at that time in his own country, assigned to R., another foreigner, also resident there, according to the law of their country, his right in a musical composition of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and, before publication, assigned it, according to the forms required by the law of this country, to an Englishman. The first publication took place in this country:

Held, reversing the judgment of the Court of Exchequer Chamber, that the foreign assignee had not, by the law of this country, any assignable copyright here in this musical composition.

Per Lords Brougham and St. Leonards.—Copyright did not exist at common law; it is the creature of statute.

Per Lord St. Leonards.—No assignment of copyright under the 8 Anne, c. 19, the benefit of which is claimed by the assignee, although from a foreigner, can be good in this country, unless it is attested by two witnesses.

Per Lord St. Leonards.—There cannot be a partial assignment of copyright.

This was an action on the case brought in the Court of Exchequer by T. Boosey against C. Jefferys. The decla-**[816]**-ration stated that the plaintiff was, and still is, the proprietor of the copyright in a certain book, to wit, a musical composition called "*Come per me sereno,*" *Recitativo e Cavatina nell' Opera La Sonnambula, del M. Bellini,* which said book had been and was first printed and published in England, and within twenty-eight years last past, and which copyright was subsisting at the time of the committing of the grievances, etc. Yet the defendant, contriving to injure the plaintiff, and to deprive him of the gains, etc. which he might, and otherwise would have derived from the said book, and also to deprive him of the benefit of his copyright therein, heretofore and after the passing of a certain Act of Parliament, etc. (the 5 and 6 Vict. c. 45), and within twelve months before the commencement of this suit, to wit, etc. wrongfully, and without the consent in writing of the plaintiff, so being the proprietor of the said copyright, did, in England, unlawfully print and cause to be printed for sale, divers copies of the said book, contrary to the form of the statute. And the defendant further contriving, etc., heretofore and within twelve calendar months next before the commencement of this suit, to wit, etc., did wrongfully, and without the consent in writing of the plaintiff, so being the proprietor of the copyright, unlawfully sell and cause to be sold, and unlawfully publish and cause to be published, and expose to sale and hire, and cause to be exposed to sale and hire, and unlawfully had in his possession divers, etc. copies of the said book, then on those days and times, etc., well knowing the said copies, and each and every of them, to have been unlawfully printed, contrary to the form of the statute. By means, etc. the plaintiff has been hindered and prevented from selling, etc., and his copyright has been and is greatly injured and damnified, to the plaintiff's damage.

The defendant pleaded, first, that the plaintiff was not **[817]** the proprietor of the copyright in manner and form, and secondly, that there was not, at the time of committing the supposed grievance, a subsisting copyright in the book, as alleged.

The plaintiff took issue on these pleas.

The cause came on for trial before Mr. Baron Rolfe, at the sittings after Easter Term, 1850, when it appeared in evidence that the opera in question was composed at Milan, in February, 1831, by Vincenzo Bellini, an alien, then and since resident at Milan; that by the law of Milan, he was entitled to copyright in this opera, and to assign such copyright; that on the 19th of February, 1831, he did, by an instrument in writing, according to the law of Milan, assign the copyright to Giovanni Ricordi, also an alien, and resident at Milan; that according to the law of Milan, such copyright, and the right of assigning the same, thereby became vested in Ricordi; that on the 9th day of June, 1831, Ricordi being then in London, duly executed, according to the laws of England, an indenture, made between himself and the plaintiff, which indenture recited the above facts, and assigned all Ricordi's interest in the copyright in the opera to the plaintiff, but for publication in the United Kingdom only. The plaintiff further proved that he was a native-born subject, resident in England; that the opera was first published by him in London on the 10th June, 1831, and that there had been no previous publication thereof in the British dominions, or in any other country; and on the same day the book was duly registered in the Stationers' Company and copies deposited there according to law. The plaintiff further proved that, on the 13th of May, 1844, he caused a further entry to be made in the registry of the Stationers' Company, for the purposes of the statute passed in the 5 and 6 Vict. c. 45, and these entries were proved in evidence at the trial. Mr. Baron Rolfe **[818]** then, in conformity with the decision in *Boosey* v. *Purday* (4 Exch. Rep. 145), directed the jury that the matters given in evidence were not sufficient to entitle the plaintiff to a verdict on either of the issues, and that the verdict must be found for the defendant. A bill of exceptions was tendered to this direction. The cause came on to be heard on the bill of exceptions (which set forth the pleadings and facts above

stated) before the Judges in the Court of Exchequer Chamber, on the 20th May, 1851, when judgment was given declaring the direction at the trial to be wrong, and a *venire de novo* was awarded (6 Exch. Rep. 580). A writ of error was then brought in this House.

The Judges were summoned, and Lord Chief Justice Jervis, Lord Chief Baron Pollock, Mr. Baron Parke, Mr. Baron Alderson, Mr. Justice Coleridge, Mr. Justice Maule, Mr. Justice Wightman, Mr. Justice Erle, Mr. Baron Platt, Mr. Justice Williams, and Mr. Justice Crompton attended.

Mr. Serjt. Byles and Mr. Quain, for the plaintiff in error.—The judgment of the Court below is wrong, for Ricordi possessed no copyright in England, and his assignment passed nothing. It is a generally understood principle, that a municipal law, such as that of copyright, does not extend beyond the limits of the country which enacts it. Story's Conflict of Laws (SS. 7—18, 375, 425, 436). If the laws of two countries conflict, the decision must be according to universal principles of law, or according to the special law of the country where the suit is prosecuted.

[Lord Brougham.—That principle was declared in this House in *Don* v. *Lippmann* (5 Clark and F. 1), the authority of which **[819]** has been universally recognized. It is quoted many times by Story.]

In the United States, the law expressly declares that no person has copyright there but one who is a native of the States, or a resident in them;* and it appears doubtful whether he must not be such a resident as may become an American citizen.† In this country the law has not been so expressly declared by statute, but the statutes that have been passed upon that subject bear a similar interpretation. Starting from an acknowledged point, the course is per-**[820]**-fectly clear. The case of *Chappell* v. *Purday* (14 Mee. and Wels. 303) decides that a foreign author resident abroad, whose works are published in this country, has not, under the statutes of 8 Anne, c. 19, and 54 Geo. 3, c. 136, any copyright here. That case was decided in 1845, and it was there said:—"The general question, whether there was such a right at common law, was elaborately discussed in the great cases of *Millar* v. *Taylor* (4 Burr. 2303) and in *Donaldson* v. *Beckett*" (*Id.* 2408; 2 Bro. P. C. 129). In the latter of these cases, it was distinctly decided that copyright was entirely the creature of the statute,—a decision that was adopted and recognized by Lord Kenyon, in *Beckford* v. *Hood* (7 Term Rep. 620-627), and seems to be assumed by Lord Ellenborough, in *The University of Cambridge* v. *Bryer* (16 East, 317), and asserted by Lord Tenterden, in *White* v. *Geroch* (2 Barn. and Ald. 982). *Hinton* v. *Donaldson* (Dict. of Decisions, tit. Literary Property, p. 8307; Fol. Dic. v. 3, p. 388) was a case in Scotland, that preceded the decision of *Donaldson* v. *Beckett* in this country, and there twelve of the Judges held that there was no copyright at common law, Lord

* The words of the Act of Congress of 3 Feb. 1831, s. 1, are: "Any person or persons, being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book, map, chart, or musical composition, which may be now made or composed and not printed and published, or shall be hereafter made or composed, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked, from his own design, any print or engraving, and the executors, administrators, or legal assignees of such person or persons, shall have the sole right and liberty of printing, reprinting, publishing and vending such book or books, map, etc., etc., in whole or in part, for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter described."

† Curtis on Copyright, p. 141: "In the United States there can be no copyright of a book, map, chart, or musical composition, print, cut, or engraving, unless the author be a citizen of the United States or resident therein, at least at the time of publication. Whether it is necessary that the work should have been made or composed in the United States, or while the author was a citizen of, or resident in the country, does not present a question of much doubt;" he then gives the provisions of the statute of 1831, and after describing the questions that may arise as to the length of the foreigner's residence in the United States, and whether it amounts to domicile, he says, speaking of the Act of Congress, "Does it mean that he must have resided while he made or composed his work, or can a resident foreigner publish and take a copyright of a work which he has composed abroad?"

Monboddo being the only Judge who took an opposite view of the question. In *Boosey* v. *Purday* (4 Exch. Rep. 145), where the facts were the same as here, it was decided that a foreign author domiciled abroad had no copyright in England. That decision, which was, in fact, made after re-considering an opinion to the same effect previously intimated in *Chappell* v. *Purday* (14 Mee. and Wels. 319), seems to have been misunderstood when the present case was in the Court of Exchequer Chamber.

The chief case on the other side is that of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), where the Court of Common Pleas held that **[821]** a foreigner, resident abroad, might, in a book first published by him in this country, have an English copyright which he could assign to another. That decision was pronounced in 1848. After that came *Boosey* v. *Davidson* (18 Law Journ. Q. B. 174; 13 Q. B. Rep. 257), which supported *Cocks* v. *Purday*, and indeed adopted it as a guiding authority. The question now will be, whether those decisions can be supported.

The title to copyright is given by statute, and is a right which can only be exercised in England according to the statute. It is a right as strictly local as are rights to an estate, or to any easement incident or appurtenant to an estate; it is a municipal law which can have no force in any other country. There is no dispute here as to Ricordi's Italian copyright, but that does not give the plaintiff any rights in England. Bellini's assignment to Ricordi may, for this part of the argument, be assumed to have passed to Ricordi what Bellini possessed, but that was Italian copyright alone; he did not possess any English copyright, and therefore he could not pass any by assignment. It may be admitted that he possessed the power to withhold the publication in England; but if he did not withhold publication, but published, unless he was actually domiciled here, he could not, by the act of publication, acquire copyright in this country. Now he made his assignment before he had done that which would vest copyright in him. The case is even stronger, if considered in another way. Bellini did not send Ricordi here as his agent, but as his assignee; the assignment in Milan did not vest property in England, and Ricordi was therefore, in this country, the assignee of a person who had nothing here to assign. In the argument in the Court below, the case of Gibbon was referred to, and it was said that he was domiciled at Lausanne, and was for such a purpose a foreigner; but the reference is not in **[822]** point, for Gibbon was an English subject, who, though he lived for years at Lausanne, never lost his English domicile. That was a personal quality, and "*Qualitas personam, sicut umbra, sequitur.*" Story, Conflict of Law (S. 65). And in fact he came here to publish his work. [The Lord Chancellor.—Do you admit that if he had established himself at Lausanne, without any *animus revertendi*, he would have lost his rights as an Englishman?] It is not necessary for the purposes of this case to discuss that question. [The Lord Chancellor.—I do not say whether that is for you or against you, but it does not appear clear to me that a British subject would lose them.] He would not; for many purposes a British subject may have two domiciles. Another case is that of Voltaire, and it is very strong against the right of a foreigner to copyright. Voltaire, in 1728, published his Henriade in England by subscription, the then Queen Caroline standing at the head of the list of subscribers. By the statute, his copyright in that work, if he had any, would not expire till 1756, or later, and he himself lived many years beyond that time. Several other editions were published, even before 1742; he was contemporary with those great lawyers who drew up the statute of Anne, and he was the friend of Bolingbroke, yet, with all these means of asserting his right to exclusive publication, he did not assert it. There can be no doubt that it was supposed he had no lawful claim to copyright, and that these publications were submitted to on that supposition.

[The Lord Chancellor.—They were submitted to, but not on that supposition. Lord Brougham.—The circulation of the book was in France, and not here; it was printed here to avoid certain difficulties in printing it in France. Lord St. Leonards.—Rousseau's works were printed in Holland for a similar reason.]

[823] The doctrine in the case of *Donaldson* v. *Beckett* (4 Burr. 2408; 2 Bro. P. C. 129), that no copyright in books existed at common law, has been adopted in the United States, in *Wheaton* v. *Peters* (8 Peters' Rep. in the Supreme Court of the United States, 591), which, though not an authority here, is evidence of the

opinion which eminent Judges, educated in the English law, entertain on the subject. If the right existed at common law, it must have existed in perpetuity, which no one would pretend. Before the invention of printing, no man thought of having what is now called copyright even in the letters which he wrote. Thus, going back to the times of Rome, we find that the letters which Cicero wrote to Atticus, were copied by the scribes of Atticus, and were freely presented by him to the mutual friends of both. Letters or literary compositions, like inventions, when once given to the world, were given without any restrictive right exercised over them by writer or inventor. In the United States it has been deemed necessary to make this matter the subject of a positive law.* The principles stated by Mr. Thurlow, in his argument in *Tonson* v. *Collins* (1 Sir W. Bl. 301-306), as to what our law was when that case was argued, are true. He describes literary productions as the result of invention, in the same way as a machine is said to be invented; and consequently if, at Common Law, the right to literary property existed, and was a right held in perpetuity, then all the useful machines and all the **[824]** chemical discoveries, as well as all the literary works of great writers, are the property of them and their descendants or assignees for ever. It is impossible to distinguish between the two things. This point was well put in the judgment on the case of *Wheaton* v. *Peters*.† There is no trace in the Civil Law of such a right as to literary compositions; indeed it seems to have been the other way; for in the Institutes (Vinnii Inst. Lib. II. Tit. I. s. 33, *de Scriptura;* see the French Code Civil, s. 547 *et seq.*) it is said, that if Titius wrote a song, or a history, or a speech upon my paper, the paper still belonged to me. Literary property is, in truth, a property in ideas only; it is not the subject of possession or occupation, and therefore never could have been a subject of a Common Law right; nor could it exist upon general principles of property; it could only be created by the express provisions of the legislative power. On this point, the argument of Mr. Yates in *Tonson* v. *Collins* (1 Sir W. Bl. Rep. 301. See 333 *et seq.*) is relied on; this seems also to have been so considered in France: Rénouard (Traité des Droits d'Auteurs, 1839). So that here are the examples of the United States and of France justifying the argument that no copyright existed in an author at Common Law; and at all events it is clear that the rights of a foreign author depend, in both those countries, as they must depend everywhere, upon the express provisions of the Legislature alone. The statutes of the United States already quoted, prove that proposition as to them: as to France, the work **[825]** of M. Rénouard expressly states the fact, that the right of a foreign author was first given by a decree in 1810.‡

The words used in the statute of Anne are retrospective. They give to the "author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books," or to the "bookseller, printer, or other person who hath purchased or acquired the copy or copies of any such book, in order to re-print the same," the sole right of printing for 21 years. These words are themselves clear evidences of the belief of the Legislature at that time that no

* Curtis on Copyright, p. 89: "In the United States manuscripts are now under the protection of the statute of 1831, which gives a remedy at law and in equity against any person who shall print or publish, or be about to publish, any manuscript whatever, without the consent of the author or legal proprietor first obtained, if the author or proprietor be a citizen of or resident in the United States."—Act of Congress, 3 Feb. 1831, s. 9.

† 8 Peters' Rep. Sup. Court of the U. S. 591. Mr. Justice M'Lean, in delivering the opinion of the Court, said (p. 657), "In what respect does the right of an author differ from that of an individual who has invented a most useful and valuable machine? In the production of this, his mind has been as intensely engaged, as long, and, perhaps, as usefully to the public, as any distinguished author in the composition of his book."

‡ Rénouard, Traité des Droits d'Auteurs (1839), Part 4, c. 3, s. 89, Vol. 2, p. 205. "Does any privilege belong in France to a foreigner who there first publishes his work?" "Under the law of 1793, which preserved silence on this matter, this question was discussed. It has been formally solved by Article 4 of the Decree of the 5th Feb. 1810, which assimilates foreign to national authors."

such right previously existed, but that it was then for the first time created. And it is remarkable, that the words of the Act give the right not to any composer of a book, but to the author of a book already printed, which affords further proof that the Legislature did not look on this as an inherent right, but as one which was then conferred. Other sections of that Statute also relate to books actually printed. But if it should still be contended that that statute did not create, but only regulated the rights of an author, it follows that the statute was a substitution for the Common Law, so that all rights of authors must now be taken to depend entirely on its provisions, and if enforceable, can only be so by an exact observance of those provisions. This observation must apply with as much force to the Statute of Anne, which regulates copyright in books as it undoubtedly applies to those which relate to dramatic and musical representations (3 and 4 Will. 4, c. 15; 5 and 6 Vict. c. 45), the right to exclusive profit from which were given **[826]** by the Legislature, and must be preserved and enforced in the way directed by the Legislature.

It will be said that this was a personal right of the author, and that such rights are carried everywhere, and are recognised by the laws of all civilised countries, and by that of this country in particular, and *Pisani* v. *Lawson* (8 Sc. 182; 6 Bing. N. c. 90; 8 Dowl. P. C. 57) will be relied on. But that case is not an authority for such an argument; there a foreigner, resident abroad, recovered damages in this country for an injury to his character by a publication here. But the character of a man is a property of a purely personal nature; it belongs to him by natural law, and is therefore recognised by the law of every country. But copyright is a special property, which has been already shown to have no existence in the law of nations, but only to exist by force of the municipal law of each particular country: this is well explained in the work of an American author, Curtis on Copyright (P. 22. "The actual law of nations knows no exclusive right of an author to the proceeds of his work, except that which is enforced by the municipal law of his own country, which can operate nowhere but in its own jurisdiction. As soon as a copy of a book is landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."). Assuming it, however, to be a personal privilege, then it is one governed entirely by the domicile of the person who is to take advantage of it, and the law of that domicile cannot alter or affect the law of any other State. The law of the domicile may, as the law of France does, give to an author very peculiar rights, but they will not attach to him elsewhere. Thus, a Frenchman may publish a work in England, and yet, some years afterwards, he or **[827]** his children, or their assigns, may have the copyright of that work in France. That was the case with Clery's Journal,* but no one would pretend that the law of England gives such a right to an Englishman. Publication abroad makes the work *publici juris* here. The difference is explained by the peculiarity of the law of each individual country.

The Engraving Acts (8 Geo. 2, c. 13; 17 Geo. 3, c. 57, and sec. 7 and 8 Vict. c. 12, and 15 and 16 Vict. c. 12) furnish, by analogy, a reason for saying that the object of the Legislature, in the statute of Anne, was to protect and encourage labour and skill in this country, and that the Legislature did not pretend to interfere with

* Merlin, Questions de Droit. Contrefaçon, s. vii. Clery had published in London a work, entitled, "Journal of what happened in the Tower of the Temple during the Captivity of Louis XVI., King of France." In July, 1814, the two daughters-in-law, and heirs of Clery, assigned to Chaumerot, a bookseller in Paris, the property in the "Journal" of their father-in-law. In September he re-printed it, and made the ordinary declaration then required by the law of France. In June, 1817, Michaud, another bookseller, published a work, entitled, "History of the Captivity of Louis XVI., and of the Royal Family, as well at the Tower of the Temple, as at the Conciergérie," in which work was inserted, entire, the "Journal," which was the property of Chaumerot. A proceeding as for piracy was commenced by Chaumerot, and, by the judgment of the Court of Cassation, he succeeded in his suit.

anything that was done abroad, *Page* v. *Townsend* (5 Sim. 395). An Act of Parliament can only be applicable to aliens, or persons out of the dominions of England, by express words. The Bankruptcy Acts and the Stock-jobbing Acts required in that way expressly to be extended to aliens and to foreign funds: they would not otherwise have affected either, *Wells* v. *Porter* (3 Scott, 141; 2 Hodges, 78; see *Elsworth* v. *Cole*, 2 Mee. and Wels. 31). The same observation applies to the Legacy Duty Acts, The *Advocate-General* v. *Thomson* (12 Clark and F. 1), to cases of bigamy, Anonymous (1 Siderf. 171), and to **[828]** other matters mentioned in argument in the Sussex Peerage case (11 Clark and F. 136). Even if it could be maintained, that though an Act may not extend to foreigners by words, it may do so in principle, and that that is the case with these Copyright Acts, and if *Cocks* v. *Purday* (5 Com. Ben. Rep. 860) should be cited as an authority for the proposition, then the answer is, that the exception to any such principle exists in the case of copyright of books; for it is admitted, that if a foreign author first publishes his work abroad, it is, by the law here, *publici juris*, and his subsequent publication of it here cannot, under any circumstances, give him a copyright in this country.

Then, as to the form of the assignment; if Bellini or Ricordi did possess copyright in this country, assignable here, it must have been by virtue of the laws existing in this country, and consequently the forms of those laws must have been observed, in order to make the assignment from the one to the other of them valid. If so, then this assignment is void, as not being attested by two witnesses, *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456), *Power* v. *Walker* (3 Maule and S. 7. See also *Clementi* v. *Walker*, 2 Barn. and Cres. 861).

[The Lord Chancellor.—The assignment is stated in the Bill of Exceptions to have been validly executed according to the law of Milan. What is the effect of that here?]

It could not be enforced here. The Bill of Exceptions should have alleged an assignment valid by the law of England. If the argument that the right exists under our law of copyright is well founded, then the assignment comes within the principles of our law, which having created it must govern its enjoyment; it must be executed in the form required by the law of this country, and it must also be alleged to have been so executed. It was not so executed, but was executed according to the law of Milan, **[829]** and therefore did not vest any property in Ricordi which the law of England can recognise.

Another point arising on the Bill of Exceptions is, that it does not there appear that it was ever the intention of Bellini to pass an English copyright at all. It is merely alleged that by the law of Milan he was entitled to copyright, and that by that law he assigned to Ricordi his interest in such copyright, and the right of transferring the same. But all that is so stated refers to the law of Milan alone, and, for anything that appears in the Bill of Exceptions, the only agreement was, that Ricordi should possess in Milan the rights which Bellini possessed there; not that Bellini pretended to give, or Ricordi to purchase, all the rights which Bellini himself might, by possibility, be entitled to claim elsewhere.

Lastly, English copyright extends all over the British dominions; 54 Geo. 3, c. 156; is an indivisible thing, and part of it alone cannot be assigned. *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456, per Maule J. 458): here the assignment was only made for the United Kingdom, and therefore, being only an assignment of part of the right which Ricordi professed to have received by transfer from Bellini, was bad.

Sir F. Kelly and Mr. Bovill (Mr. Raymond was with them), for the Defendant in Error.—The construction here sought to be given to the statute of Anne, can only be given by introducing the qualifying words "British-born subjects," or "subjects of Great Britain," the introduction of which would occasion confusion and injustice, and would have this operation, that a foreigner who should come here permanently to reside, and should then become the author of an immortal work, would be refused a title to copyright. Such a consequence, though **[830]** implied in the judgment of the Court of Exchequer in *Boosey* v. *Purday* (4 Exch. Rep. 145), certainly never was intended, and yet it follows necessarily, from the argument, that the statute of Anne applies only to British-born subjects.

The argument on the other side, founded on the principle that no act of the British Legislature can have any extra-territorial force, is fully admitted; but the

consequence deduced from it does not follow. The moment that a person or a thing, which can be the subject of English law, is found in this country, the law operates upon each, whether of foreign or English origin, and Story, who is relied on by the other side, is himself the decisive authority for this proposition (Confl. of Laws, s. 18).

[The Lord Chancellor.—The question here is not of an international kind, but is whether, under the circumstances of the case, the statute of Anne has secured to the assignee a copyright property.]

It must be assumed, as stated in the special verdict, that Ricordi came here clothed with all the rights which the law of Milan could give him in his own country. Of what value are those rights here is now the question. It is submitted that the moment Ricordi arrived here, he stood in the same situation as the foreign author himself. He brought with him something which our law recognises as property, and there is no distinction between property in the hands of an alien, and in the hands of a British subject. The law of this country came into operation both upon his person and his property; and Ricordi being, for the purposes of our law, the author, and being present in this country, had the right of exclusive publication of his work, and could assign that right to any other person in this country. If the musical composition had been surreptitiously obtained from Ricordi, and re-published, the Court **[831]** of Chancery would have afforded him protection. The protection of our law cannot be confined to the mere substantive property of the foreigner, but extends to all his personal rights (Bro. Abr. Denizen and Alien, pl. 10; Anonymous Dyer, 2 *b.*). Property in a patent may be held in trust for a foreigner, *Beard* v. *Egerton* (3 Com. Ben. Rep. 97). If Ricordi had brought pictures here, no one could say that the pictures would be protected from injury, but that he himself had no legal right to deal with those pictures as his property. Our law, indeed, not only protects him and his property while here, but it so fully recognises his personal rights, that it protects his character, as property, even while he is abroad, and when he has never been in the country, *Pisani* v. *Lawson* (8 Scott, 182; 6 Bing. N. C. 90). The plaintiff there, though a foreigner, resident abroad, and who had never been in this country, was allowed to maintain an action for compensation in damages for an injury done to his character by a publication in this country. If the form of the action for libel had been regulated by an Act of Parliament, and not by the common law, his right to claim damages would still have been the same, for the right was a personal right, existing by force of the common law. In like manner, the sole right to multiply books is a personal right, though it relates to property. It is the same as the exclusive right to sell a watch manufactured by a foreigner in a particular way, and first brought over to this country by its owner. It is not because the forms of enforcing the right may be different in our country from what they are in another, that therefore the right itself does not exist. Take the analogy of bills of exchange; they are not presentable on certain days in Milan; but if a Milan bill of exchange is brought here, the law of England attaches upon it; it becomes presentable according to the law of this country, the rights of **[832]** the holder here being quite unaffected by that difference of law in England and Milan, which is in fact a mere matter of regulation.

The question arises here whether copyright existed in this country before the statute of Anne. That it did so, is shown by the case of *Roper* v. *Streater* (Skin. 234; referred to in 4 Burr. 2316), although, of course, that question is not very material, since the right of the defendant in error must now be regulated by that statute; but still it is of some importance, as leading to a conclusion as to what was the intention of the Legislature in passing that statute, and what was the state of the law on which that statute was to operate. That statute was avowedly passed for the encouragement of learning.

[Lord Brougham.—Do you read it thus,—for the encouragment of learning all over the world?]

No. But whoever possesses and uses learning here, to that man the statute applies, if he gives this country the benefit of its first production. Is it not for the benefit of learning here, that French, Italian, and German authors should first publish their works in this country? If it had been the intention to exclude a numerous and distinguished class of men from the benefit of the Act, why could not

a few simple words have been introduced, which would have left the matter free from all doubt. That they were not so introduced is strong evidence to show that no such exclusion was intended. In the statute there is no limitation of persons; the words are, "the author and his assigns."

[Lord Brougham.—In former times were Irish editions of English books imported into this country, on being proceeded against as piracies?]

Nothing is known on that subject. But that question itself shows the dangerous consequence of constructively introducing into a statute words which may have the effect **[833]** of giving a peculiar meaning to certain of its provisions. The words in the statute are, "any author of any book," which must mean every author of every book. What is the difference, as to any principle of justice, between a book, a picture, and a machine? Suppose these words had been, not "the author of any book," but "the projector, inventor, maker, or manufacturer of any machine hereafter to be invented and manufactured;" would or would not those words apply to foreigners? If they would, why will not those now in the statute apply to authors?

[The Lord Chancellor.—A picture is analogous to a manuscript; but a picture cannot be indefinitely multiplied. In order to resemble the printing of a book, your analogy must be confined to things that can be so multiplied; an engraving would be the same as a book; but that is arguing *idem per idem.*]

The right of property in the book is the first thing to be established; that being admitted, then the other right, that of exclusively multiplying copies, grows out of it. What are the analogies furnished by other statutes? take the Patent Acts; the words are, "The first and true inventors of such manufacture." What is the distinction for such a purpose between the author of a book, or the man who first publishes it, and the inventor of a machine, or the man who first introduces it into use? it is the first publication of the book, or the first use of the machine, which gives the right. Why not confine one, as well as the other, to British subjects? but that is never done; nor, with regard to patented manufactures, has it ever been said that the foreign inventor must, in order to have the benefit of the statute, be domiciled in this country.

[Lord St. Leonards.—Assume that the common law gave the right; that right, whatever it was, was taken away by the statute of Anne, and certain privileges, not before existing, **[834]** were then given. But assuming copyright to exist at common law, would you say that the common law applied to foreigners?]

If the right existed at Common Law, every one, whether foreigner or native, would be entitled to the benefit of it, when either the man, or the property which was the subject of that law, was in this country: it was a right attaching on the property; and as soon as the property was here, the law operated upon it.

[The Lord Chancellor.—Assuming that to be so; suppose the composition of Bellini sent by him to Boosey, and first published by Boosey, and then pirated, who would be the person to complain of the piracy, Bellini or Boosey?]

Boosey, who was the owner of the right by purchase; the right attaches on the property; the man, the creator of the property, is not required to be resident here. Byron wrote many of his works abroad; Murray bought them; the copyright was in Murray.

[The Lord Chancellor.—Do those who maintain that there was a common law right, say that that right was capable of transfer; if so, what was the form of transfer at common law?]

There might, perhaps, be some difficulty about the form of the transfer; but the right to transfer existed; then the form of making it would be analogous to what was used with relation to other things.

[The Lord Chancellor.—Is there an instance of property of this sort being claimed before the statute of Anne?]

All the cases, from the earliest times, show that there existed in the author of any work, and in the purchaser from the author, an absolute right of property, *Roper* v. *Streater* (Skin. 234. 4 Burr. 2316). An anonymous case, referred to in the **[835]** *Stationers' Company* v. *Seymour* (1 Mod. 257), the *Duke of Queensberry* v. *Shebbeare* (2 Eden, 329; 4 Burr. 2330), and *Prince Albert* v. *Strange* (1 Macn. and Gor. 25; 1 Hall and Twells, 1) and in some, especially the last of these cases, the existence of

that property was recognised altogether independently of any intention to publish. An alien friend possesses this right as much as a British subject. There is nothing in the terms of the statute which expressly limits the right to a British subject; that was assumed and determined for more than a century. There is only one case which really raises a doubt upon the subject. Take the cases that appear to be opposed to the right, and it will be found that they are so in appearance only. In *Delondre* v. *Shaw* (2 Sim. 237), protection was refused to a medicine manufactured abroad, and a label printed abroad; but the ground of the decision there was, that the Plaintiff had no interest except in the copyright of the printed seal, and that was something which was printed and published abroad, and was therefore not the subject of the copyright by the law of this country. The second marginal note in that case misleads the reader, and Lord Chief Justice Wilde, in *Cocks* v. *Purday*, commenting on the dictum which is repeated in that note, says (5 Com. Ben. Rep. 883), "If this dictum was intended to apply to foreign authors who have *not* published in this country, it does not apply to the present case; if it was intended to apply to a foreign author who *has* published his work here, the same learned Judge, in *Bentley* v. *Foster* (10 Sim. 329), where the point was raised, expressed a deliberate opinion in opposition to that which he had before thrown out." *Page* v. *Townsend* (5 Sim. 395) is the next case, and that merely decided that prints engraved and struck **[836]** off abroad, but published here, were not protected from piracy; but that was because of the express words contained in the 17th Geo. 3, c. 57. Then came *Chappell* v. *Purday* (14 Mee. and Wels., 303), and there again the question did not properly arise, for the overture sought to be made copyright was first published on the continent. *Boosey* v. *Purday* (4 Exch. Rep. 145), which is the last of these cases, is the only one in point against the Defendant in Error.

[The Lord Chancellor.—The arguments of the Judges in that case may be commented on without reserve; for that case is not a direct authority, since the action, in the present case, was commenced, and the case was brought to this House finally to determine the question which was there decided.]

If so, then there is no authority whatever for the proposition that copyright does not exist in the work of a foreign author first published by him in England. Then what are the reasons given for the judgment which denies his right? It is there said (4 Exch. Rep. 157) that the object of the Legislature was not to encourage the first publication of foreign books in this country, but the cultivation of the intellect of its own subjects, to "encourage learned men to compose and write useful books," as if the first publication here of learned works composed by anybody would not have that effect; and the reward is stated to be "the monopoly of their works for a certain period, dating from their first publication," as if that reward would not be secured to them, whatever was the cause which stimulated them to write, whether the desire to enforce or to oppose the opinions of a native or of a foreign author. In these two assertions, which do not amount to reasoning, lies the whole pith of that judgment. On the other side, there are numerous **[837]** and well-considered authorities to the effect that the works of a foreigner first published in this country thereby obtain copyright: *Bach* v. *Longman* (Cowp. 623) is the first of them. There the question was, whether a musical composition was a book within the statute of Anne? a question that never could have arisen if the works of a foreigner had not been deemed entitled to protection under that statute.

[The Lord Chancellor.—That foreigner was resident in this country at the time of publication, and had obtained letters patent for his publication.]

That was so, and the case therefore shows that, both as to the statutes of James and Anne, a foreigner was not, as such, excluded from their benefit. Then came the case of *Tonson* v. *Collins* (1 Sir W. Bl. 301-321). There the question of copyright was carefully considered, and even Mr. Thurlow, in arguing against it, admitted (*id.* 306), that "it is of no consequence whether the author is a natural-born subject, because this right of property, if any, is personal, and may be acquired by aliens." The point was not absolutely decided in that case; but it is clear that it was discussed and considered. So matters remained till the case of *Clementi* v. *Walker* (2 Barn. and Cres. 861), where the decision come to could not have occurred if the fact of the author being a foreigner had been an answer to the claim. That it was not so, is proved by *Guichard* v. *Mori* (9 Law J., Ch. (1831), 227), where Lord Chancellor

Brougham refused an injunction, because, in fact, there had been a publication abroad before there was any publication in this country; but at the same time his Lordship said, "The policy of our law, recognises by statutes, express in their wording, that the importation of foreign **[838]** inventions shall be encouraged in the same manner as the inventions made in this country, and by natives. This is founded as well upon reason, sense, and justice, as it is upon policy." That case was twice before the Vice-Chancellor, and once before the Lord Chancellor; so that the question thus referred to must have been fully considered; and the fact of the party being a foreigner must have been deemed not to be an answer to the application, otherwise all the other discussion might have been saved. Then came the case of *Bentley* v. *Foster* (10 Sim. 329). There the Judge was Vice-Chancellor Shadwell, and his dictum in *Delondre* v. *Shaw* was cited to him; but he held that, "protection was given, by the law of copyright, to a work first published in this country, whether it was written abroad by a foreigner or not." As the question, however, was a legal one, he directed an action, which was brought, and the defendant, without further contesting the right of the plaintiff, consented to a verdict. In *D'Almaine* v. *Boosey* (1 Younge and Col. (Ex.) 288), it was held that the English assignee of the copyright of a foreign musical composer was within the protection of the statute, and thus in all these cases the right was admitted, and acted on. The case of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860) was the next—

[The Lord Chancellor.—The point as to publication abroad is put too broadly there.]

But still the general rule is clearly stated, that an alien may acquire personal rights here with respect to property in this country. If that is a fixed principle of the law, why should a book alone constitute the exception to it? A foreigner may maintain an action for property here, and even for an injury to his reputation; *Pisani* v. *Lawson* (6 Bing. N. C. 90; 8 Scott, 182; 8 Dowl. P. C. 57); **[839]** and *Boosey* v. *Davidson* (13 Q. B. Rep. 257) fully recognised the right of a foreigner to copyright in this country, on the sole condition of first publication here, while *Ollendorf* v. *Black* (20 Law J., Ch. (1851), 165) decided that a foreigner, who was a mere temporary resident in England, was entitled to the usual injunction, if his work was pirated.

Then as to the question of assignment. It is not contended that what was done in Milan was of itself valid here; but that what was done there, vested complete legal rights in Ricordi; he came to this country fully entitled, as the author would have been, to publish, or to withhold publication. Having here the rights of the author, he transferred them to Boosey by forms valid according to the law of this country. Now the law of England operates only on persons, things, and acts in this country: the property being here, our law will not inquire whether it was acquired abroad by forms such as are familiar to the law of England. If it was validly acquired there, it is protected here, and the Bill of Exceptions states it to have been so acquired. Besides which, the statute of Anne refers to assignment after publication, and it has never been decided that an assignment by an author made before publication, must be attested by two witnesses.

[The Lord Chancellor.—There is no doubt about the general principle, that property may be transferred according to the law of the place where the transfer is made; but here is a peculiar property, the creature of a particular statute: then the question is, whether that can be transferred at Milan, so as to give, to an assignee there, all the rights which an author alone could enjoy here under the provisions of the statute which created the property.]

[840] It is admitted that the forms of the statute must be observed; but that is only in this country; and if the statute had said that no property should pass from the author, wherever he resided, except by an instrument attested by two witnesses, then, though contrary to general principles, such an enactment must have full effect. But the Act here does not say so; it does not even refer to an assignment before publication; and the statute 54 Geo. 3, c. 156, does not require witnesses at all, but only a contract in writing, which certainly was given here. The statement that this property is entirely the creature of statute is not admitted. The property does not differ from any other property. All that has to be determined here is, whether the man here is in possession of the property here? If he is, the law operates on both,

and the Court has nothing to do with the form by which he became possessed of it at Milan. Ricordi had purchased it; he had it here, and he assigned it by the laws of this country, which laws can only operate on the assignment that took place in this country.

It is not correct to say that this was an assignment, not of English, but of Austrian copyright only. It was an assignment of all that Ricordi possessed in this country, and that was the exclusive right of publication here. The Legislature gives the privilege of copyright to the first publisher; it is his reward for first publication. The composition was first published here by Boosey. No other person could have had the copyright. He purchased from Ricordi all the rights which Ricordi possessed, and he observed all the forms which the law requires to be observed, in order to give effect to them.

As to the last objection, that this was only an assignment of a part of the copyright, it is clear that it was an assignment of the whole right which Ricordi possessed here, and **[841]** which was secured by English laws, or could be transferred under their authority.

Mr. Serjeant Byles, in reply.—The benefit of the statute of Anne, if meant to be given to foreign authors, was given only to such as should, at the time of publication, be domiciled in this country.

This case is not like that of a watch, or a picture, brought to this country; for in each of those cases there would be substantive property in possession; here the claim is one of a right, which does not depend on universal principles of law, but is entirely the creature of statute. The case of *Roper* v. *Streater* (Skin. 234) is very loosely reported, and cannot at all be relied on; besides which, the author, and the person who purchased from him, were both Englishmen. There is no analogy between the patent law and the copyright law. The former expressly gives the right to the "first or true inventor," without restricting the expression in any way; but in the Copyright Act the importer of a book, already printed abroad, such as the 7th section refers to, is the only person who answers to the inventor, and there is no doubt that the first importer of a book published abroad would not have copyright in it here, except he could bring himself within the International Copyright Acts.

The Lord Chancellor.—I think your Lordships will concur with me, that although this case itself relates only to something of extremely small value, namely, the copyright of a part only of a particular opera, yet that the question is of the very greatest importance, and therefore you will not regret that the argument has occupied a considerable portion of time. As we have had the assistance **[842]** of the learned Judges, and shall have the benefit of their opinion upon this case, I shall abstain, studiously and purposely, from making any observations as to the impression which the arguments have made upon my mind. I will merely call your attention to the fact, that the case comes before this House upon a Writ of Error, from a Bill of Exceptions, in the case of *Boosey* v. *Jefferys*. I myself was the presiding Judge at the time that case was tried; but as far as relates to myself, I ruled it in conformity (as I was bound to do, whether right or wrong) to what had been previously decided by the Court of Exchequer. In truth, it was almost agreed that that course should be taken, as it was impossible to bring the case of *Boosey* v. *Purday* to this House on the then state of the record. This action of *Boosey* v. *Jefferys*, as it stood below, was therefore brought in order that the matter might come by way of appeal to this House. That there are conflicting authorities upon this subject is a matter beyond doubt; they are not very numerous, and, none very distinctly applying to this particular point, it was thought extremely fit that the matter should be brought before your Lordships as the court of ultimate resort.

What I propose, under these circumstances, is, that certain questions, which appear to me to exhaust the case, shall be submitted to the learned Judges. In the first place, Whether the statute of Anne, or the common law, as far as the statute enforced it, with reference to copyright, extends to foreigners while domiciled and living abroad, and there composing their works? Whether foreigners, under such circumstances, can confer upon any person in this country a copyright against others of Her Majesty's subjects? Supposing they cannot do so under any circumstances, nothing further is to be discussed; but if that can be done under any circumstances,

then there **[843]** will arise a number of minor questions. Whether an author can assign, by the laws of his own country, something that shall give a right in his own country to the assignee there, so as to enable that assignee to transfer his right to this country, the assignee not being called, under any circumstances, the author; he is the assignee of the author, and not the author himself? Whether or not an assignment can be made in the mode in which this assignment purports to have been made, that is, to give a right not to a copyright generally, but only to a copyright limited to a particular district of the world, namely, this country? There are certain other minor points which will arise, but which, I think, will be exhausted by the questions which I shall propose to be submitted to the learned Judges. If your Lordships concur, I propose that this statement should be made to the learned Judges, with the questions, for their opinions.

"Firstly, Vincenzo Bellini, being an alien friend, while living at Milan, composed a literary work, in which, by the laws there in force, he had a certain copyright." I purposely propose it in that form, because no evidence has been offered with reference to the extent of copyright at Milan, and therefore I know nothing about it. "He there, on the 19th of February 1831" (it is necessary to state the dates, in order to show to what statutes the attention of the learned Judges must be directed), "by an instrument in writing, bearing date on that day, not executed in the presence of or attested by two witnesses, made an assignment of that copyright to Giovanni Ricordi, which assignment was valid by the laws there in force. Ricordi afterwards came to this country, and on the 9th of June 1831, by a deed under his hand and seal, bearing date on that day, executed by him in the presence of and attested by two witnesses"—I need not point out to your **[844]** Lordships the circumstance of the absence of the witnesses in the one case, and the presence of the witnesses in the other; I advert to it in order to raise the question, Whether the statute of Anne, which requires two witnesses, extended, or did not extend, to an assignment, which was valid by the laws of the country where it was made, but which was made according to the laws of that country alone, and had not two witnesses, as required in this country—"for a valuable consideration, assigned the copyright in the said work to the defendant in error, his executors, administrators, and assigns, but for publication in the United Kingdom only. The said defendant then printed and published the work in this country before any publication abroad. The plaintiff in error, without any license from the defendant in error, then printed and published the same work in this country. Did this publication by the said plaintiff give to the said defendant any right of action against him?"

"Secondly." I propose to ask the learned Judges, "If the assignment to Ricordi had been made by deed, under the hand and seal of Bellini, attested by two witnesses, would that have made any, and what difference?" That is, if the assignment, which was valid according to the laws of Milan, had been also valid according to the exigency of the statute of Anne, would that have made any difference?

"Thirdly. If Bellini, instead of assigning to Ricordi, had, while living at Milan, assigned to the defendant in error all his copyright, by deed, similar in all respects to that executed by Ricordi, would that have made any, and what difference?" This question is for the purpose of obtaining the opinion of the learned Judges (supposing they should think that the intermediate possession by Ricordi, who was also an alien, did affect the question) as to what would have been the case if the foreign author had himself assigned?

[845] "Fourthly. If the work had been printed and published at Milan, before the assignment to the defendant, would that have made any, and what difference?" That question, my Lords, perhaps does not actually and of necessity arise in the present case; but it may be as well that the subject should be exhausted, because many arguments have been pressed as to whether or not publication abroad is the making a matter *publici juris*, and whether that has any, and what bearing upon the case. I therefore propose to ask the learned Judges whether it would have made any difference if the work had been published at Milan first, before the assignment?

"Fifthly. If the work had been printed and published at Milan, after the assignment to the defendant, but before any publication in this country, would that have made any, and what difference?"

"Sixthly. If the assignment to the defendant had not contained the limitation as to publication in this country, would that have made any, and what difference?"

"Lastly. Looking to the record as set out in the Bill of Exceptions, was the learned Judge who tried the cause right in directing the jury to find a verdict for the defendant?" I propose, with your Lordships' concurrence, that these questions be submitted to the learned Judges.

Lord Brougham.—My Lords; I entirely agree with my noble and learned friend in the view which he has taken of this case, and also in the propriety of our abstaining from indicating in any way any impression which has been made upon us by the arguments of the learned counsel. I think these questions, which are proposed to be put to the learned Judges, will exhaust the subject.

The Lord Chancellor.—My noble and learned friend on my right suggests to me to add to the words, "a certain **[846]** copyright," the words, "the nature and extent of which did not appear" (this, however, was not ultimately done. See Judges' Opinions).

Mr. Justice Crompton (29 June).—The answers to the questions proposed by your Lordships in this case, seem to me entirely to depend upon the construction to be put upon the statutes relating to copyright in this kingdom. And I do not think it necessary to enter into the question as to the effect which the decision of this case may have upon our literary relations with other countries. Nor does it appear to me at all necessary to enter into the much-disputed question, as to whether the statute of Anne created a new right, or was an abridgment of an old one. Whatever was its origin, the right must now, I think, be taken to exist only as bounded and regulated by that and the subsequent statutes, and for the term, "and no longer," (to use the phrase of the statute), than mentioned therein, according to the words of Lord Kenyon, in *Beckford* v. *Hood* (7 T. R. 620-627), when speaking of the result of the discussion which terminated in the decision of this House in the great copyright case of *Donaldson* v. *Beckett* (4 Burr. 2408; 2 Bro. P. C. 129); "but the other opinion finally prevailed, which established that the right was confined to the times limited by the Act of Parliament."

It is not necessary either to consider the question as to the rights of an author as against parties having illegally or surreptitiously taken or used his manuscript or copies. Such rights must not be confounded with the copyright now under discussion, the creation of or limited by the statutes.

[847] It was not disputed at the Bar, and may be assumed also, that copyright, being a monopoly, or right of excluding persons from publishing in this kingdom, is local in its nature, and has no extra-territorial force. It is the creation of our municipal law, and to be acquired only in the manner and by the persons pointed out by that law, and is not a property derived or carried out of any general right of property or foreign copyright. It will be necessary, therefore, to consider by whom, and in what manner, a right to copyright, in this country, can be acquired or become vested, according to the statutes of copyright.

By those statutes, the monopoly is vested in the author or his assigns, for the limited term after first publication. This first publication is the commencement and foundation of the right, the terminus *a quo* the period of the existence of the right is to run, and a condition precedent to the existence of the right.

In *Beckford* v. *Hood*, which I have before referred to, and which was decided not very long after the great case in the House of Lords, the declaration averred the infringement as being within the period after the first publication; and Lord Kenyon, in saying that it was established that the right was confined to the times limited by the statute, in effect, treated the act of first publication, from which such time was to run, as a condition precedent to the existence of the right.

It was held in *Clementi* v. *Walker* (2 Barn. and Cr. 861), on perfectly satisfactory grounds, and is plainly to be collected from the statute, that by the first publication is meant a publication in this kingdom,—and the main question in the present case is, whether the right to acquire the monopoly by a *bona fide* first publication here, is confined to persons who **[848]** are British subjects either by birth or Act of Parliament, or as owing temporary allegiance here by virtue of their residence in this country. In *Clementi* v. *Walker* no such restriction as is now contended for, appears to have at all entered into the contemplation of either the Bar or the Court. Such a

doctrine would have been at once decisive of the cause, and would have rendered it unnecessary for the Judges to consider the question on which they decided. In deciding that a prior publication abroad by a foreign author, not followed up by a publication here in a reasonable time, destroyed any right in the foreign author, and in doubting what would be the effect of such prior publication abroad, if followed up by a publication here within a reasonable time, the Court of King's Bench seems rather to have recognized the general right of a foreign author to become the first publisher here within the statutes, than to have supposed such right to be confined to British authors publishing here. It seems admitted that an alien amy, residing here under the protection of, and subject to our laws, would be a person entitled to publish his works so as to entitle himself to a monopoly; and it is not pretended that a residence abroad by an English subject, or the fact of the work having been composed abroad, either by an Englishman or a foreigner, would have the effect of preventing the author from acquiring a copyright. It is said, however, that the party to acquire a copyright must be, when he publishes, a British subject by birth or by residence here. According to this argument, a foreigner residing at Calais, and composing a work there upon an English subject, and for the English reading market, could not write to his agent in London to publish it so as to acquire copyright, but might acquire it by crossing to Dover, and sending his work from that place to be published in London during his stay in this country. The **[849]** only words in the statute from which any such intention as is contended for, can be supposed to be implied, are in that part of the preamble which speaks of the detriment to the authors and proprietors, and the ruin of their families, and of the encouragement to learned men to compose and write. I cannot think that these words evince a sufficiently strong intention to confine the benefits of the statute to authors who are British subjects by birth or residence; and I do not find anything which is sufficiently clear to satisfy me that the Legislature has expressed any intention to restrict the protection given, further than as decided in the case of *Clementi* v. *Walker*, that the statute must be considered as legislating upon what is really a British publication; and I think that, provided the publication is really and *bona fide* British, the copyright may be acquired, although the author is foreign, although he resides abroad, and although he does not personally come to England to publish. I come to this opinion on the words of the statute, vesting the right in the authors or their assigns from the first publication; and from not finding anything in the Acts to exclude friendly foreigners from its advantage. Works of a foreign author so published, seem to me within the clauses requiring the delivery of copies to our public institutions. If the statute is to be read as if the word "British" was inserted before the word "author," it would seem also necessary to insert it before the word "assigns," for otherwise a British author could not by assignment give to a foreigner the right of publishing under the statute; such foreigner could not pass any right even to a British subject, and there would be created by the statute a species of personal property which an alien friend would be incapacitated from taking, contrary to the general rule of law. I am unwilling to introduce words into an Act of Parliament, without being able to see a manifest **[850]** intention of the Legislature much more clearly than I can do in this case.

If it should be said, why is the publication to be construed to mean a British publication, and the author not to be construed a British author, and the composition a British composition, the answer seems to me to be, that the publication being made the commencement of the term from which the monopoly is to run, and that publication giving rights confined to Britain, and the enactments as to the entry at Stationers' Hall before the rights as to the penalties were to attach, and the obligation imposed of delivering copies to British Institutions, together with the authority of *Clementi* v. *Walker*, satisfactorily show that the publication must be intended to be in England, whilst there seems nothing in the Act to show that the Legislature in using the words "authors" and "assigns" had any intention of making any restriction as to the place of composition, or as to any personal capacity of the author or assignee. I am by no means satisfied that if the case had occurred to the Legislature of a foreigner composing a work for the English market in France, and sending it over to be really and *bona fide* published here, such a work would have been excluded from the benefits and obligations of the Act. There is no authority until the one now under discussion to show that such is the construction of the statute; and taking the authorities

altogether, they are, upon the whole, more against than in favour of such a construction. And though the balance of authority may not perhaps be so much in favour of the right as to prevent a Court of Error from taking a contrary view, that balance is certainly in favour of the decision of the Exchequer Chamber. And it seems probable that the present objection, if good, would have been taken in cases which neither Judges nor counsel have thought worth raising.

[851] It is said that the Legislature must be supposed to have contemplated English authors and English assignees. An argument of this nature was pressed with much greater ground, as it appears to me, but without success, in a class of cases which arose as to the construction of the statute passed in the same reign as the Copyright Act of Queen Anne, to give a right of action upon promissory notes, and to make them indorsable. The statute saying that such notes shall have the force of inland bills, and shall be indorsable like inland bills, it was argued, as here, that the Legislature must be intended to have been legislating about English notes and English indorsements, and this argument was considerably strengthened by the statute using the words "as in the case of inland bills," from which there might be reason to suppose that the Legislature was speaking of a subject-matter in England, and making what could not have been before negotiable in England available as negotiable English securities. It was accordingly urged in different cases, first, that the Act did not refer to the case of a note made abroad, and in another case to a note indorsed abroad; but the general words of the statute were held to prevail, and it was established that the Act might well apply to notes made abroad, and to indorsements abroad; *Bentley* v. *Northhouse* (Moo. and Mal. 66), *Milne* v. *Graham* (1 Barn. and Cres. 192), and *De la Chaumette* v. *The Bank of England* (2 Barn. and Ad. 385).

I find reasons in the Act, as well as authority, for thinking that the publication means a publication in England; but I find no words to show, and no reason or authority for thinking that the Legislature meant to make any restriction with reference to the capacity of the author or the assignee. There may no doubt be cases, such as where the Legislature is imposing a tax by way of legacy duty or **[852]** otherwise, in which the very subject-matter of the enactment would show it to be absurd to apply the provision to a foreigner residing and domiciled abroad. The question must always be, whether, in the particular case under discussion, any such absurdity or manifest intention appears, and in this case I see no absurdity in giving the right to a foreigner having his work *bona fide* first published here, nor any manifest intention in the Legislature to restrict the benefit of the Act to a British-born subject. It does not seem a sufficient argument for giving the restricted sense contended for to the general words of the statute, to assert that the Legislature must be taken to have been legislating as to British authors only, or that it would not have been likely in the reign of Queen Anne for the law to show any favour to foreign productions. In truth it is not to them as foreign productions, but as English publications, that the protection seems to be afforded.

The doctrine of a prior publication abroad destroying the right of the foreign author to publish here, so as to acquire English copyright, appears to me to rest upon a satisfactory ground. When the work has been made public abroad, there is no statute which makes that publication the commencement of the right of monopoly here; and the work becoming *publici juris* here, and it being once lawful for any one to publish it in England, it would be impossible to hold that a subsequent publication here was a first publication within the meaning of the Act, so as to give a monopoly which would make unlawful the continuing to publish what had once been *publici juris*, and might have been lawfully published here.

My opinion therefore is, that a foreigner residing and composing abroad, is not prevented by anything in our copyright statutes from acquiring a monopoly if he sends over his work to be published first in England, and it is **[853]** really and *bona fide* first published here as an English publication. I think also that the assignee of the foreign author, though himself a foreigner, has the same right of acquiring the monopoly by a first publication in this country. The statute of Anne clearly contemplates a first publication by the assignee as sufficient to give him the monopoly—and, in point of fact, I believe that nothing is more common than that the booksellers should take an assignment of the copyright, and publish themselves as proprietors, so as to vest the monopoly in them during the term. The words of the statute, that the

author or his assignee shall have the sole liberty, etc., from the day of the first publication, seem to me to show that the assignee may himself publish, so as to acquire the copyright, and I see no reason why an alien friend should not have this right.

I agree, however, with the argument of the counsel for the plaintiff in error, that no person can have this right as assignee who is not assignee under the provisions of the statute. The right to be gained under the assignment being local in its nature, and being the creation of or regulated entirely by our statute law, the assignment must, I think, be such as our law requires in such a case, whether the execution of the instrument takes place in this country or abroad. The statute of Anne has been construed as meaning by assignee, a person to whom an assignment has been made by writing attested by two witnesses, and I should be sorry to advise your Lordships to disregard a decision which has been so long acquiesced in and acted upon, especially when it was recognised and acted upon in the recent case of *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456). I think, however, that since the Act of 54 Geo. 3, c. 156, the attestation by two witnesses has become no longer necessary to the validity of an assignment of copyright. The case **[854]** of *Power* v. *Walker* (3 Maule and S. 7), was decided in June 1814, and in the next month, the statute of 54 Geo. 3, c. 156, was passed, which makes the consent in writing necessary, but does not require any attestation. This seems to have been an intentional alteration of the law. The case of *Power* v. *Walker* must be taken as establishing that the construction of the statute of Anne is, that as the licence or consent of the proprietor is to be by writing, attested by two witnesses, the assignment, which is a greater thing, must also, *a fortiori*, have been intended to be by writing attested by two witnesses. I will not stop to inquire how far such a doctrine, if now propounded for the first time, might or might not be satisfactory. But when the Legislature, immediately after the decision, re-enacted the same provision in the same words as to publishing without consent in writing, but omitted the provision making the attestation by two witnesses necessary, I think that the same construction leads to the conclusion that the assignment need not now be attested. It would be impossible to say that the action on the case mentioned in the 54th Geo. 3, would lie, or that an action for the penalties could be maintained since that statute, if there had been the assent of the author in writing, although not attested, and I think that the necessity for an assignment in writing attested by two witnesses, which arose only from the construction put upon the words of that provision of the statute of Anne, was put an end to by the 54th Geo. 3, c. 156, and that the assignment need now only be in writing. I should observe, that the 54th Geo. 3 was not referred to in the case of *Davidson* v. *Bohn*, which appears to me properly decided according to the authority of *Power* v. *Walker*, as to the publication where there was no assignment in writing, but not to have been right, owing **[855]** to the 54th Geo. 3, not having been brought to the notice of the Court, as to the publication assigned in writing, but without the attestation required by the statute of Anne, but not required, as I think, by the 54th Geo. 3. The conclusion, therefore, at which I arrive, is, that an author being an alien amy may acquire a copyright here if he first publishes here, though he is not personally here, provided that his first publication here is prior to any publication abroad, although he does not himself bring over his work either in manuscript or in his head. And that, under the same restriction, a foreign assignee of such foreign author may acquire a copyright here, if he is an assignee under an assignment executed according to the provisions of our statutes regulating such assignments. I should add, in reference to the answers which I shall have to give to some of the questions proposed by your Lordships, that the assignment must be such as will in its terms comprehend the English copyright in question.

I have now to apply the conclusions at which I have arrived to the questions proposed by your Lordships in detail.

To the first of your Lordships' questions I answer, that although, on the state of facts assumed, Bellini appears to me an author who might have sent his work over here for first publication, yet that it does not sufficiently appear that there was any sufficient assignment of his right to publish, so as to obtain English copyright. It is stated with reference to the first question that Bellini had by the law of Milan, a right to a certain copyright, by which I understand some copyright in a foreign country to be enjoyed there according to the law of the country; but to what extent or for what time does not appear. And it is stated that the assignment was of that copyright. As I conceive

Bellini's right to clothe himself with the English monopoly [856] arose from his authorship, and not at all as being parcel of or carved out of any foreign copyright, I do not see how an assignment stated to be of foreign copyright can pass a right under the English statutes. On the supposition, then, that the assignment maintained in this first question is intended by your Lordships to apply to the foreign copyright solely, I answer in the negative, on the ground that the assignment referred to in that question does not appear to be an assignment of any English right.

Secondly. If the assignment by Bellini had been by deed attested by two witnesses, I do not think that the defect in the title would be cured, as the assignment is stated to have been of the foreign copyright, and does not appear to have included any other right.

Thirdly. I think if Bellini had assigned either to Ricordi, or immediately to the Defendant in Error, by deed, similar in all respects to that executed by Ricordi, and therefore comprising and assigning the right as to this country, that the Defendant in Error would have had a good title to the copyright.

Fourthly. I think that if the work had been printed and published at Milan before the assignment, the right to publish in England, so as to acquire the English copyright would have been lost.

Fifthly. I think that the same consequence would have ensued if the publication at Milan had been made after the assignment, but before the publication in England. There would have been nothing in the assignment of the English copyright to prevent the publication at Milan, and that publication not giving the monopoly in England would, I think, make it lawful to publish the foreign work in England. And if once lawful for any one to publish, I think that the right of acquiring English copyright in the work is gone.

[857] Sixthly. In the view which I take of the right of the author and the assignee, the limitation of the right to be exercised in this country does not appear to me to be material. It was suggested in argument that if the right was an entire right, it could not be divided, so, for instance, as to make an assignment of English copyright to one person for Yorkshire, and to another for Middlesex; and I think that in such case there would be great difficulty. In such a case as the present, however, I regard the right of the author to the English copyright as an entire thing under our municipal statutes; and as not being parcel of or derived out of anything else. I look upon the author as having this right, if at all, as the author; and not as having the copyright by the laws of Milan. And he having that entire thing under our own law, if by assignment he passes that right as to this country, there is no subdivision or limitation of the copyright, unless, indeed, the matter which has been brought under my notice to-day for the first time as to the statute 54 Geo. 3, extending the privilege to all the British dominions, may make a difference in this respect.

Lastly. In answering this question I must call your Lordships' attention to the mode in which the question arises upon the record, and to the peculiar position of the parties as to the proof required by the enactment of the 5th and 6th Vict. c. 45, s. 11. The question upon this record arose upon a bill of exceptions to the ruling of the learned Judge directing a verdict for the Defendant below. The section to which I refer, made the copy of the entry produced *primâ facie* evidence of the title of the Plaintiff. He was therefore entitled by such evidence to the verdict, unless the *primâ facie* title given by the statute was destroyed by the Defendant's evidence. If the supposed defect in the title [858] depended only upon the form or nature of the assignment produced, the Plaintiff's *primâ facie* title under the statute may not be so entirely destroyed as to warrant the direction to the jury that the finding must be for the Defendant; as though the proof of such defective assignment without evidence of any other might be strong and cogent proof for the jury that there was no other; yet as it is not found that there was no other, there would be evidence both ways for the jury, and the direction to the jurors can only be supported if there was no evidence for their consideration. As to the supposed defect on the ground of the author being an alien, and not having been in this country; as that fact is directly negatived, the defect, if available, would directly negative the title of the Plaintiff, and the direction of the learned Judge to find for the Defendant would be right. As I think that, under the circumstances stated in the record, the title might be gained by the foreign author or his assignee, and that an assignment in writing, though without

witnesses, would be sufficient; and as the assignment in question, though ambiguously stated in the Bill of Exceptions, may have been sufficiently general to pass to the assignee the right of clothing himself with the English copyright, (as I should suppose from the recital of it in the deed to the Plaintiff it really was in point of fact), and as there is nothing, at all events, to negative the *primâ facie* title of the Plaintiff under the entry in this respect, by showing that there has not been a sufficient assignment by this or some other instrument, the statement upon the Record not being inconsistent with the existence of a good assignment, I think that the learned Judge was not right in directing the jury to find a verdict for the Defendant; and I accordingly answer your Lordships' last question in the negative.

[859] Mr. Justice Williams.—In answer to the question first proposed by your Lordships, I have to state my opinion, that the publication by the Plaintiff in Error did give to the Defendant in Error a right of action against him. The facts show, in my judgment, that the Defendant in Error, by assignment from the author, was the owner of the work in question at the time he printed and published it in this country; and that was enough, in my opinion, to give him the right of action under the statute 8 Anne, c. 19 (extended by statute 54 Geo. 3, c. 156). Assuming for the present that the Defendant in Error was the assignee of the author of the work at the time it was first published in England, before any publication of it abroad, I have to maintain the proposition that the statute of Anne conferred on him a copyright in the work, from the date of that publication, notwithstanding the author of it was a foreigner, and then resident abroad. I lay no stress on the fact that the Defendant himself was a resident Englishman; because I am willing to concede that the proposition which governs the question, and which I am bound to sustain, in order to justify my opinion, is that a foreign author may gain an English copyright by publishing in England (before any publication abroad) though he may be resident abroad at the time. The authorities in favour of this proposition are no mean ones; though the question does not appear to have been raised till modern times. In the case of *Clementi* v. *Walker* (2 Barn. and Cr. 861), in the year 1824, the point actually decided was, that an author who had published first abroad gained no English copyright by a subsequent publication here; at all events, after a delay and after a publication here by another. But it is plain that neither to the Counsel nor to the Judges in that cause did the doctrine ever occur, that **[860]** copyright could not be gained by a foreign author who was resident abroad at the time of the publication; and yet that doctrine would have furnished a ready and conclusive answer to one at least of the points which arose, but which was argued, and disposed of, upon other grounds in the considered and elaborate judgment of the Court. But the very question arose in the year 1835, before Lord Abinger, Chief Baron, on the Equity side of the Exchequer, in the case of *D'Almaine* v. *Boosey* (1 Yo. and Col. 288), where he granted an injunction in protection of the copyright of a foreigner who had first published in England. And in the subsequent case of *Chappell* v. *Purday* (4 Yo. and Col. 494), the same Judge stated that he fully adhered to his decision in *D'Almaine* v. *Boosey;* and he took occasion to mention that his mind had been many years before especially directed to the doctrine of copyright. Again, in *Bentley* v. *Foster* (10 Sim. 329), (in the year 1839), the precise point arose before Vice-Chancellor Shadwell. In that case the author of a work from whom the Plaintiff had purchased the copyright, was a citizen of the United States, domiciled and resident there: And the Vice-Chancellor said that in his opinion protection was given, by the law of copyright, to a work first published in this Kingdom, whether it was written abroad by a foreigner or not. And accordingly, in the year 1845, Chief Baron Pollock, in delivering the judgment of the Barons of the Exchequer, in *Chappell* v. *Purday* (14 Mee. and W. 303, 320-321), states the result of the cases at that time decided on the subject, to be, that if a foreign author, not having published abroad, first publishes in England, he may have the benefit of the statutes. These cases were followed in 1848, **[861]** by that of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), in which it was decided by the Court of Common Pleas, after a deliberate consideration of the authorities as well as upon principle, that an alien amy resident abroad, the author of a work of which he is also the first publisher in England, and which he has not made *publici juris* by a previous publication abroad, has a copyright in that work, whether it be composed in this country or abroad. And this decision was followed without comment by the Court of Queen's Bench, in *Boosey* v.

Davidson (13 Q.B. Rep. 257). The only authority which in any way conflicted with these decisions, up to the time of that of *Boosey* v. *Purday* (hereafter to be mentioned), was a passage in the judgment of the Barons in the case I have already cited of *Chappel* v. *Purday*. There the point actually decided was, that a foreign author who first published his work abroad, could not gain an English copyright under the statutes. But the Court, in giving judgment, farther intimated an opinion that, on a proper construction of the Copyright Acts, a foreign author, or the assignee of a foreign author, whether a British subject or not, could not gain any English copyright. The opinion thus expressed subsequently grew so strong, that in *Boosey* v. *Purday* (4 Exch. Rep. 145) the Barons declined to follow the example of the Court of Queen's Bench, in *Boosey* v. *Davidson*, in acceding to the decision of the Common Pleas in *Cocks* v. *Purday*, and, in fact, overruled that case. The doctrine which the Barons laid down, and which has also been the foundation of the argument on behalf of the Plaintiff in Error, at the Bar of this House, is, that the Legislature must be considered *primâ facie* to mean to legislate for its own subjects, or those who owe obedience to its laws; and, consequently, that the Copyright Acts apply *primâ* **[862]** *facie* to British subjects only, in some sense of that term, which would include subjects by birth or residence, being authors: and that the context or subject matter of the statutes does not call for a different construction.

The doctrine, then, on which the case for the Plaintiff in Error is rested, does not deny that a foreign author may gain an English copyright by a publication in England, provided he is resident here; and though it has not been said expressly to what period the requisite residence is to be referred, yet it seems plain that residence at the date of publication in England must be intended, because it must surely be immaterial where the author resided at the time he composed the work. This doctrine cannot be adopted by your Lordships without overruling the cases of *D'Almaine* v. *Boosey*, and *Bentley* v. *Foster*, and *Cocks* v. *Purday*. But on the part of the Plaintiff in Error your Lordships are called upon, as the supreme tribunal, to disregard these authorities as inconsistent with the true construction of the statute of Anne. Now, looking merely at the words of that statute, there is nothing at all to confine the benefits of it to British subjects, by birth or residence. And although the context and the other provisions of the statute plainly show (as is fully demonstrated in the judgment of the Court of Queen's Bench in *Clementi* v. *Walker* (2 Barn. and Cr. 861-868), and in the judgment of the Court of Exchequer in *Chappell* v. *Purday* (14 Mee. and W. 303-318), that the publication on which the privilege is to be conferred by the statute, must be British, nothing of this kind appears as to the author being a British author.

The argument, therefore, for the Plaintiff in Error rests on this, viz., that the Act is styled "An Act for the Encouragement of Learning," and that its object is to encourage learned men to publish books, by conferring a **[863]** copyright on them: and that, though its language is general, yet, as the Legislature has no power but over its own subjects, natural-born or resident, it must be deemed *primâ facie* to have meant to protect those alone on whom it can impose duties. But it can hardly be said that the Act would have been improperly called "An Act for the Encouragement of Learning in Great Britain," if it had expressly provided that the publication of literary works in Great Britain, by authors or purchasers from authors, whether British subjects or not, should confer a copyright. And although no one can dispute that the British Legislature has no power to legislate for aliens, in respect of matters not occurring in Great Britain, yet it certainly has the power, and may well have the intention, to legislate for all the world, in respect of the legal consequences in Great Britain of an act done in Great Britain; and may, therefore, well enact that if an author, whether he is a subject, or in no sense a subject of the realm, writes a book, whether abroad or in this country, and gives the British public the advantage of his industry and knowledge by first publishing the work here, the author shall have copyright in this country. The argument being that foreign authors resident abroad at the time of the publication of their works in this country are to be excluded from the benefits of the Act by implication, it becomes material to inquire whether such a construction of the general words of the Act might lead to any absurd, harsh, or unjust consequences. Lord Campbell, in his judgment in the Court below, has pointed out the difficulty of supposing the Legislature to have meant that a foreign author should

have no copyright if he remained at Calais, but should gain it if he crossed to Dover, and there gave directions for and awaited the publication of his work. And the same may be said of a distinction that must be **[864]** taken, if the Act is to be construed as contended for; viz., that a foreign author who during a residence in England has composed a work which is afterwards first published in England, by his order, and at his expense, shall have no capacity to acquire a copyright therein, if the exigencies of his affairs constrain him to quit England just before the work is published; but that a foreign author who, during his residence abroad, has composed a work which is afterwards first published in this country, shall have the copyright, if he happens to come to England just before the publication, and abides here until it is complete. Now, with respect to the trade of booksellers (for whose protection, as well as that of authors, the Act purports to be made) such a construction might operate with much harshness. For if a bookseller were to purchase a literary work in manuscript from a foreign author resident in England, the copyright would be lost to the bookseller, if the author should choose to leave this country and be absent from it, even without the knowledge of the bookseller, at the time of publication. And if the bookseller should think it best to publish the work in several volumes at several times (as it has happened in many well-known instances) he might have copyright in some of the volumes and not in others, because the existence or non-existence of the right would vary with the accident of the author's being or not being in this country at the dates of the respective publications of the volumes. I may add, that I think no little difficulty would arise in deciding on the rights of the bookseller, supposing the author were to die between the time of selling his work to the bookseller, and the time of the publication of the work in England.

It remains for me to state why I think the Defendant in Error ought to be regarded as the assignee of the author within the meaning of the statute. I understand the **[865]** statements in your Lordships' questions to mean, that the laws of Milan recognise in the author of an unpublished book a right of property in it capable of being assigned, and that such right was duly assigned by Bellini to Ricordi, according to the laws of Milan, where the assignment was made; and that the assignment in England from Ricordi to the Defendant was duly made according to the laws of England. If the latter assignment had comprised the whole of the right which Bellini had assigned to Ricordi, the Defendant, in my opinion, would have been plainly the assignee of Bellini, the author. And I think he was not the less so within the meaning of the statute, because the assignment from Ricordi was only for publication in Great Britain. For if the author assigned a right to publish in this country, he assigned, in my judgment, a right to gain all the benefit and privileges which the statute conferred on every publication in Great Britain; and he was therefore the assignee of the author contemplated by the Act. The purchaser of a copyright from an English author would not, I conceive, be deprived of the privileges conferred by the Copyright Acts, because the assignment to him from the author was limited to publication in Great Britain; and I can see no distinction between a foreigner and an English author.

In answer to your Lordships' second and third questions, I have to state my opinion that if the assignment to Ricordi had been made by deed under the hand and seal of Bellini, attested by two witnesses, or if Bellini, instead of assigning to Ricordi, had, while living in Milan, assigned to the Defendant all his copyright by deed, similar in all respects to that executed by Ricordi, that would have made no difference, provided the supposed assignments had been operative according to the laws of Milan.

In answer to your Lordships' fourth and fifth questions, I have to state my opinion that if the work had been **[866]** printed and published at Milan before the assignment to the Defendant, or after the assignment to the Defendant, but before any publication in this country, the Defendant, by his subsequent publication in England, would have gained no copyright. The reasons for this opinion may be found fully and clearly stated in the judgment of the Court of Exchequer, delivered by Chief Baron Pollock, in the case of *Chappell* v. *Purday* (14 Mee. and Wels. 303, 319, 322).

In answer to your Lordships' sixth question, I have to state my opinion, that if the assignment to the Defendant had not contained any limitation as to publication in this country, that would have made no difference. I have already had occasion to give my reasons for this opinion.

Lastly, I am of opinion, that looking at the record as set out in the Bill of Exceptions, the learned Judge who tried the cause was wrong in directing the jury to find a verdict for the Defendant. My reasons for this opinion have already been stated at large in my answer to the first of the questions proposed by your Lordships.

Mr. Justice Erle.—To the first question of your Lordships, whether upon the facts stated the action lay? my answer is in the affirmative. This answer is founded upon the propositions—1st. That all authors have, by common law, copyright and all other rights of property in their written works. 2d. That the statute of Anne extends to alien authors and their assigns, publishing first in England, as well as to native authors. Either of these propositions, if true, would defeat the case of the Plaintiff in Error; and I take them in their order.

With respect to the property of authors in their works at common law, as the authorities conflict, I would propose to recur briefly to some first principles relating to the origin and nature of the property, then to answer some objections, **[867]** and, lastly, to review the authorities. The origin of the property is in production. As to works of imagination and reasoning, if not of memory, the author may be said to create, and, in all departments of mind, new books are the product of the labour, skill, and capital of the author. The subject of property is the order of words in the author's composition; not the words themselves, they being analogous to the elements of matter, which are not appropriated unless combined, nor the ideas expressed by those words, they existing in the mind alone, which is not capable of appropriation. The nature of the right of an author in his works is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copying after publication in print, which is the limited meaning of copyright in its common acceptation, and which is the right of an author, to which the statute of Anne relates. Thus, if after composition the author chooses to keep his writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages if any are sustained; also, if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong, still the author's right to his composition would be recognised against the importer, and such sale would be stopped. These rights would be enforced for an alien as well as for a native author, in case his private writings were copied wrongfully abroad and published here, it being a personal right resting on principles common to all nations who read, and analogous to the right of an alien, while residing abroad, to prohibit the publication here of words defamatory of his character, which was recognised in *Pisani* v. *Lawson* (6 Bing. N.C. 90; 8 Scott, 182). Again, if an author chooses to **[868]** impart his manuscript to others without general publication, he has all the rights for disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give, or sell any copy of his composition, with or without liberty to transcribe, and if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee. About the rights of the author, before publication, at common law, all are agreed, and the cases on the point are collected in *Prince Albert* v. *Strange* (18 Law J., Chan., 120; 1 Macn. and Gord. 25; 1 Hall and Twells, 1). But the dispute is, whether these rights had any continuance after publication until the statute of Anne. I submit the answer should be in the affirmative, both because printing, which is only a mode of copying, and unconnected with the right of copying, has no legal effect upon that right of control over copying which existed while the work was in manuscript, and because it is just to the author and useful to the community, in order that production should continue, to secure the profits of a production to the labour, skill, and capital that produced it; and this can only be effected by giving property after publication, as the profits on books only begin then to arise.

Those who object to the author's right at common law after publication, rely mainly on three grounds. 1st. That copyright after publication cannot be the subject of property. 2d. That copyright is a privilege of prohibiting others from the exercise of their right of printing, and a monopoly lawful only by statute. 3d. That by publication the property of the author is given to the public.

With respect to the first of these grounds, that copyright cannot be the subject of property, inasmuch as it is **[869]** a mental abstraction too evanescent and fleeting to be property, and as it is a claim to ideas which cannot be identified, nor be sued for in trover or trespass, the answer is, that the claim is not to ideas, but to the order of words, and that this order has a marked identity and a permanent endurance. Not only are the words chosen by a superior mind peculiar to itself, but in ordinary life no two descriptions of the same fact will be in the same words, and no two answers to your Lordships' questions will be the same. The order of each man's words is as singular as his countenance, and although if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious, by comparing the words of ancient authors with other works of their day; the vigour of the words is unabated; the other works have mostly perished. It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by action on the case, instead of detinue or trover. The notion of Mr. Justice Yates that nothing is property which cannot be ear-marked and recovered in detinue or trover, may be true in an early stage of society, when property is in its simple form, and the remedies for violation of it also simple, but is not true in a more civilised state, when the relations of life and the interests arising therefrom are complicated. As property must precede the violation of it, so the rights must be **[870]** instituted before the remedies for the violation of them; and the seeking for the law of the right of property in the law of procedure relating to the remedies is the same mistake as supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein. The difference in the judgments of Mr. Justice Yates and Lord Mansfield on this point, appears to me to be the difference between following precedent in its unimportant forms, and in the essential principles. If the precedents in their unimportant forms are to be followed, it is clear there would be no precedent relating to printing before the time of Richard the First, when the common law in theory existed, as printing was not known then; and this objection has been made to copyright at common law after printing. But if the essential principle for one source of property be production, the mode of production is unimportant; the essential principle is applicable alike to the steam and gas appropriated in the nineteenth century, and the printing introduced in the fifteenth, and the farmers' produce of the earlier ages. The importance of the interests dependent on words advances with the advance of civilisation. If the growth of the law be traced with respect to the words that make and unmake a simple contract, and with respect to the words that are actionable or justifiable as defamation, and with respect to the words that are indictable as seditious or blasphemous, it will be thought reasonable that there should be the same growth of the law in respect of the interest connected with the investment of capital in words. In the other matters the law has been adapted to the progress of society according to justice and convenience, and by analogy it should be the same for literary works, and they would become property with all its incidents, on the most elementary principles of securing to industry its fruits, and to capital its profits.

[871] With respect to the second objection, that copyright is a privilege of prohibiting others from the exercise of their right of printing, and so a monopoly lawful only by the statute, I submit I have already shown that copyright is a property, and not a personal privilege in the nature of a monopoly. I submit also that the notion of all printers having a right to print whatever has been published is, on the same reasoning, a mistake. The supposition of the objector is, that there is a demand for books; that the supply is produced by labour, skill, and capital, for the sake of profit; that the profit begins to arise upon the sale of the production, and that as soon as the sale has commenced the law gives to the pirate an equal right to the profits with the producer; in other words, that the law gives up the most important production of industry to spoliation; which seems inconsistent. There is no ground for the assertion that a printer is at liberty to print anything in print; to use the

language of the Court in 1689, in the *Stationers' Case* (1 Mod. 256), he may print all that has been made common, but not that which has remained inclosed. Words are free to all; he may print any words that he can compose or get composed; but it does not follow that he may transcribe the composition which another has appropriated. The printer is prohibited from words of blasphemy and sedition, for the sake of the public interest; from words of defamation, for the sake of character; from the words in the books of the King's copyright, by reason of his property therein. The liberty of printing is restricted in these instances, and the principle of liberty would not be more infringed if the printing was restricted also as to the property of the author. Whether he is so restricted by law, is the question in controversy; and to assume that the supposed law would be contrary to lawful liberty and **[872]** therefore no law, is merely a form of assuming that the question in dispute is answered.

With respect to the third objection, that by publication the property is given to the public; if it is meant as a fact that the author intends to give it, it is contrary to the truth, for the proprietors of copyright have continuously claimed to keep it. If it is meant that the publication operates in law as a gift to the public, the question is begged, and the reasoning is in a circle. For the question being, whether the law protects copyright after publication, the reasoning in law is, that the law does not so protect it, because publication operates as a gift to the public; and the reasoning in fact is, that the publication must be taken to operate as a gift to the public, because after publication the law does not protect copyright. In further support of this view, and for a more full statement of many points here, for the sake of time, merely touched, I would beg to refer to the argument of Wedderburn against Thurlow, in *Tonson* v. *Collins* (1 Sir W. Bl. 321), and to the judgments of Lord Mansfield (4 Burr. 2303), and Aston and Willes, Justices, against Yates, Justice, in *Millar* v. *Taylor*, and to the summing up of the argument on this point in *Donaldson* v. *Beckett* (2 Bro. P.C. 129), as reported in Brown's Parliamentary Cases. In all of these Cases the governing question was, whether authors had a perpetuity of copyright since the statute of Anne? This House decided in the last case that the statute had restricted the right to the terms of years therein mentioned, but it left the question of copyright at common law undecided.

With respect to the authorities, they decidedly preponderate in favour of copyright at common law. For those that are prior to Charles the Second, I refer, for the **[873]** sake of time, to them as cited in the cases last mentioned. They are not judicial decisions upon the right, but they are, to my mind, good evidence that the right was, from the beginning of printing, known and supported. By the 13th and 14th Charles 2, c. 33, s. 6, the Legislature recognises copyright as is shown more fully below; and in 16th Charles 2, the Court of Common Pleas adjudged for it by deciding in *Roper* v. *Streater* (Skinner, 234, referred to in 4 Burr. 2316), that the assignee of the executor of the author had the copyright in the Law Reports of the author against the law patentee, and although the law patentee succeeded on error, that was by force of his patent over law works; not from the failure of copyright as to other works. Also the statute of 8th of Anne, c. 19, is, to my mind, decisive that copyright existed previously thereto; and as it has been understood in an opposite sense, it may not be a waste of time to examine it with attention.

So far from creating the copyright as a new right, the statute of Anne speaks of authors who have transferred the copies of their books, and of booksellers who have purchased the copies of books in order to print and reprint the same; and if copyright in printed books was before the statute the subject of sale and purchase, it was the subject of property. It also speaks of the then usual manner for ascertaining the title to that property, for it directs that the title to the copy of books hereafter to be published shall be entered at the Stationers' Company in such manner as hath been usual. Indeed, the statute 8 Anne, c. 19, s. 1, is, as to this, identical with 13 and 14 Charles 2, c. 33, s. 6. Each of these statutes recognises copyright as a property existing before the statute; each secures it against piracy by penalty and confiscation; each refers to registration with the Stationers' Company as a **[874]** mode of proving the right. They differ in this, that under the statute of Charles the 2d, the property was unlimited, and under that of Anne it is restricted to 14 and 21 years. The Legislature under Queen Anne had the double purpose of encouraging both learners and authors; and as the monied interests of these two parties conflict,

the learner wishing the book at the lowest, and the author at the highest price; therefore, for the benefit of learners, the author's perpetuity in his property is reduced, as to future publications, to 14 years, with a contingent increase, and as to existing publications, to 21 years; the larger term being due for the loss of a vested right, and the price of books is to be lowered, if certain officers shall judge it to be too high. On the other hand, for the benefit of authors, the power of fining pirates and confiscating their piratical property during the statutable term of copyright, as also the mode of proving proprietorship, and licenses under the proprietor, by means of registration with the Stationers' Company, are restored almost as they had existed from the 13th and 14th of Charles the 2d, till late in the reign of William the 3d.

The Judges, in construing the 8th of Anne, in *Millar* v. *Taylor*, advert to its Parliamentary history, as brought in to secure copyright, and altered in its progress to destroy it. But without going upon such a ground of construction, it is legitimate to observe, from the statute itself, that it appears to have proceeded from the conflicting interests of readers and authors. For the clause which has the appearance of promoting the interests of authors by vesting their property in them for a term, and giving them stringent remedies for its protection during that term, contains the expression which was ultimately discovered, after a most remarkable discussion, by the decision of this House in *Donaldson* v. *Beckett*, to have destroyed the perpetuity of [875] their property; the clause vesting the property in them for the term, "and no longer." This decision created such a sacrifice of the author's interest as I may assume has been thought inconvenient, seeing that the Legislature made one restoration to authors of their property by 54 Geo. 3, and another by 5 and 6 Vict.

Furthermore, all the actions on the case, and all the injunctions for infringements of copyright, during the first fourteen years after publication, are authorities for saying that the copyright of authors at common law has continued since the statute of Anne, no otherwise affected thereby than limited in duration. For, if the statute is to be held to create a new right for fourteen years, it created also a new remedy at the same time, and that remedy, according to law, would be the only remedy. And the very narrow point on which the Plaintiff succeeded in *Beckford* v. *Hood* (7 T.R. 620), namely, that the new remedies given by the statute do not extend to the second term of fourteen years given to an author, in respect of which that Plaintiff sued, would have been of no avail in correct reasoning for the first term of fourteen years.

In the learned conflict ending with *Donaldson* v. *Beckett*, the numbers for copyright at common law are in a great majority; Lord Mansfield, Aston, and Willes, Justices, against Yates, in *Millar* v. *Taylor;* and ten Judges against one for copyright at common law; and either eight Judges against three, or seven against four, for an action for infringement in *Donaldson* v. *Beckett*. Against copyright at common law, the sole judgment is that of Yates, Justice, of which I have before spoken; Lord Kenyon seems to have held this opinion from some expressions used by him in *Beckford* v. *Hood*. It is true that he gives the author, by that judgment, the remedy given by [876] the law in respect of a right at common law, but he derives the right from the statute of Anne; and thereby the judgment is, I submit, anomalous. Lord Ellenborough also seems to have held this opinion, from some incidental expression in the *Cambridge University* v. *Bryer* (16 East, 317). But the latest judgment on the point is that of Lord Mansfield, in *Millar* v. *Taylor*, in which he does the service of tracing the law upon the question to its source in the just and useful. And Lord Mansfield's authority in this matter outweighs that of Lords Kenyon and Ellenborough, not only as an elaborate judgment outweighs an extrajudicial expression, but also because these successors of Lord Mansfield appear to me to have turned away from that source of the law to which he habitually resorted with endless benefit to his country.

It is true that no record of an action on the case for infringement of copyright, prior to the statute of Anne, has been found; the claim in *Roper* v. *Streater*, though founded on copyright, being in form for a penalty under the Licensing Act. But, the absence of resort to that remedy is no presumption against the right to it, if no such remedy was needed, or if more convenient remedies existed. And there is reason for believing that this was the case; for printing, when first introduced, was regulated by the Legislature, and confined in its progress by the powers of the Star Chamber and High Commission Courts, and by Licensing Acts, and patents for the

sole printing of certain works. And so late as the 13 and 14 Charles 2, c. 33, s. 11, the number of printers is restricted by that statute to twenty, and of type founders to four; and proprietors of copyright then registered with the Stationers' Company, and came under their regulations. And thus the opportunities for piracy were rare, while [877] presses were few and known, and consequently the need of an action on the case against a pirate would be small.

Furthermore, if there were pirates, the remedies in the Star Chamber, and for penalties under the statutes, were probably more convenient than actions for damages; indeed, it is noticed by Willes, Justice, in *Millar* v. *Taylor*, that, in the time of Queen Anne, the poverty of those who practised piracy was such as to make an action for damages against them futile, and that therefore the booksellers petitioned for the statute of 8th Anne to enable them to punish piracy by penalty and confiscation. In such a state of society and of the law, the absence of an action on the case is of no weight in the way of presumption against the right.

Upon this review of principle and authority, I submit that authors have a property in their works by common law, as well since the statute of Anne as before it; that such property includes copyright after publication; that before publication abroad, the property of an alien author in his work is recognised in our law; that this property of an alien author passed to the Plaintiff below, and was infringed by the Defendant below; and that therefore the action lay.

But supposing your Lordships should be of opinion that since the statute of Anne the right of an author to copyright after publication is derived from that statute alone, still I submit that the Plaintiff below had cause of action. The Plaintiff in Error contends that the statute put an end to the property of the author existing at publication, and created a personal privilege in the nature of a monopoly; and that because the Legislature intended to encourage learning, and to induce learned men to write useful books, that therefore it excluded alien authors from the privilege so created. As to the statute putting an [878] end to the property of the author, and creating a personal privilege, what I have before stated contains the grounds of my opinion to the contrary. It is clear that the author had and has property before publication, *Prince Albert* v. *Strange* (18 Law J., Ch., 120; 1 Hall and Twells, 1; 1 Macn. and Gord. 25); the statute does not express an intention to annul or destroy property, and effect can be given to all its provisions without coming to that conclusion.

As to the right of prohibiting piracy being a personal privilege of monopoly, the answer is, that it is the same right as is incidental to all ownership, which in its nature prohibits the use of the property against the will of the owner, and is no more a monopoly in case of copyright than in the case of other possessions. Even if the statute should be held to annul the property after publication, still it leaves the property before publication as it was; and then the right of the Plaintiff below stands, for he took by assignment, before publication, when the statute had no operation. As to the intention of the Legislature to exclude alien authors from the rights of authors in England, because it is intended to encourage learning, and to induce learned men to write useful books, the recited intention leads me to an opposite construction; for learning is encouraged by supplying the best information at the cheapest rate, and according to this view the learner should have free access to the advances in literature and science to be found in the useful books of learned men or foreign nations, and I gather from the statute that this was its scope. It is not to be supposed that the Legislature looked upon all foreign literature as bad, because of some pernicious writings, or on all British productions as good, on account of some works of excellence; nor is it to be supposed that the Legislature planned either to release British authors from a competition with aliens, or to [879] restrict readers to a commodity of British productions of inferior quality, at a higher price; or that it intended to give to British authors of mediocrity a small premium, at the expense of depriving British printers and booksellers of the profit of printing and selling works of excellence by aliens. If any such plan existed, the enactment contains no words for executing it. It provides for authors, which, in common acceptation, denotes authors of all countries; "author" expressing a relation to a work exclusive of country. The notion that "authors" here meant authors in some sense British, first emanated from the Court of Exchequer, in *Chappell* v. *Purday*, as a ground of

judgment; and although years have since elapsed, I do not find that any one can express with the precision required for practice, in what sense the authors must be British. Perhaps Irish authors were not excluded; but if "authors" means British authors, by what construction were the Irish included? Perhaps alien authors, who owed British allegiance by reason of residence in Britain, are included; but if so, what is the residence that will qualify? Must it be during education, so that the mind should be British; or during composition, so that the work should be British? I believe that the answer to both is in the negative, the rule in this sense being too vague to be practical, and that the qualification is to depend upon the moment of publication or assignment. If the alien has come across the frontier at that moment, he is to be British within the statute. By such a construction the Legislature would be taken to have planned a British monopoly, and made it liable to be defeated by any alien, who would go through a senseless formality; which seems inconsistent. Moreover the construction is too vague for practice, not only as to the authors within it, but also as to the books to be affected thereby. If ancient manuscripts are brought to **[880]** light from unburied cities, or private papers, written by foreigners remarkable in history, are purchased and published by the skill and capital of a British bookseller, in neither case is the author British; but it is not to be supposed that Parliament would for that reason intend to deny security to such an investment, and to lay the profits of such a bookseller at the mercy of any pirate who would re-print; if it is said that the transcriber of a difficult manuscript is equal in merit with an author, is not such a notion devoid of practical precision? and if it is adopted, would the bookseller lose his investment, if he employed an alien to transcribe? Again, if it is said that the collector of letters and papers of a distinguished foreigner might publish with notes and narrative, and so be protected, is not the protection illusory if the pirate might transcribe the original documents, and supply his own notes and narrative?

These considerations lead me to the conclusion that the construction proposed by the Plaintiff in Error is wrong. It is contrary to the general rule, requiring effect to be given to words according to their ordinary acceptation; it is contrary to justice and expediency, in depriving learners of information, and booksellers of their profits, while the supposed protection of British authors from competition is of more degradation than gain to them.

In holding that the plaintiff below may maintain his action on copyright derived under the statute of Anne, no extra-territorial effect is given to that statute. The personal right of the alien author, at Milan, to the copyright in his manuscript, which is assumed in the question, is recognised in England, on the authorities collected in *Cocks* v. *Purday* (5 Com. Ben. Rep., 860); the manuscript is assigned in Milan by the author, and brought to England, without having **[881]** been published abroad by the assignee, and he assigns to the plaintiff before publication, and so before the term of copyright, supposed to be given by the statutes, begins. Afterwards the plaintiff, being such assignee, publishes in England, and after publication in England, claims the operation of the statute in England, to protect his right there; and in so doing, he claims only an intra-territorial effect from the statute. Nay, if the statute made void the assignment in Milan, which was valid by the law of that place, it would have an extra-territorial effect, by depriving an alien abroad of a personal right in England, which, but for the statute, the common law would have given him there. I rely on these reasons, in addition to the reasoning in the judgment appealed from, to show that the Plaintiff in Error is wrong in his construction of the statute of Anne, and that the plaintiff below had cause of action under that statute.

To the second question, whether, if the assignment from Bellini had been by deed, attested by two witnesses, it would have made any difference, I answer in the negative. In my opinion it is immaterial; the assignment by a foreigner abroad having validity in England, if in the form required by the law of the country where it is made. Even if the English law operated in respect of the assignment of copyright at Milan, since the 54th Geo. 3, c. 156, s. 4, that is since 1814, the requirement of two witnesses to a licence, according to the statute of Anne, has ceased, and an unattested licence in writing is sufficient, and therefore an unattested assignment in writing is valid. As the 54th of Geo. 3, c. 150, s. 4, has altered the law on this point, it is not of much importance now to consider whether the requirement, in the statute of Anne, of two witnesses to a licence, after publication, to be used by a defendant charged with

piracy, was a requirement of two witnesses to an [882] assignment before publication, to be used by a plaintiff in an action on the case for damages, as laid down in *Power* v. *Walker* (3 Maule and S. 7). The statute does require the defence of licence to be so proved; and that in the case of a plaintiff claiming under a licence, and suing for a statutable penalty, the licence should be so proved; but it appears to leave the assignee, suing according to the common law, to prove his case under that law. Still it may not be immaterial to observe upon the decision in *Davidson* v. *Bohn* (6 Com. Ben. Rep., 456), by which, since the 54th of Geo. 3, an assignment was held void, which had one witness, only that the difference between the statute of 8th Anne, and the statute of the 54th Geo. 3, was not adverted to therein.

To the third question, my answer is in the negative. It would have been immaterial. The assignment in the form valid at Milan, would, in my judgment, be valid in England; so would also an assignment in the form valid in England, if made to an Englishman, to be used in England.

To the fourth question, whether a publication in Milan, before the assignment to plaintiff below, would have made any difference, my answer is in the affirmative. It would have defeated the right of the plaintiff below. I understand the cases to have decided that there is no copyright in England for a work which has been already published abroad. It seems that the Legislature recognized this to be the law by 8th Anne, c. 19, s. 7, relating to the importation of books printed abroad, and by the statutes on international copyright.

To the fifth question, my answer is the same as to the fourth; the lawful publication abroad would defeat a claim of copyright in England.

To the sixth question, whether, if the assignment to the plaintiff below had not contained a limitation to this [883] country, it would have made any difference, my answer is in the negative; it would be immaterial, for the reasons given in my answer to the first question. The owner of copyright may dispose of the whole, or any part of his interest, as he may choose.

To the last question, whether the Judge was right in directing a verdict for the defendant, my answer is in the negative, the plaintiff having been, in my judgment, entitled thereto, on the grounds before stated.

Mr Justice Wightman.—It appears, from the statement of facts which precedes the questions proposed by your Lordships, that Boosey, the Defendant in Error (a British subject residing in England), was the first publisher of a certain literary work, and that such first publication was in England; but that he was not himself the author of the work, nor the immediate assignee of the author, who was an alien, residing at Milan, and who there assigned, by an unattested written instrument, what is called his copyright in the work, to one Ricordi, who assigned the same in England, by deed attested by two witnesses, to Boosey, the Defendant in Error, but for publication in the United Kingdom only.

The first question proposed by your Lordships is, did Jefferys, by printing and publishing the same work in England, subsequently to the printing and publishing by Boosey, give to the latter any right of action against him? The answer to this question depends upon the construction to be put upon the statute of 8th Anne, c. 19; but it may be expedient to consider the nature of the property, and of the right of an author in what may be called "the copy" of his works, as recognised by the common law, independently of the statute. It appears by the answers of the Judges to the questions proposed to them by the House of [884] Lords, in the case of *Donaldson v. Beckett* (4 Burr. 2408; 2 Bro. P. C. 129), that ten out of eleven Judges were of opinion that, by the common law, an author of any literary composition had the sole right of first printing and publishing the same for sale, and eight out of the eleven were of opinion that he might bring an action against any one who published the same against his consent; seven of the eleven were of opinion that the author did not lose his right upon his publishing the work; and six of the eleven Judges were of opinion that whatever right of action the author might have had by the common law, after publication, it was taken away by the statute of Queen Anne. The only point upon which the Judges were almost unanimous (ten to one) was, that by the common law, the author of a literary work had the sole right of first printing and publishing the same for sale. Upon the mode of enforcing the right, and the extent of it, after the first publication by the author, there was much greater difference of opinion, and the majority came to

the conclusion that, after publication, the right and the remedy for any infringement were regulated by the statute. It would appear then, from the opinions given by ten of the eleven Judges, to whom may be added Lord Mansfield, that by the common law the author of a literary composition is entitled to " the copy " of it. The term " copy " is said by Lord Mansfield, in the case of *Millar* v. *Taylor* (4 Burr. 2303), to have been used for ages in a technical sense to signify " an incorporeal right to the sole printing and publishing of something intellectual communicated by letters." This incorporeal right or property the author has at common law, according to the opinion of those learned persons, from the time of composition down at least to the time of first publication; and by the statute of 8th Anne, c. 19, from the time of first publication for the time specified in **[885]** that and the subsequent statute of 54 Geo. 3, c. 156. This incorporeal right or property may be possessed by any one who may acquire or hold personal property in England, as far as the right of property depends upon the common law. The right or property is merely personal, and an alien friend, by the common law, has as much capacity to acquire, possess, and enjoy such personal right or property as a natural-born British subject.

An alien friend may possess any description of personal property in England, and maintain any action in respect of it applicable to the nature of the wrong. He may have a property in its nature incorporeal in his character and reputation, and may maintain an action for verbal or written slander. In *Tuerloote* v. *Morrison* (1 Bulstr. 134; Yelv. 198), the plaintiff brought an action against the defendant for verbal slander, and the defendant pleaded that the plaintiff was an alien at the time of speaking the words, born at Courtrai, in Brabant, out of the King's allegiance, upon which the plaintiff demurred, and had judgment in his favour, the Court saying, that the protection of the common law extended both to the goods and to the person of an alien friend. This appears to have been the first instance of such an action; but in the more modern case of *Pisani* v. *Lawson* (8 Scott, 182; 6 Bing. N. C. 90), an action for libel was held to be maintainable by an alien, though resident abroad, in accordance with an Anonymous case reported in Dyer (Dyer, 2 b.), in which it was held that an alien residing abroad might maintain an action of debt in the English courts.

It is hardly disputed in the present case, that if Bellini, the author, an alien friend, had come to England, and there, for the first time, published his work, he would have been entitled to copyright, and to the protection afforded to **[886]** authors by the statute of Anne, or if, being in England, he had duly assigned his copy to Boosey, who had published the work for the first time, the latter would have been entitled to copyright and the protection of the statute. The question turns upon the circumstance of Bellini being an alien resident in Milan at the time of the assignment by him and of the publication of the work in England. It was said for the plaintiff in error, that Boosey, at the time of the publication in England, could have no greater right than the author himself would have had, supposing he had published it on his own account whilst residing at Milan, and that the author, unless he was in England at the time of publication by him there, could acquire no English copyright, as it was called, as all that he was possessed of whilst resident at Milan was what was called a Milanese copyright, and that when he assigned to Ricordi, he assigned no right in England, but only a right in Milan. It is proper that I should now advert to the statute of the 8th of Anne, c. 19. [His Lordship stated the title, the preamble, and the first section of the statute.] The statute gives the author or his assignee copyright properly so called, from the time of the first publication in England. From the expressions used in it there is a recognition of proprietors of literary works, independently of the statute, and it enables the author to give to an assignee the same power to obtain a copyright that he possessed himself; but neither he nor his assignee would be entitled to copyright until publication. Whatever right the author may have possessed before publication must have been at common law. The statute is general in its terms as to the persons who may be entitled to the benefit of it, and has no words or expressions to show that it was intended for the exclusive benefit of authors who are British subjects. It professes to be an Act for the encouragement of learning **[887]** generally, and for the encouragement of learned men to compose and write useful books, without reference to any country or persons. Literature and learned men are of no particular age or country, and the benefit to be derived by this country from the encouragement of learned men would be greatly reduced if the operation of the

statute was restricted to native authors. It seems, indeed, to be admitted, that if a foreign author comes to England for however short a time, and first publishes his work here, he is entitled to the benefit of the statute; but if he stopped at Calais, and sent his work to London by an agent to be published for him, he would not be entitled; or if he assigned his copy at Calais, he would transfer no right or property to his assignee, though he would if he assigned at Dover. It is said, and said correctly, that the English municipal law has no operation *extra fines*, but the question in the present case arises with respect to a matter occurring within the realm, namely, the first publication in England of a work by a foreign author which had not been published elsewhere before. Neither the common law nor the statute of Anne excludes the right of a foreign author to possess such a property in England, though he may be resident abroad, and to maintain a personal action, if such personal right or property, though incorporeal, is infringed, and if Bellini himself had been the publisher, though resident abroad, I am not aware of any good reason why he would not have been entitled to all the rights that an English author would have been entitled to, and the principles deducible from the authorities I have already referred to fully warrant such a conclusion. But it is said, that even if Bellini could, by publication himself, and on his own account, in England, though he was at the time resident at Milan, become entitled to copyright and the protection of the statute, he could not by an assignment at **[888]** Milan give any title to copyright in England to an assignee, for that he had nothing to assign before publication in England but what is called a Milanese copyright.

If the opinions of the ten judges in the case of *Donaldsons* v. *Beckett* and others be correct, Bellini would be possessed, as author, of an incorporeal right or property in his unpublished work, recognized by the law of England. It is true his right would not come into question until it was to be claimed or exercised in England, but his right and property would nevertheless exist. That which Bellini had at Milan, was "the copy," or right of publication of his work, a species of personal property incorporeal, which, as it seems, the common law of England considers every author entitled to, and which, when carried into effect by actual publication in England by the author or his assignee, would entitle either to the benefit and protection of the statute of Queen Anne. The property which Bellini had in "the copy" of his work he assigned at Milan to Ricordi, and being a personal matter, the assignment would transfer the property, so as to give the assignee the same right that the assignor had in all countries where such property is recognised, and in which it may be transferred by assignment, as it may in this case, both by the law of Milan and the law of England. The law of Milan will not confer any right upon an author in this country, nor will the law of England confer any right at Milan, or have any ex-territorial power. But the question here is whether a certain subject-matter is property assignable by the English law, though its first existence may have been abroad.

In all, or almost all the cases that have occurred upon the subject of copyright, it has been made a question whether, before publication, there could be any property in an author in his composition. There has been no **[889]** decision, of which I am aware, that there may not be such property, and if there is, as would appear to be the case from the opinions to which I have referred, it would be subject to the ordinary incidents to such property. In the case of *Tonson* v. *Collins* (1 Sir. W. Bl., 321), which was an action on the case for pirating the *Spectator*, it was said, *arguendo*, that that part of the special verdict which stated that the author, Mr. Addison, was a natural-born subject, was of no consequence, because the right of property, if it existed, was personal, and might be acquired by aliens. That case was by five or six years prior in date to the case of *Donaldson* v. *Beckett*, to which I have already referred, and there was no decision upon it.

In the case of *Clementi* v. *Walker* (2 Barn. and Cres. 861) the question now under consideration did not arise, nor does the decision in that case at all govern the present.

The first case of which I am aware in which the question came directly before a court of common law, and in which there was an express decision upon the point now under consideration, was the case of *Chappell* v. *Purday* (14 Mee. and W., 303). In that case it was intimated by the Court of Exchequer, that a foreign author residing abroad, who composed and published his work abroad, had not, either at common law or by the statutes of 8th of Anne, c. 19, or 54th Geo. 3, c. 136, any copyright in

this country. The Lord Chief Baron, in giving judgment in that case, says, "We think it doubtful whether a foreigner not resident here can have an English copyright at all, and we think he certainly cannot, if he has first published his work abroad, before any publication in England." That latter circumstance of the first publication being abroad, distinguishes that case from the present, and leaves the question of the right **[890]** of a non-resident foreigner who first publishes in England doubtful.

In the previous case of *D'Almaine* v. *Boosey* (1 Yo. and Col. 288), decided by Lord Abinger in the Exchequer in Equity, he observes, "The Acts give no protection to foreigners resident abroad in respect of works published abroad." I may here remark, that in the case of *Chappell* v. *Purday*, the Lord Chief Baron, after reviewing the previous decisions, says, "The result seems to be, that if a foreign author, not having published abroad, first publishes in England, he may have the benefit of the statutes."

In the case of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), the express point now under consideration arose, and the Court of Common Pleas held that a foreigner resident abroad may acquire copyright in this country in a work that is first published by him as author, or as author's assignee, in this country, which has not been made *publici juris* by a previous publication elsewhere.

The same question came before the Court of Queen's Bench in the case of *Boosey* v. *Davidson* (13 Q.B. Rep., 257), and it was held by that court that a foreigner, though resident abroad, may have copyright in this country, if the first publication is in this country. The circumstances in that case were the same as in the present.

The next case was that of *Boosey* v. *Purday* (4 Exch. Rep. 145), in which the question was the same as in the present, and in which the Court of Exchequer held that a foreign author residing abroad, who composes a work abroad, and sends it to this country, where it is first published under his authority, acquires no copyright therein; neither does a British subject who claims under an assignment made abroad by the author, gain any such right.

[891] In the case of *Ollendorf* v. *Black* (20 Law J., Ch., 165), Vice-Chancellor Knight Bruce was of opinion that a foreign author, who first published in England, did acquire a copyright.

Upon modern authority, then, there appears to be a preponderance in favour of the proposition that a foreign author, resident abroad, can by first publication in England acquire a copyright here; but I am also of opinion that, upon the principles deducible from the older authorities, and upon the true construction of the statute of the 8th of Anne, he may acquire such a right. With respect to the assignment to Ricordi, there is nothing in the terms used in the statute of 8th of Anne, c. 19, which requires the assignment to be either by deed or attested by witnesses; and at all events since the statute 54th Geo. 3, c. 156, it appears to me that an assignment by writing only is valid; and by the law of Milan, where it was made, it is said to be sufficient to pass such property. I therefore think that the Defendant in Error (Boosey), had a right of action against Jefferys.

With respect to the second and third questions proposed by your Lordships, it appears to me that it would not have made any substantial difference in the case if the assignment to Ricordi had been by deed attested, or if the assignment had been direct at Milan from Bellini to Boosey, by deed attested. My reasons are included in those which I have presented to your Lordships in answer to the first question; and though by the English law an assignment of a copyright should be by writing, neither the law of England nor of Milan requires that it should be by deed, or attested.

With respect to the fourth and fifth questions proposed by your Lordships, it appears to me that, if the work had been printed and published at Milan before the assign-**[892]**-ment to Boosey, or after the assignment to him, but before publication here, neither the author nor his assignee would have been entitled to copyright in England. It appears to me that first publication in England is essential to entitle the author or his assigns to the protection given by the statute. In this view of the case, my opinion is supported by the judgment of the Court of Exchequer in the case of *Chappell* v. *Purday*. I may observe, that a first publication at Milan by the author after assignment would not be by a wrong-doer as far as Boosey is concerned, as the assignment to him is limited to publication in England.

With respect to the sixth question, it appears to me that the limitation in the assignment makes no difference, under the circumstances of the case. A first publication in England under such an assignment would, I think, entitle the assignee to the benefit of the statute; for no terms, however general, could restrain a publication abroad, where the English law has no operation; and I am not aware of any rule of law which would make such a restricted assignment invalid, though it may be that, as far as copyright in the British dominions is concerned, a restricted assignment would exhaust the whole power of the assignor, and that he could not make another assignment to take effect in another place.

Upon the last question proposed, I am of opinion that, looking to the record as set out, the learned Judge who tried the cause was wrong in directing the jury to find a verdict for the defendant.

Mr. Justice Maule.—Before answering the several questions put to the Judges, I propose to begin by stating some of the principles on which I think the solution of those questions depends.

[893] In so doing, the nature of copyright itself is first to be considered. In the sense in which copyright is commonly spoken of, it comprehends, first, the right belonging to an author before publication, that is, the right to publish or not, as he thinks fit, and to restrain others from publishing; and, secondly, the right, after publication, of republishing, and of restraining others from doing so.

The first kind of copyright (that of the author before publication), has been much less questioned than the right after publication; and indeed there are reasons for the right before publication, which do not apply to the right after publication; as well as reasons against the right after publication, which do not apply to that before publication.

With respect to the right before publication, as above described, I am of opinion that such right does in fact exist by the common law of England. The weight of authority is in its favour; it has scarcely been disputed, and it appears to me to arise out of the nature of the thing, and to be like the law of the exclusive right of property in personal chattels, arising out of their nature in respect of their mode of acquisition, and their capacity of exclusive use; and that, therefore, like the law enabling private persons to hold property in personal chattels, it is to be presumed to be the law of all civilized countries, so far as not derogated from by the municipal law of any particular country. It therefore appears to me that the law giving to the author the extent of copyright applicable to the case of an unpublished work, must be taken not only to be part of the common law of England, but also to be the law of all countries where it is not shown to be restricted by the law of the place, and therefore that it must be taken to be the law of Milan.

The second kind of copyright, that which restrains all but the owner of the copyright from republishing a book **[894]** already published, certainly does not arise, like the first kind of copyright, out of the nature of the thing. It is rather in derogation of the natural right of an owner of a copy of a published book to make what use he will of his own property, by copying it or otherwise. Whether such a copyright does actually exist by the common law of England, has been much questioned, and high authority may be cited on both sides. But it is not necessary for my present purpose that I should decide this question, except so far as to say that I am of opinion that no such right exists in respect of the first publication in England, of a book which had been previously published in a foreign country. The existence of such a law is not supported by authority, and, if it existed, it would take away the right of an owner of a copy of a work, so published, to re-publish it in England; a right which he clearly had before the first publication here. It is indeed conceivable that such a law might exist, and that its object might be to encourage and reward the republication in this country of good books already published abroad. But it is very unlikely that such a law, if it existed, would give, without any distinction, the same monopoly to a republisher of a book which any one might and could republish, as to an author of an unpublished work; I think it, therefore, very clear that the common law does not confer any copyright on the first publisher in England of a book already published abroad, the right to publish such a work having thereby become common to all. But whatever may be the common law, there is no doubt that a right after a first publication in this country, and indeed arising out of that

first publication as well as dating from it, is conferred by the statutes of 8 Anne, c. 19, and 54 Geo. 3, c. 156, and the existence of this right is sufficient to enable me to answer the questions proposed.

[895] A main question debated at the bar, and often agitated elsewhere, was, whether the statutes of Anne and Geo. 3, do, on their true construction, give the sole liberty conferred by them on authors and their assigns to authors and their assigns who are aliens, and it appears to me that they certainly do. By the common law of England, aliens are capable of holding all sorts of personal property, and exercising all sorts of personal rights. Their disabilities in respect of real property arise out of special laws and considerations applicable to property of that particular kind. So that when personal rights are conferred, and persons filling any character of which foreigners are capable are mentioned, foreigners must be comprehended, unless there is something in the context to exclude them. The general rule is, that words in an Act of Parliament, and indeed in every other instrument, must be construed in their ordinary sense, unless there is something to show plainly that they cannot have been used, and so, in fact, were not used, in that sense. Here the words to be construed are, "author, assignee, and assigns." These words plainly comprehend aliens as well as others; and there is nothing, as it seems to me, in any part of the Acts to show that they are to be restricted. Indeed, those who reject this construction, do not rely on anything to be found in the terms of the Acts; nor is it pretended that, by construing the words in their proper sense, any contradiction, incongruity, or absurdity will arise. But it is said that the intention of the Acts is restricted to the encouragement of British industry and talent, and that this construction of the words would give an effect to the Act beyond that restricted intention, *Chappell* v. *Purday* (14 Mee. and Wels., 303). I cannot bring myself to think that any such restriction was intended; it certainly is not expressed. But even **[896]** taking the intention of the Acts to be as assumed, it would not, I think, be sufficient to take from the general words of the Legislature their natural and large construction; for British industry and talent will be encouraged by conferring a copyright on a foreigner first publishing in England; industry, by giving it occupation; and talent, by furnishing it with valuable information and means for cultivation. It is also said that the Legislature was dealing with British interests, and legislating for British people. This is true; but to give a copyright to a foreign author publishing in this country is dealing with British interests, and legislating for British people. Some parts of the Acts, it is said, though expressed generally, must be construed with a restriction to this country. And this is true with respect to the extent of the sole liberty of printing conferred by the Acts in general terms. But these words are, with respect to their operation, necessarily confined to the dominions within which the Legislature had the power of conferring such liberty; and the words prohibiting importation show that the framers of the Acts had this construction distinctly in view. But this consideration has no operation with respect to the persons on whom the sole liberty is conferred. The words, "author, assignee, and assigns," naturally comprehend aliens; and the Legislature is not denied to have had the right and power of conferring the sole liberty on them if it thought fit. In my opinion, therefore, the Acts confer a copyright on a foreign author, or his assignee, first publishing in England. To hold otherwise would, I think, be contrary to the plain meaning of the Acts, and would be a most inconvenient restriction of the rule, which, in personal matters, places an alien in the same situation as a natural-born subject.

Having stated the principles on which I think the **[897]** several questions put to the Judges may be determined, I proceed to answer them severally.

As to the first, it appears to me that Bellini was an author within the meaning of the Acts of Anne and Geo. 3; that the copyright which he is said to have had, is to be taken to have comprehended the copyright before publication, as above explained; that by the transfer of that right, which is stated to be valid by the laws of the country where it was made, Ricordi became an assignee of the author within the meaning of the Acts, and acquired under them, as incident to that character, the right of obtaining to himself or his assignees, by a first publication in this country, the sole liberty of printing conferred by the Acts upon an author and his assignee; and that Ricordi duly assigned that right to the defendant. The words limiting that assignment to publication in the United Kingdom do not operate, I

think, as restrictive of the rights acquired by the defendant Boosey to become entitled, under the Acts, to a sole liberty of printing and publishing in this country, by publishing here before any publication elsewhere; and I think this assignment, notwithstanding such limitation, constituted the defendant a complete assignee of all the right of publishing recognised and conferred by the statutes, that is the right of publishing in the United Kingdom, as effectually as it would have done if the limiting words had been omitted. Words not so limited would have given no greater British right, and I think it makes no difference with respect to that effect, that perhaps such words might have conferred some rights in other countries, which perhaps Ricordi may have had. I therefore answer the first question, that the publication by the Plaintiff in Error did give the Defendant in Error a right of action against the plaintiff.

As to the second question, I think it would have made **[898]** no difference, supposing the other circumstances in the first question to be the same.

Thirdly,—I think it would have made no difference. This question does not state that such a deed would have been operative by the laws of Milan; but as the subject of it was expressed to be, and actually was the right of publishing, or that of acquiring such right by proper means in the United Kingdom only, and as the deed was in a form, which by the law in this country was proper to operate on such a subject, and was executed by an "author," on whom the Acts conferred the British right and the power of transferring it, I think such deed was effectual for the purpose of constituting an assignee with the Acts.

Fourthly and Fifthly,—In the cases supposed in these two questions, I think the Defendant in Error would have had no right of action against the Plaintiff in Error. The copyright in printed books, given by the Acts of Anne and Geo. 3, is given to the authors and their assigns, of books not printed or published. This, I think, means not printed or published generally, or anywhere. The words naturally bear this meaning; and there is nothing, I think, to restrict it. When a book has once been published, the right to republish it seems to be common to all, except so far as the law of any place may specially restrain it. At the time of the defendant's publication in the cases supposed in these questions, he was not the author, or assignee of the author, of a book not printed and published, and on such only is the sole liberty conferred by the statutes, and I have already shown that no such right exists at common law with respect to a book previously published in a foreign country.

Sixthly,—I think, for the reasons stated in answer to the first question, that whether the words limiting the right to the United Kingdom were or were not contained in the **[899]** assignment, the defendant in the case supposed in the first question would have had a right of action against the plaintiff.

Lastly,—It appears to me that, for the reasons above given, the learned Judge was not right in directing a verdict for the defendant.

Mr. Justice Coleridge.—In answer to your Lordships' first question, I am of opinion that the publication therein stated gave to the Defendant in Error a right of action against the Plaintiff in Error, and this question in substance is one of so long standing, and has been so often discussed with so much learning, and such great ability, that I despair of adding anything new in support of my opinion. Therefore, although your Lordships will expect me to state my reasons for entertaining it, I shall endeavour to do so as shortly as I can, and without any complete or detailed collection of the conflicting authorities.

First, however, it is necessary to settle the state of facts on which I found myself. The question appears to me to identify, for the purposes of the argument, Bellini and Ricordi. The former is said to have "a certain copyright," which copyright he effectually vested in the latter. If by the words "certain copyright" your Lordships had intended to speak of a copyright with any limitations specified in the contract material to the present argument, I must presume they would have been stated; I consider, therefore, that none is to be supposed to have existed. On any other supposition the question cannot be answered at all, because we do not know its terms; and further than this, as your Lordships, addressing English Judges, use the term "copyright" without any definition, I must assume that, although speaking of a Milanese author in Milan, **[900]** and a Milanese production, your

Lordships use "copyright" in the sense in which an English Judge would define it, according to English law, to an English Jury. And still further, although the question states Bellini to have been an alien friend, and is silent as to Ricordi, I suppose I must, in order to raise the question at all, assume that Ricordi is to be considered an alien friend also. Ricordi, then, came to this country, bringing with him an unpublished manuscript of a literary work, of which he was the lawful owner, and owner also of the copyright, so far as the original author could confer it on him. The manuscript, namely, the paper with the writing on it, was a personal chattel. The unrestrained copyright, or copy, to use the technical term, is well defined by Lord Mansfield in *Millar* v. *Taylor* (4 Burr. 2397), as "the incorporeal right to the sole printing and publishing." These are manifestly two distinct properties, capable of distinct violations, protected by distinct sanctions and remedies, but both, such in their nature as an alien friend may by our law possess, and entitling him to the enjoyment and use of all such sanctions and remedies, in case of violation, as a natural-born subject would have. It seems to me, therefore, that he stood in the same situation as a natural-born subject would have been in if he had composed a literary work in Milan, and brought it with him unpublished to England.

Two considerations, however, are suggested as difficulties at this stage of the argument, the first arising from the nature of the thing itself, the right of copy; that which the French jurists call the "object" of the right, and the second from the quality of the person, or what they call the "active subject" of the right. It is said that from the nature of the thing, the property being the creation of positive law, and both Bellini and Ricordi owing their **[901]** right of property entirely to the law of Milan, which could have no operation in England, Ricordi bringing the manuscript with him here, brought no right of property attached to it. Secondly, it is said that there is a difference between a natural-born subject and an alien amy in England; because it has been decided that a prior publication abroad prevents the latter from having any copyright in England, whereas it has not that effect in regard to a natural-born subject.

I will consider in what follows both these objections. It would certainly be a miserable reflection on our municipal law, whether common or statute, both in respect of its consistency and breadth, if the first objection could be maintained. It cannot be denied, that the alien arriving with the manuscript in his portmanteau, if it were stolen from him, might have recourse to the criminal law of the country, and that if it were stolen from the possession of another person to whom he had lent it, he might, in the indictment, still describe himself as the owner of the property. It is not denied, that if it were taken from him in any way other than feloniously, he might sue for it, or its value, in detinue or trover. But this value, it is said, is merely that of the paper and ink, and that it is immaterial whether the writing on it be a collection of nonsense verses, or the most excellent product of human intellect; because, although he has the undoubted right and power to prevent any one from seeing, reading, or multiplying copies of it, yet, if this last be done unlawfully, because he has no right to multiply copies himself exclusively, he is not injured by the act of multiplication by another, and therefore is not entitled to any compensation. I do not wish to wander unnecessarily into equitable considerations, yet I may observe, in passing, that I presume that if the alien amy had corresponded from abroad with an Englishman here, and that Englishman should attempt to publish **[902]** the letters against his will, he, being in England, might restrain him by injunction, on the ground of his property, and might have an account against him for the profits of the publication, if he published them, on the same ground. And this seems to me very material to the present inquiry. I confess to the strongest disinclination to the belief that our law is so inconsistent and narrow. But, before I come to the inquiry directly into this, let me observe, that it seems to me a fallacy to found Ricordi's rights, in England, upon any supposed operation of the Milanese law here, and that the whole argument on the intra-territorial operation of municipal laws, on which so much learning was exhibited, is purely beside the question. The Milanese law is only of importance to establish the validity of the contract at Milan, and to show that what Bellini had, was, according to that law, well transferred to Ricordi; that Ricordi came into this country the lawful owner, as against Bellini, and through him against all the world, of the manuscript, with all the rights incident to such ownership which

the English law would attach to it. It will not be contended, of course, at this time of day, that our law does not regard contracts made abroad. But, as I thus limit the operation of the Milanese law, so, by parity of reason, I limit the operation of the English law to transactions in England; and if it requires any special formalities to the validity of the transfer of copyright, I say they were entirely out of the question as to giving effect to the transfer, which did, in fact, take place between Bellini and Ricordi, in Milan.

Having cleared the case as to that difficulty, I come to consider what rights of property Ricordi had, as the lawful owner of the unpublished manuscript, living in this country, and at first without reference to his being other than a domiciled native; that is, looking only to **[903]** the object itself. And I apprehend that he had the exclusive right of multiplying copies of it, with the necessary remedies for the vindication of that right in our courts of law. That copyright for the author of a literary work (and there is no distinction for this purpose between a literary and a musical composition, expressed in musical characters), exists by the common law, unless taken away by the statute of Anne, or some succeeding statute, ought, I think, to be considered as settled by the judgment of the Court of Queen's Bench, in *Millar* v. *Taylor* (4 Burr. 2303), and by the all but unanimous opinions of the Judges, expressed in this House, in the case of *Donaldson* v. *Beckett* (*id.* 2408; 2 Bro. P. C. 129). At the time when those cases were decided, but one Judge on the Bench held a different opinion, and the Lord Chancellor had acted in accordance with the majority. The point is one which is unaffected by lapse of time, change of circumstances, or advancement in science. The Judges of that day had every light by which to decide it, which we have now; all the difficulties which are presented now, were as ingeniously and forcibly presented then, and they did not prevail. If there was one subject more than another upon which the great and varied learning of Lord Mansfield, his special familiarity with it, and the philosophical turn of his intellect, could give his judgment peculiar weight, it was this. I require no higher authority for a position, which seems to me in itself reasonable and just; indeed, I do not know what point can be considered as concluded to any court in this country, except that of your Lordships' House, if this is not.

The reasons on which the judgment of that day rested, apply with equal force to the lawful owner or assignee, as they do to the author himself, to the alien amy in this country, as to the native subject; for the principle is **[904]** property. It is carefully established in the judgments in the Queen's Bench, that property was the foundation of the right; the author had the copyright because he was the owner—the Crown had copyright in certain books, because it had acquired the ownership by the outlay of money. Where there is the same reason, there must be the same law, if no statute intervenes to prevent it. Ricordi, being the lawful owner of an unpublished manuscript coming into this country, by the law of which a native author, because the owner of his manuscript had copyright, would have it also, because, in regard of such property, the law of the country places an alien amy resident here in the same situation as a natural-born subject.

This being the state of things at the common law, how is it affected by the statutes? Now, these either apply to such a case, or they do not. If they apply, they may be held to restrain the common law right, or to extinguish it, giving a new one in its place. If they do not apply in any particular case, then, in that case, the common law remains; for the repeal of the common law is only inferential. It cannot be maintained, I conceive, that they do not apply for the benefit of foreigners, but do apply for their injury. Wherever they either extinguish or restrain, they also create a new right, or give a modified one. And this may be very reasonable; even a larger right may be attended with so many practical difficulties, in the way of enjoyment, that a more restrained one, properly guarded, and simplified, may be more beneficial. But it would be simply unreasonable and unjust to say, "You are not within our contemplation for the purpose of protecting the new right, but you are for that of extinguishing the old."

If, then, I am right in supposing that a foreign author or owner of an unpublished manuscript, under the circumstances **[905]** of Ricordi, that is, being an alien friend in England, had, at common law, copyright in England, the construction of the statute becomes a matter of indifference as to the answer to your Lordships' questions. But, suppose that I am not, I apprehend it will not be denied that if Bellini,

being here, had composed, or had come here with a work previously composed abroad, but remaining unpublished, he would have been within the provision of the statutes of Anne and George the 3d in respect of copyright, and might have conferred a good title on his assignee under those statutes respectively. No case, that I am aware of, has excluded from the benefit they confer, foreigners, except those who are resident abroad, at the time when the right to the benefit must, if at all, attach. If this is so, on what ground is Ricordi, the lawful owner of the unpublished manuscript by good conveyance from Bellini, from him, and being in England, to be excluded?

The statute of Anne speaks, in respect of works already printed, "Of the author who hath not transferred to any other, the bookseller, the printer, or other person or persons, who hath purchased or acquired the copy of a book, in order to print the same;" and in respect of books, not then printed and published, it speaks of "the author and his assignee or assigns;" in both cases being entirely silent as to any special form of transfer or attestation, and using words which embrace assignees in law, and by devolution, as well as assignees by act of the parties. This is the part of the section which either confers or regulates the limited copyright, and because, in the penal part of the clause which follows, an exception is made in favour of those who are licensed by a consent in writing, attested by two witnesses, it has been twice held that the assignees in the first part must be such as claim under an assignment in writing so attested: *Power* **[906]** v. *Walker* (3 Maule and Sel. 7); *Davison* v. *Bohn* (6 Com. Ben. Rep. 456). It is remarkable that both these are cases merely of refusing a rule for a new trial, the latter mainly proceeding on the authority of the former, and neither of them fully argued; both, I must take leave to say with most sincere respect, founded on reasoning which is anything but satisfactory.

Those who make light of the judgments in *Millar* v. *Taylor* and *Donaldson* v. *Beckett*, can scarcely object to a respectful difference in opinion from the Judges who decided these latter cases; but, assuming them to be well decided, it is clear that they left many supposable states of circumstances unaffected by their decision. Suppose, with reference to the first branch of the statute of Anne, the case of a purchaser before it passed, or that of a legatee or executor or an administrator after it passed, surely it could not be said, that they had no title because they claimed respectively under instruments without witnesses, or with only one. Indeed if the language of the decisions in both cases be looked to, it will be seen that the Judges had in contemplation only the precise cases before them respectively. They are, therefore, no authority where the facts are not only dissimilar, but fall under a different principle. Where the assignee and the licensee both claim under instruments executed in England, let the requirements of the statute as to one govern in regard to the other; this is the principle of the two cases; but where one purchases, or acquires, or becomes the assignee of the author's right, in a country in which the statute has no operation, the ground of the reasoning fails. Suppose an Englishman with undoubted English copyright, should, in Milan, license another to print and sell so many copies in England, by an instrument valid in Milan, but without attestation by two witnesses, could it be maintained that **[907]** such printing and selling would be piratical, and subject the licensee to the penalties of the Act of Anne or George? Ricordi stands in this predicament; he has been, by a conveyance valid in Milan, substituted for the author; he does not claim under that conveyance English copyright, as existing at the time of the conveyance, and specifically conveyed by it, any more than if Bellini had died at Milan, having well bequeathed to him the unpublished manuscripts. But he claims to have been clothed by the conveyance from Bellini with all his rights, so that when he came to England he was, by the joint operation of it and the English law, entitled to all the rights of which the statute speaks. He is clearly within the enabling words of the statute; he is the assignee of an author; and even if these words may, in some cases, mean an assignee under an instrument in writing, attested by two witnesses, it has not been shown, or decided, that they must or can mean this in all cases. I think the contrary has been shown. Larger words, and less restrained, the Legislature could scarcely have used; and on what sound principle are we to import a restraint by implication?

I have already said, that I do not propose to go through the numerous cases on these two great branches of the subject, because they are fully before your Lordships. They must be admitted to be conflicting, and what is of more consequence, they may

all be considered to be under review now in your Lordships' House. They can, therefore, hardly serve to conclude the question. But I may be excused a word in respect of the two which last preceded the case now in judgment, because they were very fully argued, and the principal preceding authorities reviewed in them, and because they have been much discussed in the arguments at your Lordships' Bar. I am desirous of seeing what they really profess to decide, and of respectfully con-[908]-sidering the weight of the arguments on which the judgments proceed.

The first of these is *Chappell* v. *Purday* (14 Mee. and Wels. 303), decided in 1845. In that case it will be found that the Plaintiff claimed under two assignments; the first by Latour alone, the second by Auber, Troupenas, and Latour: both, however, professed to be specific conveyances of copyright in England, not in an unpublished manuscript. At the dates of these respectively, the parties conveying had no such property as they professed to convey. The music being public at Paris, any one who heard it and could carry it off might have gone into any other country, might certainly have come into England and made it public here without infringing any right of property in the owner of the work at Paris. What was public at Paris any one procuring there might make public here without injury to the owner of the copyright there, because, merely as such owner, he had no right to exclusive publication here. The present case materially differs from that in this respect, that here the author, or his substitute, comes to this country with his work in such a condition that the English law of copyright, whether by common law or by statute, attached to it as much as if an Englishman had composed it in this country, and produced it for the first time from his writing case.

It is remarkable that an inaccuracy, not immaterial, has crept into the reported judgment in this case. The question is stated to be (*id.* 316), "Whether a foreigner, residing abroad, and composing a work, has a copyright in England?" and the question is answered in the same page, by saying, "that a foreign author residing abroad, and publishing a work there, has not any copyright here," as if composing and publishing were the same thing. It is not [909] necessary in the present case to contravene what is said in that judgment respecting the intent of the British Legislature in the statutes of Anne and George 3; but with great respect I desire to guard myself from being supposed to agree with these remarks in all particulars, and exactly as they are expressed. I think it would be more true to say that the statutes were intended to extend to all persons who could bring themselves within their requirements. Many of these may be inapplicable to a foreign author resident abroad, and thence it is logical to infer that the statute was not made for him. But I see no logical sequence in thence inferring that "the assignee of a foreign author, whether a British subject or not, may not come within their protection." There is nothing, as it seems to me, absurd in supposing that the author can possess a subject matter, which, from personal incapability of complying with the requisitions of the municipal law of this country, may be no property in him here; yet, which he may be able to pass to another not under the same incapability, in whom it may be property. And where the words of a statute are large, and admit of a liberal construction, I confess I do not see any legal or philosophical ground for giving them a narrow one. The political or economical ground, which was glanced at more than once in the argument of your Lordships' Bar, that the more tightly we drew the limits round the law of copyright, the more likely we were to induce foreign Governments to enter into treaties for international copyright, may be very cogent with aggrieved authors, but can surely have no place in influencing the decisions of a court of justice, when determining what is the common law, or how the language of a statute is to be construed.

In *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), decided in 1848, the author was [910] a foreigner, residing in the empire of Austria. By a contract, valid by the law of the country, he assigned to another foreigner, also resident abroad, the unpublished manuscript, and his copyright in it. This foreigner, still so resident abroad, sold the English copyright in the still unpublished manuscript, to the plaintiff, resident in England. The instrument, clearly, would not have been valid for the purpose in England, but it was sufficient where made. The plaintiff made the proper entries at Stationers' Hall, and published in England, contemporaneously with a publication abroad. The questions were, whether there was a subsisting copyright? and whether the plaintiff was the proprietor of it? and both these the Court of

Common Pleas, after a full argument, and time taken to consider, adjudged in favour of the plaintiff. It is obvious that this decision goes beyond what is necessary for the present case. It was found as a fact that, by the foreign law, the owner of copyright might transfer it to another, for another country, even after publication; but this assumption of extra-territorial power could not weigh at all in the decision of an English Court. The grounds of the decision are, that an alien amy, the author of a work, unpublished elsewhere, and first published by him in England, has copyright in that work by our law; and that any one claiming under him, by an instrument valid for the purpose where made, before publication and first publishing here, is a good assignee, within the third section of 5 and 6 Vict., c. 45. Now, I cannot perceive anything in the language of this statute from which a more favourable intent, as to foreign authors, is to be inferred, than from the language of the 8th Anne, or 54th Geo. 3; but I do perceive in both these statutes, that language is used as to licences less restricted than in the earlier statute, neither of them requiring the attestation of two witnesses to the licence. If **[911]** that case be law, it is a clear authority for the Defendant in Error, and the case of *Chappell* v. *Purday*, for the reasons I have given, is no authority against him.

For the reasons I have given, I answer your Lordships' question by supporting the Defendant's right of claim against the Plaintiff in Error; and these reasons have led me to so much greater length than I contemplated when I began, that I am compelled to omit some parts of the argument, and some of the objections to it, which I should otherwise have much desired to lay before the House.

Second and Third. To your Lordships' second and third questions, I answer, for reasons I have already given, in the negative.

Fourth. If the work had been printed and published at Milan, before the assignment to the defendant, I think it would, according to the authorities, have made a difference. For that publication would have made it lawful for any one to publish in England. Bellini, or his assignee in Milan, had not directly copyright in England. If either of them brought an unpublished manuscript to England, then the English copyright arose; but if the manuscript had been published before, and so put within the power and the right of all other persons as to copyright, out of the Milanese territory, Bellini or his assignee would have been on the same footing as any one of the public. An Englishman would have had the same right to publish Bellini's work as he would to publish Dante's; and that state of things is inconsistent with any exclusive right in Bellini or his assignee.

Fifth. I think the answer to this question must be the same as to the fourth.

Sixth. I do not see that the limitation as to publication in this country made any difference.

Lastly. I think the learned Judge was wrong in directing the jury to find a verdict for the Defendant.

[912] Mr. Baron Alderson.—My Lords,—I have considered the various questions which your Lordships have sent to Her Majesty's Judges; and it seems to me that I shall answer them more clearly and distinctly by first stating what, according to my judgment, are the correct facts on which we are to proceed, and the true propositions of the law on this subject generally applicable to them, (assigning my reasons for that opinion), and then adding my answers to each individual question separately, as corollaries from the general propositions of law, previously in my view of the case established.

And first, therefore, as to copyright after publication. It may be described as the sole right of multiplying copies of a published work. Whether this existed at Common Law, or was created by the statute for protecting literary property seems not material for the present case. Indeed, it seems strange to my mind to discuss this question in the case of a foreigner who is not bound, so long as he remains abroad, by our Common Law at all. But whatever the difficulties may have been originally, I had supposed that it had been considered as now settled, that either copyright was originally created, or, at all events, is now entirely regulated by, and in this country depends on, the statute of Anne. I think that this law, by which it is given and regulated, must be considered as a territorial law, applying only to persons who are under the ligeance of this country, unless there is something in the statute to give a more extensive operation to its provisions. This is to be

shown by those who wish so to extend it; it is not sufficient for this purpose to show that there are expressions which may be so construed. They should go further, and show that they must be so. And this cannot be done. I think, therefore, that this, which is, in truth, a profitable monopoly, is a species of territorial property, which must **[913]** be regulated, as to its transmission, extent, and duration, by the law of this country, which created and regulates it.

In the case of an alien amy, he may, it is true, make himself capable of obtaining this right, by coming into this country, and first publishing his work here. But until he does that, he cannot, I think, have the right at all, and consequently cannot transmit what he has not yet acquired.

The learned Counsel for the Defendant in Error, indeed, admitted very candidly that the statute of Anne was not intended to have any extra-territorial effect. But then they argued that this did not decide the question, because, as they said, that here, the assignee of the copy of the manuscript, before that time unpublished altogether, came into this country with that manuscript, and had then all the rights of publishing or refusing to publish, which the author himself originally had, and *inter alia* the copyright which the statute of Anne gave to the author or his assignee. And, in truth, this was the sum of their argument. Now, it may be safely admitted that the assignee had the sole and exclusive power to the individual copy of the manuscript assigned to him, and consequently the sole and exclusive power of first printing and publishing it. But whether that would give him the copyright is a very different thing.

The Act gives that right to the author and to the assignee, not of the manuscript, but of the copyright. And if the author has it only in a qualified way, viz., provided he be a British subject, or, being an alien, may become so by residing in England at the time when he assigns his right, then the assignee cannot possess by assignment what the author never had to assign, until he complied with the condition on which alone he could obtain it; and that is in truth the case here.

[914] But there is a further difficulty in the present case. Here the author, Bellini, had, as is stated in the bill of exceptions, a copyright, by the law of Austria, in the work. Now the law of Austria could give no right extra-territorial, or at least none which could be enforced here.

The right, therefore, of Bellini, which he assigned, was this Austrian or Italian copyright, capable of being there, and there only, enforced. And this he assigned to Ricordi, and nothing else. Ricordi does not assign this to the plaintiff, but he assigns to Boosey a right of solely publishing in England. This right he had not; it was no part of his Austrian copyright. But even if his copyright had been general, this is not an assignment of the copyright at all; it is at most a local licence from the assignee of the copyright to Boosey, with a covenant that he alone shall be allowed to publish the work here. Boosey, therefore, cannot, as I think, be treated as an assignee of the copyright of the author, for he has not the same right of publication as the author himself, which an assignee of the copyright has and must have. A licensee to publish solely within a limited district cannot, I apprehend, maintain this action at all, or, in any event, cannot do so in his own name, which Boosey is attempting to do here.

Again, in the Judgment below it is said that Bellini having the copyright, it cannot be necessary that he should come to England, and that he may well act by agent in publishing here. But this is answered by the fact, that Ricordi in publishing here on his own account, and for his own profit, cannot, without a total disregard of all principles, be treated as an agent of the author who has assigned all his rights to him.

For these several reasons, therefore,—first, that Bellini had no English copyright which he could assign so long as he resided out of England, and, secondly, that he never **[915]** did assign to Ricordi anything more than what the Austrian law gave him; thirdly, because Ricordi never assigned to Boosey (even if Bellini had a general copyright, and had assigned it to him) anything more than a mere local licence solely to print and publish in England, which would not enable him to maintain an action in his own name, I am of opinion that the plaintiff in this case could not recover, and that the fact of his publication of the work in England gave him no right of action against the defendant.

I think, also, that it is too late now to question the authority of the two decisions, *Power* v. *Walker* (3 Maule and Sel. 7), and of *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456), by which the assignment from the author, in order to be valid, must be executed in the presence of two witnesses, and be in writing. But for the latter case it might have been said that the 54 George 3, c. 156, passed almost immediately after the case of *Power* v. *Walker*, had, by taking away one principal reason for that decision, made it doubtful whether the assignment required now two witnesses. But *Davidson* v. *Bohn* is long subsequent to the 54 George 3, and is expressly in point. And the difference between the two provisions in 8 Anne and 54 George 3, the latter of which only in words requires the licence to be in writing, and not, as in 8 Anne, that it should be attested by two or more witnesses, does not seem necessarily to decide this point. The two clauses may stand together, and therefore the one does not necessarily repeal the other. I think, therefore, that *Davidson* v. *Bohn* may still be considered as governing this point; and certainly if it may, it is decisive of the question. For, granting that Bellini had a copyright which extended to England, it is clear that he must assign according to English law, in order to pass his English copyright; and then it is also decided by these cases that the assignment must be **[916]** in writing, and attested by two or more witnesses. Now the case finds that it has not been so assigned. Then the copyright did not pass to Ricordi, and if it did not, he could not convey what he never had to the plaintiff. Each of these propositions flows from the other. If the first proposition, therefore, is true, the consequences inevitably follow.

I will now, with your Lordships' permission, shortly advert to the main cases which have been cited in the argument. I think there is no preponderance of authority against the above view of the case. It is said, and there is no doubt of it, that for injuries to his personal property or to his person, an alien amy may maintain an action in this country. The case of slander to his character, *Pisani* v. *Lawson* (8 Scott, 182; 6 Bing. N. C. 90), was cited for this, and the running down the ship of an alien amy on the high seas is another instance. Nobody ever doubted this, since these decisions at all events; but I am at a loss to see what they have to do with this question, which is, whether an alien amy ever had the property which he has assigned here, and whether the plaintiff's right as the assignee of his assignee can be supported. This is an Englishman suing, and the contest is only as to the property. Those cases turn upon the question whether the alien amy can sue, the property injured being admitted to belong to him.

I come to the other cases, and it is marvellous to see how little real authority there is on either side. The first is a dictum of Lord Thurlow, in an argument as Counsel at the Bar, in *Tonson* v. *Collins* (1 Sir W. Bl. 301. 321). Now, the argument of counsel, be he ever so eminent, is really nothing; for we do not know that it was his real opinion—it was useful to his case so to state the law. I think we may pass **[917]** over that as an authority. So, again, we need not be much embarrassed by *Bach* v. *Longman* (Cowp. 623), for many reasons. It amounts to this, that Baron Wood did not make this point there. Now, in the first place, the case did not require it; the case was sent by the Court of Chancery only to ascertain whether a musical composition was a book. The authority then amounts to this, that in arguing that question Baron Wood said nothing about a point which had no relation to the matter; but if he had made the point, the fact would have probably given an answer to it, for it is matter of history that Sebastian Bach was a foreigner residing in this country, and an artist in the service of the King of England. Yet this case was the authority on which the dictum of Lord Abinger was founded in *D'Almaine* v. *Boosey* (1 Yo. and Col. 288), which after all is only to this effect, that a foreigner residing here and publishing, may have a copyright, which is not now disputed, and is also not the point we are discussing here. *Clementi* v. *Walker* (2 Barn. and Cres. 861) may be classed with these authorities. As yet we have nothing like a decision on the point: the cases in Simons may be set off against each other. Then came the case of *Chappell* v. *Purday* (14 Mee. and Wels. 303), in which is a distinct opinion on this subject. That opinion was no doubt questioned in a very able judgment in *Cocks* v. *Purday* (5 Com. Ben. Rep. 860); but in neither of those cases does this exact point seem to have been precisely decided. And in *Boosey* v. *Davidson* (13 Q. B. Rep. 257), the Court of Queen's Bench simply adopts the view

of the Court of Common Pleas in *Cocks* v. *Purday*. After all, this case is almost untouched by previous authority, and your Lordships have now to decide whether the judgment of the Court of Exchequer here, or **[918]** that of the Court of Exchequer Chamber, most accords with general principles. On this I have already stated my reasons, and the conclusions I draw from them, which have induced me to answer your Lordships' first question in the negative.

The second question of your Lordships, I answer thus: if the assignment to Ricordi had been made as suggested, it would have removed one difficulty in the case, but the result would be the same, that the plaintiff could not recover.

To the third question, I give the same answer as to the second question.

As to the fourth question, it seems admitted by the Court below, that according to the cases, a previous publication abroad would have put an end to the plaintiff's right. But why should it do so if a foreigner and a British subject are in *pari casu*, as the Court below seems to say they are? A publication by an English author abroad does not, I apprehend, prevent his acquiring a copyright in England. It may, possibly, affect its duration; for the statute of Anne does not date the commencement of the term given from the first publication in England, but from the first publication. The clauses as to entry in Stationers' Hall, which no doubt point to a publication in England, are added to give a new and further remedy against those who infringe the right, and this remedy cannot be had till that is done. The fact that a previous publication abroad takes away the right of a foreigner, seems to me to show that the law applies only to persons who when *they first publish* in England have the right of then acquiring an English copyright. This qualification is everywhere, at all times, and under all circumstances, possessed by a British subject; but if it is not possessed by an alien amy till he comes to England with an unpublished work, he **[919]** cannot, if he has before published abroad, acquire by a publication here which is not the first publication, a copyright in England. This is admitted to be so in fact, and this seems to me to show that the English subject and the alien amy are not in *pari casu* till the latter comes to this country.

To the fifth question, I answer the same as to the fourth question.

To the sixth, I answer that I think the suggested fact would make a difference. For then it would have been an assignment of the copyright, and not a mere licence to publish. But, as in the second question, I also wish to add, that I think it only removes one out of several fatal objections to the plaintiff's case.

To the seventh, I answer that I think the direction of the Judge and the verdict were right.

Mr. Baron Parke.—In answer to the first question proposed by your Lordships, I have to state that my opinion is, that the Defendant in Error, under the circumstances stated, had no right of action against the Plaintiff in Error.

In the first place, I am of opinion that Vincenzo Bellini, who was an alien, and at the time he composed his work, the piracy of which is complained of, and from thence to the time of the first publication thereof in England, was resident at Milan, never had any English copyright, nor could have had, by a first publication by himself of his work in England. The term "copyright" may be understood in two different senses. The author of a literary composition which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. **[920]** If he lends a copy to another, his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. This sense of the word "copyright" has nothing to do with the present question, though, in the course of the argument, it has been sometimes used in that sense, when it was convenient to do so, particularly when it was contended that a copyright existed at common law. The other sense of that word is, the exclusive right of multiplying copies: the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word, and is alone to be looked at in the discussion of this case, and it would tend to keep our ideas clear in determining this question, if, instead of copyright, it was called the exclusive right of printing a published work, that being the ordinary mode of multiplying copies.

Whether such an exclusive right belonged to any one at common law, is a question on which the highest authorities have differed. If it were necessary to give an opinion on that question, I should say that the rational view of the subject is most clearly against the existence of this right; and I believe that the weight of authority, taking into consideration the opinions expressed since the decision of the great cases of *Millar* v. *Taylor* (4 Burr. 2303), and *Donaldson* v. *Beckett* (*id.* 2408. 2 Bro. P. C., 129), and of *Hinton* v. *Donaldson* (Dict. of Decisions, Tit. Literary Property, 8307), quoted by Mr. Quain, at your Lordships' bar, is likewise against it; and so is the opinion of foreign Judges administering English law. The expressions used by Lord Kenyon in *Beckford* v. *Hood* (7 T. R. 620. 627), evidently show that such was his opinion, and **[921]** Lord Ellenborough, in *Cambridge University* v. *Bryer* (16 East. 317) shows an inclination of opinion to that effect, to which may be added the authority of the majority of the American Judges in *Wharton* v. *Peters* (8 Peter's Rep. Supr. Ct., U. S. 591), cited by my brother Byles.

But whether such an exclusive right of multiplying copies in this kingdom exists or not at common law, in favour of a subject of this country, it is clear that it does not exist in favour of a foreign author living abroad. By the municipal law of his own country he may have such a right, but that law has no extra-territorial power, and does not give him a right here. And it seems to me extravagant to contend that by natural law, or, as Lord Mansfield says, *Millar* v. *Taylor* (4 Burr. 2398), by "the principles of right and wrong, the fitness of things, convenience and policy, and therefore by the common law," or by the comity of nations, the subject of one country, on the publication of his works in other countries, has an exclusive right to the multiplication of copies in those countries, and can oblige the Courts in each country to protect him in the exercise of that right. This point has not been disputed in the argument at your Lordships' Bar.

The only question, then, is, whether this exclusive right is given to a foreigner, resident abroad, by virtue of the statute law; and the statutes in force at the time applicable to this case are the 8th Anne, c. 19, and the 54th Geo. 3, c. 156. If a judicial construction had been put on these Acts, by a direct and deliberate decision of a superior court, we, if sitting in another court of co-ordinate jurisdiction, should probably feel ourselves bound by that construction, leaving it to be questioned in a Court of Error; but, as advising the highest tribunal in the land, we should not consider ourselves precluded by **[922]** one judgment, of an inferior tribunal, from putting the construction which we think ought to be given to the statutes: we should require more. But, in truth, before the case of *Chappell* v. *Purday*, in the Court of Exchequer, 1845 (14 Mee. and Wels. 303), and of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), followed by that of *Boosey* v. *Davidson* (13 Q.B. Rep. 257), and *Boosey* v. *Purday* (4 Ex. Rep. 145), the first and last of which are conflicting with the two others, there is no authority on this subject which, properly considered, ought to be of any weight at all in deciding this case.

All the authorities, prior to the first of these cases, have been collected in the reported judgment of Lord Campbell in the Exchequer Chamber (6 Ex. Rep. 580), now brought up by Writ of Error into your Lordships' House. Of the authorities on which that judgment relies, the first in order of time is that of *Tonson* v. *Collins* (1 Sir W. Bl. 301—321). The supposed authority is that of Lord Thurlow, who, when he was counsel, in arguing that there was no copyright at all at common law, remarked that some part of the special verdict was out of the case, as it was of no consequence whether the authors were natural-born subjects or not, because the right of property, if any, was personal, and might be acquired by aliens. The special verdict, in the part referred to by Lord Thurlow, states that the "Spectator" (the work pirated), was an original composition by *natural-born subjects, resident in England.* This is, surely, no authority whatever; it is the mere dictum of counsel, and, after all, only amounting to this, that if authors *resident in England* composed a work, it matters not as to the right to copyright whether they be natural-born subjects or not—a point which no one has disputed. The **[923]** second is that of *Bach* v. *Longman* (Cowp. 623). It is said that in that case, Baron Wood, at the Bar, although the plaintiff was a foreigner, did not take the objection. As little can the implied admission of counsel be an authority as his positive dictum; but, in truth, it does not appear, except by conjecture from the name, that the plaintiff

was a foreigner. Nor does it appear in any manner, if he was a foreigner, that he was not resident in England when he published his work. It may be rather inferred that he was, for he applied for and obtained the Royal licence for the sole printing and publishing the work for fourteen years; and I believe it is well known that he was organist in the Chapel Royal. Further, the sole question in the case sent from the Court of Chancery to the Court of King's Bench was, whether a musical composition was a work within the statute 8th Anne. Therefore it was impossible for Baron Wood to have made such a point, if he thought it tenable. These two cases do not furnish the semblance of an authority on the question in this case. *D'Almaine* v. *Boosey* (1 Yo. and Col. 288), before Lord Abinger, in which he granted an injunction against the infringement of a foreigner's copyright, was decided immediately on the argument, without time taken to consider, and entirely on the supposed authority of *Bach* v. *Longman*, the circumstances of which had evidently escaped the recollection of the learned Judge, for the point never was, or could be, argued or decided in that case. The case of *D'Almaine* v. *Boosey*, therefore, is no authority whatever. Then followed the case of *De Londre* v. *Shaw* (2 Sim. 237), which was a bill to restrain the defendants from pirating the plaintiff's trade marks. The Vice-Chancellor Shadwell remarked, that a court does not protect the copyright of a foreigner. **[924]** It is certainly a dictum only, but, as far as it goes, is against the claim of the plaintiffs below; but little reliance can be placed on it, for the learned Vice-Chancellor afterwards, in *Bentley* v. *Foster* (10 Sim. 329), expressed a different opinion, and directed the plaintiff to bring an action to try the right. The case of *Clementi* v. *Walker* (2 Barn. and Cres. 861) was decided on the ground that, before the author, a foreigner, came to England, and assigned, or rather attempted to assign, his copyright to the plaintiff, the work had been published in France, and so there was no first publication in England. The point, whether a foreigner who resided *continually* abroad, as the author in the present case did, could have a copyright, did not arise. The only remaining case prior to the recent decisions, already mentioned, is *Page* v. *Townsend* (5 Sim. 395). That arose on the Acts for the protection of engravers, 8 Geo. 2, c. 13, s. 1; 7 Geo. 3, c. 38; 17 Geo. 3, c. 57. The Vice-Chancellor (Shadwell) held, that the object of the Acts was to protect works designed or engraved in England; but, as he held that the last statute, in which these words were expressed, was in *pari materia* with the others, these words were to be implied in the other Acts (see an able Essay on the subject of "The Laws of Artistic Copyright, by D. R. Blaine, Esq., Barrister-at-Law"); and this case cannot be relied upon as an authority either way.

Looking at the state of the decisions up to this time, it is out of the question to say that there was any authority of the most trifling value, still less any binding authority, as to the construction of the Copyright Acts. Then occurred the case of *Chappell* v. *Purday* (14 Mee. and Wels. 303), in which the Court of Exchequer intimated the opinion, that copyright depended on the proper construction of the statutes 8 Anne and 54 Geo. 3, that it was perfectly open to the **[925]** court to decide upon the proper construction, and that the opinion of the court was, that those statutes gave a copyright only to British subjects, either natural-born or by residence. The Court of Common Pleas took a different view in the case of *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), though, in looking at the report, I cannot find that the court addressed much, or indeed any, attention to the construction of the statute of Anne, upon which the right to copyright is founded, and on which construction alone the Court of Exchequer formed its opinion. The Judges seem to have supposed that the Court of Exchequer had doubted upon the right of an alien friend to personal property, and all other personal rights in England, a point which that Court had not the least idea of bringing into question. This decision of the Court of Common Pleas was followed by the Court of Queen's Bench, in *Boosey* v. *Davidson* (13 Q. B. Rep. 257), without further comment. In this state of conflicting authorities, the Judges in the Court of Exchequer decided the case of *Boosey* v. *Purday* (4 Ex. Rep. 145), acting upon their own opinion; and in conformity with the authority of that case the law was laid down by Lord Cranworth, on the trial of the cause now before your Lordships, and that opinion was excepted to.

This review of the authorities appears to me to show, that the only question now is, as to the true construction of the statute 8 Anne, c. 19 (for the 56th Geo. 3 does

not change it). Copyright, as it affects this case, depends upon this Act, and this high tribunal is called upon to construe it, entirely unfettered by decision. What, then, is the true construction of the statute of Anne, and of the 54th Geo. 3, c. 156? The statute of Anne is entitled, "An Act for the Encouragement of Learning, by vesting the **[926]** Copies of printed Books in the Authors and Purchasers of such Copies;" and, after reciting the practice of publishing copies without the consent of the authors or proprietors, for preventing such practices, and for the encouragement of *learned men to compose and write* useful books, it provides that the author, or his assignee, shall have the sole liberty of printing such books for the term of fourteen years, to commence from the day of first publishing the same. The Act of 54 Geo. 3, c. 156, recites that it will afford *further encouragement* to literature if the duration of such copyright should be extended, and it extends the fourteen years to twenty-eight, and if the author be living, till the end of his life. The object of these Acts most clearly is, as is expressed in the Acts themselves, for the encouragement of learning, *by encouraging learned men to compose and write useful books*, by giving them as a reward the sole right of printing their works for a term. It is clear that the Legislature has no power over any persons except its own subjects, that is, persons natural-born subjects, or resident, or whilst they are within the limits of the Kingdom. The Legislature can impose no duties except on them; and when legislating for the benefit of persons, must, *prima facie*, be considered to mean the benefit of those who owe obedience to our laws, and whose interests the Legislature is under a correlative obligation to protect.

General words have been held to have such a limitation. The Acts relative to legacies have been confined to English domiciled subjects—*Thomson* v. *The Advocate-General* (12 Clark and F. 1), *Attorney-General* v. *Forbes* (2 Clark and F. 48), and in *Arnold* v. *Arnold* (2 Myl. and Cr. 256, 270) Lord Cottenham observes, "that when the Act speaks of any will of any person, and of the legacies payable out of the personal estate, it must be considered as speaking of **[927]** persons and wills and personal estate in this country, that being the limit of the sphere of the enactment."

When, therefore, the Legislature offers to authors a reward for their ingenuity and labour, at the expense of the subjects of the realm, in the shape of an exclusive right of printing the result of those labours for a term, and so making the acquisition of the printed work dearer to all over whom their authority extends, I cannot doubt that it was meant to benefit English authors only. Whatever construction ought to be put upon this statute in the time of Queen Anne, ought to be put now. We must read and understand it exactly in the sense we should have done then. The construction cannot vary from time to time, according to the prevailing opinions as to the proper course of policy to be pursued in our intercourse with strangers. It is rather a startling proposition that the Parliament of Queen Anne meant to foster and encourage foreign authors at the expense of the British public. It is said that learning would be encouraged by the introduction of foreign books which might not otherwise be imported, but it is expressly declared in the Act itself, that it is for the encouragement of learned men to *compose and write*, not for the encouragement of the importers of books. It would be of small advantage indeed to the community, and an inadequate reward to the first importer, to allow him to have a monopoly, and thereby increase the price of the book to the public; for if the book was of real value, doubtless it would be imported for the use of British readers. And if the introduction of books had been the object, why not give the exclusive right of printing to the first *importers?* It was indisputably the intention of the framers of the Act to reward *authors*, not importers; and what benefit could the British public derive from the encouragement of foreign *authors?*

[928] I must say that I feel no doubt that the benefit is to be given to English authors only, and in that category are to be placed not merely subjects of the Crown by birth, but subjects by domicile or residence, or even, perhaps, by personal presence here at the time of composing the work, or at least at the time of first publication; for even those owe a temporary allegiance, and are bound by our law, and probably ought to have a corresponding benefit—questions now not necessary to be considered.

It is no answer to the argument that the Legislature meant to give the privilege only to English authors, that if residence or personal presence here would be enough, it could be easy to procure that title by taking the trouble of a journey to England,

and remaining for a short time, and thus the intended benefit to British subjects would be evaded. It might, it is true; but then there would be some cost of time and trouble, much more in the time of Queen Anne than now; and it is no valid argument against the construction that the Legislature meant to confine the reward to subjects, that there might be some cases in which that intention could be defeated with no great trouble. That is no reason for holding that aliens should enjoy the right without any trouble at all. It would be rather an argument against construing the Act in favour of persons who came into England, not to reside, but merely to publish.

It is said that the same construction ought to be put on the Copyright Acts as upon the Patent Acts. I think not. The Patent Act, 21 James 1, c. 3, was in restraint of the prerogative, the King having always had the power of granting monopolies of new inventions, as the chief guardian of the common weal, for the sake of the public good; and this power extended to new discoveries only, "to wit, to one who hath brought in a new invention and new trade **[929]** within the Kingdom"—Cloth-workers of Ipswich Case (Godb. 252); and the statute 21 James 1, c. 3, abolishes monopolies, except grants for the sole working or making of new manufactures within the realm, to the true and first invention of such manufactures, which are of the same force as at common law. Taking the common law and the exception of the statute together, it could not be doubted that a patent could be granted to one who first introduced a *new* manufacture from beyond sea, "for the statute speaks of *new* manufactures *within the realm;*" and if they are new here, they are within the statute, and new devices useful to the Kingdom, whether learned by travel or by study, it is the same thing, and therefore it was so decided in *Edgebery* v. *Stephens* (2 Salk. 447). As the King has the discretion to give the patent right to whom he will at the common law, he probably may, in respect of the value of the invention, give it to an alien resident abroad, though that point has never been decided. But the Crown is not *bound* to give it to any person whatever; it is entirely in its discretion. But in the case of copyright there is no power of selection in the Crown, and an alien, if entitled under the Act on that subject, would be entitled absolutely, whatever the value of his work or its merit may be. The right is given to every author.

There is an argument mentioned at the bar, arising out of the International Copyright Act, 1 and 2 Vict. c. 59, repealed and re-enacted, with additions, by 7 Vict. c. 12 (see also 15 and 16 Vict. c. 12), which ought to be noticed. It is that if aliens living abroad could obtain a copyright under those Acts by first publication in England, and could make the first publication by the new device of simultaneously publishing abroad and in England (a device of very questionable **[930]** validity, if the state of the authorities permitted it to be questioned), there would be an end of the advantages which we could offer to foreign countries, the United States of America for instance, who recognise no copyright but in citizens of those States, as an equivalent for a copyright in that country, a copyright of incalculable advantage to all British authors, the value of whose works would be greatly multiplied from the increased number of readers who speak the same language. This is quite true at present. If the decision of the Court of Exchequer Chamber is law, every American author can obtain the right of sole publication of his own work here, if he takes care to publish it on the same day in his own country. But our decision ought not to proceed on the ground of public policy, at all events not in the sense of political expediency, which this is, but we must give that construction which we think properly belongs to the Acts of Parliament, on which the right depends.

I therefore, for these reasons, come to the conclusion, that Bellini, being resident abroad from the time of the composing to the time of the publication of his work, never did or could acquire an English copyright. This is a sufficient answer to the first of your Lordships' questions; for if he never had a copyright, the Defendant in Error, who claimed only under him, could maintain no action for infringing the supposed right. But, in the next place, supposing the above reasoning to be incorrect, and that Bellini had an English copyright by first publication by him, or his assigns, in England, I am of opinion that there is a defect in the title of the Defendant in Error. First, according to the statement introducing your Lordships' first question, Bellini, who had a copyright by the laws of Milan, assigned *that*

copyright only to Ricordi, under whom the Defendant in Error claimed; *such assignment*, **[931]** therefore, passed the Milanese copyright only. Secondly. If the terms of the assignment were capable of transferring *all* his copyright, wherever it existed, and consequently the English copyright, the assignment to Ricordi would be void, as not being made in the presence of two witnesses, according to the case of *Power* v. *Walker* (3 Maule and S. 7), and of *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456), if these cases are applicable to transfers since the 54th Geo. 3, c. 156. These cases decided that such a form of assignment was necessary in English copyrights transferred in England, on the ground that, as the statute of Anne required a simple licence to be executed in the presence of two witnesses, it was reasonably to be inferred that the Legislature meant that the transfer of the whole interest should not pass without an instrument of similar solemnity.

A question now, however, arises, whether, since the 54th Geo. 3, c. 156, and before the 5th and 6th Vict. c. 45, an assignment in writing only, without attesting witnesses, might not be sufficient. This point was not raised in *Davidson* v. *Bohn*, probably because the assignment therein mentioned was before the 54th Geo. 3. That statute does not *expressly* repeal the clause of the statute of 8th Anne, from which the necessity of attesting witnesses arises. The question is, whether it *impliedly* repeals it. The provision in the statute of Anne is, that a licence shall be in writing, signed in the presence of two witnesses. In the statute 54 Geo. 3, it is that it shall be *in writing*. But both being affirmative enactments, not inconsistent with each other, it may be said at first sight that there is no implied repeal. The statute 5 and 6 Vict. leaves no doubt, for it expressly repeals the whole of the statute of Anne, and an assignment may now be undoubtedly made in writing, unattested, as well as by entry in the registry **[932]** of the Stationers' Court. But I also think, after much consideration, that the 54th of George the 3d impliedly repeals the statute of Anne. It provides that all booksellers and others, who print and publish without the consent, in writing, of the proprietor, should be liable to an action. It implies, therefore, that if any bookseller or other person prints and sells with *any licence, in writing*, he is *not* to be liable to an action. *Any* licence, therefore, in writing, being sufficient to give a man authority to print and sell, and, therefore, to give him a partial interest, it follows, according to the reasoning in the case of *Power* v. *Walker*, that there is no longer any ground for requiring more than an assignment in writing, in order to give the entire interest in a copyright to an assignee. Assuming it, however, to be the law, that at the time of the transfer in question, an attested instrument was required in England, then the assignment of an English monopoly, being the exclusive right of printing and publishing within the English territory, clearly required to be attested by two witnesses.

Although, according to international law, generally speaking, personal property passes by transfer conformably to the law of the domicile of the proprietor, yet if the law of any country requires a particular mode of transfer, with respect of any property having a locality in it, that mode must be adopted—Story, Conflict of Laws (Ss. 383, 398), and Lord Kenyon, in *Hunter* v. *Potts* (4 T. R. 182, 192). The sole right of printing copies of a work, and publishing them within the realm, is clearly of a local nature, and, therefore, must be transferred by such a conveyance only as our law requires.

I answer the second and third questions in the negative, that the attestation of the deed in each case would have made no difference, because I am of opinion that Bellini himself never could have had any English copyright, sup-**[933]**-posing that he had remained at Milan from the time of his composing to the time of the first publishing his composition, and, therefore, his assignees, by whatever form of conveyance, and with whatever solemnities they might claim, would have none.

For the same reason I answer the fourth and fifth questions in the negative. It may be added, that a prior publication abroad would, according to the case of *Clementi* v. *Walker* (2 Barn. and Cres. 861), at all events prevent the plaintiff from recovering.

To the sixth question I answer, that if the assignment to the Defendant in Error had not contained the limitation as to the publication in this country, it would have made no difference in that respect, being of opinion that the Defendant had no copyright to assign. But if he had such a right, it was the statutory right, by 54 Geo. 3, c. 156, to the sole privilege of printing copies in the United Kingdom, or *any part of the British dominions*. And I am of opinion that this is an indivisible right, and

the owner of it cannot assign a part of the right, as to print in a particular county or place, or do anything less than assign the whole right given by the English law. It seems to me that it is analogous to an exclusive right by patent, which cannot, I apprehend, be parcelled out, though licences under it may.

And, lastly, looking at the record, as set out in the Bill of Exceptions, the learned Judge who tried the cause was, in my judgment, perfectly right in directing the jury to find a verdict for the defendant.

The only doubt arising from the form of the question lastly proposed by your Lordships is, that in the record a certified copy of the register book of the Company of Stationers is stated to have been produced; and that by **[934]** the 5th and 6th Vict. c. 45, s. 11, is made *prima facie* proof of proprietorship therein expressed, but subject to be rebutted by other evidence; and therein arises a question, whether the other evidence produced by the plaintiff below himself does *rebut* it. I am of opinion that the evidence of Bellini, being a foreigner, for the reasons above mentioned at length does rebut it; for a foreigner resident abroad cannot have it, and therefore the certified copy of the entry proves no title in the plaintiff. And if your Lordships shall be of opinion that a foreigner resident abroad has such a copyright, I think the evidence set out in the bill of exceptions does sufficiently rebut the title of the plaintiff below; because it sufficiently appears that the conveyance to the plaintiff of the right in the United Kingdom, was the assignment under which the plaintiff claims. But he has no title, because a part of a copyright cannot be assigned. The other objection, that Bellini did not assign the whole of his copyright, but only the copyright in Milan, does not, I think, sufficiently appear, so as to rebut the *prima facie* inference arising from the evidence of the entry.

On the whole, I think that the learned Judge was perfectly right in his direction to the jury.

Lord Chief Baron Pollock.—My Lords,—In answer to the first question proposed by your Lordships, I have to state my opinion that, assuming the facts stated in that question to be true, the publication by the Plaintiff in Error did not give the Defendant in Error any right of action against him; and the grounds upon which I have formed that opinion are such, that, in answer to the second, third, fourth, fifth, and sixth questions, I am of opinion that (assuming the facts to be true which in those questions respectively are supposed), they would **[935]** not have made any difference. And, lastly, looking to the record, I am of opinion that the learned Judge who tried the cause was right in directing the jury to find a verdict for the Defendant (now the Plaintiff in Error).

The answers to these questions depend upon some more general propositions, as to which I propose to state my opinion to your Lordships.

The first is, whether, by the Common Law of this country, the author of any published work has an exclusive right to multiply copies, that is, is entitled to what is commonly called copyright? This is a question upon which very great names and authorities are arrayed on either side. Some of the greatest lawyers have been of opinion that by the Common Law such an exclusive right existed, while it has been denied by others of at least equal authority. The whole question is most ably and elaborately argued and discussed on both sides, and all the authorities then existing are collected with great research in the celebrated case of *Millar* v. *Taylor* (4 Burr. 2303); and I entirely agree with my brother Parke, that the weight of mere authority, including the eminent persons who have expressed an opinion on the subject since the case of *Millar* v. *Taylor* was argued, is very much against the doctrine of a copyright existing at the Common Law.

In Mr. Justice Willes' judgment (giving a very able, elaborate, and learned exposition of the whole subject) he appears to think that, because, upon general principles, he has satisfied himself of the justice and propriety of an author possessing such a right, therefore by the Common Law it exists. The passage is a remarkable one, and shows what were his views of the Common Law, and what, probably, he thought would not be considered strange or novel by the rest of the Judges. It is this: **[936]** he is speaking of the allowance of "copy" as a private right; and he says, "It could only be done on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make Common Law without a precedent." My Lords, I entirely agree with the spirit of this passage, so far as it

regards the repressing what is a public evil, and preventing what would become a general mischief; but I think there is a wide difference between protecting the community against a new source of danger, and creating a new right. I think the Common Law is quite competent to pronounce anything to be illegal which is manifestly against the public good; but I think the Common Law cannot create new rights, and limit and define them, because, in the opinion of those who administer the Common Law, such rights ought to exist, according to their notions of what is just, right, and proper. This ground or method of arguing for a Common Law right, has not been adopted at your Lordships' Bar. The ground taken by the learned Counsel for the Defendant in Error, on this part of the case, has been that an author has the same property in his composition, being his own creation or work, as a man has in any physical object, produced by his personal labour. If such a property exists at Common Law, it must commence with the act of composition or creation itself, and must, as it seems to me, be independent of its being reduced into writing; it must also be independent of whether the author is willing to furnish copies at a reasonable price (which Mr. Justice Willes made one of the points in his Judgment). If it is the author's property, he may give or withhold it, as he pleases; he may communicate it to the public with a liberal or a niggardly hand, or withhold it altogether. And the same principle must be applicable to every other creation, invention, or discovery, as well as a **[937]** poem, a history, or any other literary production. It must apply to every other offspring of man's imagination, wit, or labour; to discoveries in science, in the arts, and manufactures, in natural history; in short, to whatever belongs to human life. An ode, composed and recited by an ancient bard at a public festival, is as much the creation of his genius, and is published by the recitation, though not in the same degree, as the poem of a modern author, printed and sold in Paternoster-row. The speech of the orator, the sermon of the preacher, the lecture of the professor, have no greater claim to protection, and to be the foundation of exclusive property and right, than the labours of the man of science, the invention of the mechanic, the discovery of the physician or empiric, or indeed the successful efforts of any one in any department of human knowledge or practice. And it is difficult to say where, in principle, this is to stop; why is it to be confined to the larger and graver labours of the understanding? Why does it not apply to a well-told anecdote, or a witty reply, so as to forbid the repetition without the permission of the author? And, carried to its utmost extent, it would at length descend to lower and meaner subjects, and include the trick of a conjuror, or the grimace of a clown.

Weighing all the arguments on both sides, and looking to the authorities up to the present time, the conclusion I have arrived at is, that copyright is altogether an artificial right, not naturally and necessarily arising out of the social rules that ought to prevail among mankind assembled in communities, but is a creature of the municipal law of each country, to be enjoyed for such time and under such regulations as the law of each state may direct, and has no existence by the Common Law of England. It would follow from this, that copyright in **[938]** this country depends altogether on the statutes which have been passed on this subject; and the next question is, What is the true construction of the various statutes; viz., the 8th Anne, c. 19, and the 54th Geo. 3, c. 156, now merged in the 5th and 6th Vict., c. 45?

The laws of foreign nations have no extra-territorial power, so as to give to Bellini a copyright in this country, on the ground that he possessed such a right at Milan; and the English statutes on copyright do not, according to their true construction, in my judgment, apply to a foreign author residing abroad, or to his assigns. Such foreign author is not within the scope and meaning of the Acts of Parliament referred to, and probably it is better that the rights of foreigners should be the subject of treaty confirmed by Act of Parliament (by which means the corresponding or correlative interests of British subjects in foreign countries may be secured); but whether better or not, I am of opinion that neither Bellini nor his assigns acquired any copyright in this country. This question has been twice lately before the Court of Exchequer; first, in the case of *Chappell* v. *Purday* (14 Mee. and Wels. 303), and again in the case, more exactly resembling the present, of *Boosey* v. *Purday* (4 Ex. Rep. 145). Each of these cases was fully argued, and the deliberate and unanimous judgment of the Court was delivered by myself. I have discovered no reason and have heard no argument that induces me to alter the judgment pronounced in the latter case; and after the

opinions that have been already delivered, examining the various cases, I do not think it is necessary to do more than refer to the judgment already pronounced by the Court to which I belong, in the case of *Boosey* v. *Purday*, for the grounds on which my opinion is still in accord-[939]-ance with that judgment as far as the decided cases are concerned.

In the judgment of the Court below, an opinion is expressed that in the statutes on copyright, the word "author," includes a foreign author resident abroad; but, with all respect for the argument presented by that judgment and the views there stated, I have been unable to arrive at the same conclusion. The statutes of this realm have no power, are of no force, beyond the dominions of Her Majesty, not even to bind the subjects of the realm, unless they are expressly mentioned, or can be necessarily implied, and I apprehend it becomes therefore a rule in construing a statute not to extend its provisions beyond the realm, whether to create a disability or to confer a privilege. An alien residing here owes a temporary allegiance to, and, while resident, is one of Her Majesty's subjects; he owes obedience to the law, and is therefore entitled to the benefit of it, and I think he is an author within the meaning of the statute; but it appears to me that an alien resident abroad was not at all contemplated by the Legislature, and is not within any of the provisions of the Act. It seems conceded that if a foreign author first publishes his work abroad he cannot have a copyright in England; but why is this so, if such foreign author can be included within the enactments of the statute? The third section of the Act which confers copyright makes no distinction in words between a publication "in the lifetime of the author" in this country, and anywhere else. Again, the sixth section, which requires copies to be delivered to the British Museum, seems to confine the operation of the Act to the British dominions. From the whole tenor of this and all the other statutes, it seems to me that a foreign author resident abroad was altogether out of the contemplation of the Legislature in framing the [940] statutes which have created copyright, and therefore Bellini, living at Milan, and not having published his work in any part of Her Majesty's dominions, had no property to convey, no interest or right to assign.

This view of the subject necessarily leads to the answers I have given to your Lordships' second, third, fourth, fifth, and sixth questions. I think the varied circumstances suggested in those questions would not have made any difference, because I think the statute did not give to Bellini any right or interest which could be conveyed or assigned to Ricordi. But I think it respectful to your Lordships' questions to give some further answer to them. In answer to the second question, I think if Bellini had, with reference to the laws of this country, any right, interest, or property to assign, an assignment valid by the laws of Milan, would have been sufficient, inasmuch as "copyright" is expressly enacted to be "personal property," and would therefore pass according to the laws of Milan, where the transfer took place. In answer to the third question, I think it very doubtful whether copyright can be at all partially assigned. I am clearly of opinion that in this country the proprietor of the copyright could not assign it with reference to one country to one person, and with reference to another country to a different person, so as to give to each a right to maintain an action for infringing the copyright. Now, the statute in force at the time of this transfer was the 54th Geo. 3, c. 155. The fourth section of that Act makes copyright under the statute commensurate with the British dominions, and I think it is a right or property which is not capable of being divided into parts and divisions according to local boundaries. It appears to me, therefore, that the assignment to the Defendant in Error being for publication in the United Kingdom only, and not all the [941] British dominions, would operate as a licence only, and would not by the laws of the country enable the Defendant to sue at law as the proprietor of the copyright for the United Kingdom only. It seems agreed on all hands that a publication at Milan before the assignment would have been fatal to any claim to copyright in this country; and (if it existed) I am of opinion that a subsequent publication at Milan, but before publication here, would also have defeated it.

Lord Chief Justice Jervis.—My Lords,—Before I answer the question proposed by your Lordships, I wish to consider the record and the points which arise upon it, because it involves several technical considerations, some of which also appear upon your Lordships' questions, which might determine this Writ of Error, without pronouncing an opinion upon the main subject.

The party who excepts to the ruling of a learned Judge must show clearly, upon his bill, that the learned Judge was wrong. Every fair intendment must be made in favour of the summing-up, and if, therefore, it is not apparent upon the record that the direction was wrong, the verdict must stand.

The first point of a technical nature which arises upon the Bill of Exceptions, and is also presented by your Lordships' last question, is, whether the certified copy of the Register Book, at Stationers' Hall, without more, entitled the Plaintiff below to a verdict in his favour? In my opinion it did not. The statute 5 and 6 Vict., c. 45, s. 11, only makes such certificate *prima facie* evidence of the proprietorship therein expressed, subject to be rebutted by other evidence, and, for the reasons which I shall give hereafter, I think that such *prima facie* title is rebutted by the other evidence set out upon the record.

[942] The second point is likewise of a technical nature, and is involved also in the first and some other of your Lordships' questions. The Bill of Exceptions states that, by the law of Milan, Bellini was entitled to copyright in his book, and to assign the same, and that he did, by an instrument in writing, signed and executed by him according to the law of Milan, assign the said copyright to Ricordi. Construing this allegation by the rules applicable to Bills of Exceptions, there can be no doubt that the words "said copyright," refer to the copyright before mentioned; viz., the copyright to which Bellini was entitled by the law of Milan; and as by the law of Milan Bellini could have no copyright elsewhere, it follows that even if Bellini had, by the law of England, a copyright in England, it did not pass by this assignment to Ricordi. This point, in my judgment, is decisive of the Writ of Error; but, inasmuch as the parties have, not improbably, stated the assignment in this form by mistake, and your Lordships desire the opinion of the Judges upon other questions, I proceed to consider the principal subject.

Before doing so, however, there is another point, of a somewhat technical character, arising upon the Bill of Exceptions, and forming the subject of your Lordships' second question, which may here conveniently be disposed of. It does not appear upon the Bill of Exceptions that the assignment by Bellini to Ricordi, at Milan, was attested by two witnesses; on the contrary, as every fair intendment must be made against the party who excepts to the summing-up, it must be taken after verdict that the assignment was not so attested. Upon this subject I have entertained some doubts, but upon consideration am of opinion that two witnesses were not necessary. I do not adopt the argument at the Bar, that, being personal property, copyright would pass by a mode of transfer legal **[943]** in the country where the proprietor was domiciled, because, although that is the general rule with respect to personal property, it is subject to an exception where the personal property, as in this case English copyright, has a locality in a country which prescribes a particular form in which alone it can pass. My opinion is formed upon the difference which will be found in the wording of the statutes 8 Anne, c. 19, and 54 Geo. 3, c. 156. If the case was governed by the statute of Anne, I should think it clear that two witnesses were necessary, because an English copyright having a locality in England, and passing only in the form prescribed by the law of England, the cases cited at the Bar, *Power* v. *Walker* (3 Maule and Sel. 7), *Davidson* v. *Bohn* (6 Com. Ben. Rep. 456), would be expressly in point. But, in my opinion, the law has been altered in this respect by the statute 54 Geo. 3, c. 156. This statute does not repeal the statute of Anne; it does not say that two witnesses shall not be necessary, but merely enacts that all booksellers and others who print and publish without the consent in writing of the proprietor, shall be liable to an action. A printer and publisher, therefore, who has the consent in writing of the proprietor, is not within this Act, or liable to an action. In this respect it is inconsistent with the statute of Anne, and, as I think, repeals it by implication. It is true that such provision does not expressly refer to an assignment of copyright, but neither does the statute of Anne, upon which reliance is placed. The cases referred to determined that as the statute of Anne required two witnesses for a simple licence, an absolute transfer of the author's whole interest must be made with the same solemnity; and the same reasoning applied to the statute of Geo. 3, leads me to the conclusion that if a licence in writing, unattested by witnesses, is sufficient to save a **[944]** printer and publisher from an action, an assignment of a copyright may be made in the same form.

I come now to the main question, which is one of considerable difficulty and great importance: Has an alien resident abroad copyright in England? If he has, it must be by the common law or by statute, and upon each of these questions I will say a few words.

It will be convenient, however, before I do this, to understand clearly what is meant by the word "copyright," for much confusion has prevailed, during the argument at your Lordships' Bar, from a misapplication of this term. Mr. Bovill contends that the owner of a book or a manuscript has the same right as the owner of a chair or other personal chattel; he may keep it exclusively for his own use; he may give it or lend it to another, with a stipulation that it shall not be copied; and he argues that because these rights may be enforced in this country by a foreigner resident abroad, a foreign author is therefore entitled to copyright. But this meaning of the word "copyright," viz., the right to the individual copy, has no application to the subject under discussion. Copyright here means, the exclusive right of multiplying copies, which right does not attach to personal chattels; for although the owner of the valuable inventions might at common law, and still may, under certain limitations, obtain the exclusive privilege of making them for public use, that right of monopoly springs from the prerogative of the Crown, and is not incident to the property itself.

It is not necessary to decide in this case whether a British author had copyright at common law. Upon this subject there has been much difference of opinion amongst the greatest authorities; and I find from the judgment of Lord Campbell, in the Court of Exchequer Chamber, that if it had been necessary, his Lordship, and the Judges **[945]** before whom that case was then argued, were strongly inclined to agree with Lord Mansfield, and the great majority of Judges, who in *Millar* v. *Taylor*, and *Donaldson* v. *Beckett*, declared themselves to be in favour of the common law right of authors. It is with extreme diffidence, therefore, that I express an opinion upon the subject, and declare that, in my judgment, a British author has not copyright at common law. I see nothing to distinguish the case of the author, as owner, of a book or manuscript from that of the inventor or owner of a complicated and highly useful machine. Each is the result probably of great talents, profound study, much labour, and it may be, of great expense; but as the inventor of the steam engine would, at the common law, have had no exclusive privilege of multiplying copies of his machine for sale, I see no reason, from the peculiar nature of the property, why the author of a treatise to explain the action of the steam engine should have at the common law an exclusive right of multiplying copies of his work. Since the cases of *Millar* v. *Taylor*, and *Donaldson* v. *Beckett*, Lord Kenyon has expressed a decided opinion, that no such right existed, *Beckford* v. *Hood* (7 T.R. 620). Lord Ellenborough has inclined to the same view, *Cambridge University* v. *Bryer* (16 East, 317); and a majority of the American Judges, in *Wheaton* v. *Peters* (8 Peter's Rep., Supr. Ct. U. S. 591), arrived at the same conclusion. But I agree with the Judges of the Exchequer Chamber, that it is not here necessary to decide that question; indeed, the Plaintiff's title was not put during the argument upon the common law right, except in so far as I have already referred to that argument; and it is clear that, even if by the common law a British author has copyright in this country, a foreign author resident abroad would not have it. The law of **[946]** Milan, where Bellini resides, would not confer it, and the common law of England would be confined to British authors, or to authors resident in England, and within the protection of the law of this country.

Is, then, the right conferred upon a foreigner, resident abroad, by the statute law of this country? In my opinion, it is not. The question turns upon the true construction of the statute 8 Anne, c. 19, for the statute 54 Geo. 3, c. 156, merely extends the term "copyright," without containing any provision applicable to this subject. In the construction of this statute we must not be influenced by questions of policy. Our duty is to expound the law to the best of our ability, and we must endeavour, if possible, to arrive at the intention of the legislators who passed the statute in the reign of Queen Anne. Statutes must be understood in general to apply to those only who owe obedience to the laws, and whose interests it is the duty of the Legislature to protect. Natural-born subjects, and persons domiciled or resident within the kingdom, owe obedience to the laws of the kingdom, and are within the

benefits conferred by the Legislature; but no duty can be imposed upon aliens resident abroad, and with them the Legislature of this country has no concern, either to protect their interests or to control their rights.

But it is said that this Act itself shows that it was intended to apply to all authors, foreign or British, wheresoever resident. A careful consideration of this statute leads me to a different conclusion. It is an "Act for the Encouragement of Learning by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies." Authors are to be encouraged, by enabling them to obtain from their publishers a larger remuneration, because, their publishers having the exclusive right of multiplying copies, can obtain from the public a larger price [947] for each copy of the work. To this extent the public are injured, that the author may be rewarded. In the case of British authors, the avowed object of this Act, the encouragement of learning may be worth the price which the public pay for it, and the Legislature may well be justified in such an enactment. But is it so with respect to foreign authors resident abroad? By the law of Milan, Bellini has that which, by the law of his own country, is deemed a sufficient encouragement for the advancement of learning. He has copyright in that country, and although it is true that an author would obtain more for his work if, by a simultaneous publication in every country in Europe, he could obtain a copyright in each country, such a state of things could not have entered into the contemplation of those who passed this Act. The object was the advancement of learning; and although I can understand why the privilege of copyright might have been given to foreign authors resident abroad, if their works, when once published abroad, could not have been imported into and published in this country, without their consent, I can see no reason why, having, what is deemed by their own country a sufficient encouragement for the publication of their works there, they should also be encouraged to publish in this country, for the mere purpose of giving them an additional reward at the expense of the reading public. I think, therefore, that the statute is confined to British authors; meaning, by that expression, natural-born subjects of the realm, and those who, by domicile, residence, or possibly by personal presence only, are under the dominion of and subject to the laws of England.

This latter consideration gives rise to an argument upon which much reliance was placed in the judgment of the Court below, where it was asked, why, if a foreigner may acquire the right by coming to England, may he not have [948] it whilst resident abroad; and why need he come from Calais to Dover, and not send his manuscript to his publisher at once, without that trouble? The answer, in my opinion, is, that whilst he is out of the realm he is not subject nor entitled to the benefits of the laws of the kingdom. It may be that by taking upon himself a liability to obey the laws, even by a temporary presence in this country, he also acquires the rights which the same laws confer; but it by no means follows that he would have the same right whilst residing abroad, without taking upon himself the corresponding duty. It has been further urged that copyright is analogous to patent right, and that the same construction should be put upon the several statutes applicable to each. I have already explained that at Common Law monopolies spring from the prerogative, and had no origin in the property protected. As guardian of the public interest, the Crown might legally, at Common Law, have granted monopolies for many purposes, and there is no doubt that it did so protect and foster the woollen manufacturers at Norwich, Ipswich, Wales, and elsewhere, who, though foreigners, introduced from a foreign country a new manufacture into this realm. Subsequently, when this prerogative, being abused, was controlled and defined by the statute 21 James I., cap. 3, the words used were new manufactures within the realm, and true and first inventor of such manufacture, and the Courts, having reference to the Common Law, held that these words authorised the granting of a patent for an invention known abroad, but introduced as a new manufacture into this country. The distinction between the case of a patent and a copyright is this: In the former, at common law, the Crown might if it pleased, grant a monopoly for a manufacture new in this country, but in full operation abroad; and the statute of James saved to the Crown the power of [949] granting monopolies for a limited period in respect of new manufactures within the realm, meaning, of course, the same kind of manufactures as were the subject of monopolies at common law; whereas there was certainly no copyright at

common law for foreign authors, and the statute of Anne had nothing upon which it could attach to give to the words used a larger meaning than they naturally import.

It remains only for me to examine the cases which bear upon the subject, for if I had found a current of decisions one way, I should have deferred to them, and have felt myself found by their authority. *Tonson* v. *Collins* (1 Sir W. Bl. 301-321) is the first case upon the subject. In that case Lord Thurlow, then at the Bar, said, during the argument, that the right of property, copyright, if any, was personal, and might be acquired by aliens; but the property pirated in that case was the *Spectator*, the composition of natural-born subjects resident in England, and the observation amounts only, at most, to an assertion by Counsel, that if an author resident in England composes a work, it is immaterial whether he is an alien or a British subject. *Bach* v. *Longman* (Cowp. 623) is the next case in order of time, and this is said to be an authority, because Baron Wood, then at the Bar, did not object that the plaintiff was a foreigner. The only matter to be there determined was, whether a musical composition was a book within the statute, and the point, therefore, could not arise, even if it had been clear that Bach was a foreigner, or if a foreigner, was not resident in this country when he published his work. *D'Almaine* v. *Boosey* (1 Yo. and Col. 288), was decided by Lord Abinger, avowedly under the authority of *Bach* v. *Longman*, which, for the moment, was supposed to have determined that a foreigner resident **[950]** abroad had copyright in this country; but that case, when examined, establishes no such thing, and the authority upon which it proceeded failing, the case of *D'Almaine* v. *Boosey* cannot now be considered as conclusive upon the subject. In the two cases referred to before Vice-Chancellor Shadwell, he seems to have been of opinion both ways. In *De Londre* v. *Shaw* (2 Sim. 237), he is reported to have said that the Court would not protect the copyright of foreigners, and in *Bentley* v. *Forster* (10 Sim. 329) he directed an action to try the right. *Clementi* v. *Walker* (2 Barn. and Cres. 861), so far as it goes, is an authority for the Plaintiff in Error. The point decided there was, that a prior publication in France destroyed any copyright which a foreigner, coming to this country, might have here; but the Court intimated an opinion that the statute of Anne was passed for the advancement of British learning.

Such was the state of the authorities when this great question was for the first time pointedly raised in the case of *Chappell* v. *Purday* (14 Mee. and Wels. 303). The Court of Exchequer in that case held, under circumstances like the present, that a foreigner resident abroad had no copyright, for that the statute of Anne was confined to British authors. The Court of Common Pleas, in *Cocks* v. *Purday* (5 Com. Ben. Rep. 860), took a different view of the same subject; and in *Boosey* v. *Davidson* (13 Q.B. Rep. 257), the Court of Queen's Bench followed the case of *Cocks* v. *Purday* without making any observations upon the subject. It was supposed at the time when *Boosey* v. *Davidson* was decided, that there had been a difference of opinion amongst the learned Judges who heard it, and that the Court had for that reason followed the last case without comment, leaving the question to be determined by a **[951]** Court of Error. But I find by Lord Campbell's judgment that such was not the case; he was informed by his colleagues that the decision in *Cocks* v. *Purday* was not only followed, but was fully considered and entirely approved of by Lord Denman and all his brethren. That case must therefore be treated as a deliberate and well-considered decision upon the subject. In the last case, *Boosey* v. *Purday*, the Judges of the Exchequer adhered to their former judgment. In truth, therefore, there are but four cases which bear directly upon the subject; one in the Common Pleas, and one in the Queen's Bench, in favour of the Defendant in Error, and two in the Exchequer in favour of the Plaintiff in Error. The learned Judge who tried this cause adopted the view of the Court of Exchequer, and it cannot be said, in this state of the authorities, that he was bound by express decisions to take a different view.

With this preface, I proceed to answer your Lordships' questions.

I answer the first question in the negative, because the question assumes that Bellini only assigned to Ricordi the copyright which Bellini had by the law of Milan; and further, because Bellini had, under the circumstances stated, no copyright in England which he could assign.

I answer the second question in the negative, because, first, in my opinion, two witnesses would not be required to attest the assignment of an English copyright, if

Bellini had such a copyright to assign; secondly, because Bellini did not profess to assign the English copyright if he had it; and thirdly, because he had, in my opinion, no English copyright to assign.

I answer the third question in the negative, because, for the reasons which I have given, I am of opinion that Bellini had no English copyright which he could assign.

[952] I answer the fourth and fifth questions in the negative, because Bellini, under the circumstance, having no English copyright to assign, it is immaterial whether the work was published abroad before or after the assignment, and before the publication in this country. In *Clementi* v. *Walker* (2 Barn. and Cres. 861), it was decided that a prior publication abroad would prevent a foreign author resident in this country from having copyright here.

I answer the sixth question in the negative, under the particular circumstances of this case, because, in my opinion, Bellini had no English copyright to assign.

I answer the last question in the affirmative, because technically the assignment to Ricordi passed only the Milanese copyright, and because substantially Bellini had no English copyright to assign.

The Lord Chancellor (August 1) having stated very fully the nature of the action, and the evidence set forth in the Bill of Exceptions, said:

These being the facts deposed to, the question arose, whether they afforded evidence of the existence of any copyright in the Defendant in Error? It may be assumed that on the facts thus proved, the rights of Bellini, the author (if any), had been effectually transferred to Boosey, the Defendant in Error; and thus the important question arose, whether Bellini had by our law a copyright which he could transfer through Ricordi to Boosey, so as to entitle the latter to the protection of our laws?

If the work, instead of having been composed by an alien resident abroad, had been composed by a British subject resident in England, there is no doubt but that his assignee would have acquired a copyright which our laws would **[953]** protect. The question, therefore, arising on this evidence (assuming the assignments, first to Ricordi, and then to Boosey, to have been effectually made), is whether Bellini ever had a copyright here? that is, whether an alien resident abroad, and there composing a literary work, is an author within the meaning of our copyright statutes? If he is not, then the direction which I gave at the trial was correct; for then it was proper to tell the jury that the evidence would not warrant a finding that Boosey was the proprietor of the alleged copyright, or that there was, in fact, in this country any subsisting copyright in the said work.

The case was argued most ably at your Lordships' Bar in the presence of the learned Judges, ten of whom have since given us their opinions on the questions submitted to them. They have differed in the conclusions at which they have arrived; six of them being of opinion that Bellini had a copyright which was effectually transferred to the Defendant in Error, and four of them holding, on the other hand, that he had no such right. The majority, therefore, is of opinion that my direction at the trial was wrong, and so, that the Exchequer Chamber was right in awarding a *Venire de novo*.

It is impossible, my Lords, to overrate the advantage which we have derived from the assistance of the learned Judges in helping us to come to a satisfactory decision on this important and difficult question. They have in truth exhausted the subject, and your Lordships have little else to do than to decide between the conflicting views presented to you by their most able opinions. I could have wished that, as my direction at the trial was the matter under review, I might escape from the duty of pronouncing an opinion in this case; but I have felt that I have no right to shrink from responsibility, and I have therefore given **[954]** the case my most anxious attention; and I now proceed to state, very shortly, why it is that I adhere to the opinion I expressed at the trial, and why I therefore think that the Court of Error was wrong in awarding a *Venire de novo*.

In the first place, then, it is proper to bear in mind that the right now in question, namely, the copyright claimed by the Defendant in Error, is not the right to publish, or to abstain from publishing a work not yet published at all, but the exclusive right of multiplying copies of a work already published, and first published by the Defendant

in Error here in this country. Copyright thus defined, if not the creature; as I believe it to be, of our statute law, is now entirely regulated by it, and therefore in determining its limits we must look exclusively to the statutes on which it depends. The only statutes applicable to the present case are the statutes of 8 Anne, c. 19, and the 54th of Geo. 3, c. 156. Indeed, the first of these statutes is that to which alone we may confine our attention; for though the statute of George the 3rd extends the term of protection, it does not alter the nature of the right, or enlarge the class of persons protected. Looking, then, to the statute of Anne, we see by the preamble that its object was the "encouragement of learned men to compose and write useful books;" and even if there had been no such preamble, the nature of the enactments would have sufficiently indicated their motive. With a view to attain this object, the statute enacts that "The author of any book which shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book for the term of fourteen years, to commence from the day of the first publishing the same, and no longer." The substantial question is, Whether, under the term "author," we are to understand the Legislature as referring to British authors only, or to have contemplated all authors of every **[955]** nation. My opinion is, that the statute must be construed as referring to British authors only. *Prima facie* the Legislature of this country must be taken to make laws for its own subjects exclusively, and where, as in the statute now under consideration, an exclusive privilege is given to a particular class at the expense of the rest of Her Majesty's subjects, the object of giving that privilege must be taken to have been a national object, and the privileged class to be confined to a portion of that community, for the general advantage of which the enactment is made. When I say that the Legislature must *prima facie* be taken to legislate only for its own subjects, I must be taken to include under the word "subjects" all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here, and composing and publishing a book here, is an author within the meaning of the statute; he is within its words and spirit. I go further; I think that if a foreigner, having composed, but not having published a work abroad, were to come to this country, and, the week or day after his arrival, were to print and publish it here, he would be within the protection of the statute. This would be so if he had composed the work after his arrival in this country, and I do not think any question can be raised as to when and where he composed it. So long as a literary work remains unpublished at all, it has no existence, except in the mind of its author, or in the papers in which he, for his own convenience, may have embodied it. Copyright, defined to mean the exclusive right of multiplying copies, commences at the instant of publication; and if the author is at that time in England, and while here he first prints and publishes his work, he is, I apprehend, an author, within the meaning of the statute; even though he should have come here solely with a view to the **[956]** publication. The law does not require or permit any investigation on a subject which would obviously, for the most part, baffle all inquiry; namely, how far the actual composition of the work itself had, in the mind of its author, taken place here or abroad. If he comes here with his ideas already reduced into form in his own mind, still, if he first publishes after his arrival in this country, he must be treated as an author in this country. If publication, which is (so to say) the overt act establishing authorship, takes place here, the author is then a British author, wherever he may, in fact, have composed his work. But if at the time when copyright commences by publication, the foreign author is not in this country, he is not, in my opinion, a person whose interests the statute meant to protect.

I do not forget the argument, that from this view of the law the apparent absurdity results, that a foreigner having composed a work at Calais, gains a British copyright if he crosses to Dover, and there first publishes it, whereas he would have no copyright if he should send it to an agent to publish for him. I own that this does not appear to me to involve any absurdity. It is only one among the thousand instances that happen, not only in law, but in all the daily occurrences of life, showing that whenever it is necessary to draw a line, cases bordering closely on either side of it are so near to each other, that it is difficult to imagine them as belonging to separate classes; and yet our reason tells us they are as completely distinct as if they were immeasurably removed from each other. The second which precedes midday is as completely distinct from that which follows, as the events which happened a hundred years ago are from

those which are to occur in the next century. I do not, therefore, feel the force of the argument to which I have just adverted.

[957] On the other hand, great support for the opinion of those who think that the statute did not comprise foreign authors may be found in the exception, which those who take a different view are obliged to make, of the case of authors who have just published abroad. I do not see any satisfactory ground for such an exception, if we are to consider the statute as extending to foreigners at all. If the object of the enactment was to give, at the expense of British subjects, a premium to those who laboured, no matter where, in the cause of literature, I see no adequate reason for the exception, which it is admitted on all hands we must introduce, against those who not only compose, but first publish, abroad. If we are to read the statute as meaning by the word "author" to include "foreign authors living and composing abroad," why are we not to put a similar extended construction on the words "first published?" And yet no one contends for such an extended use of these latter words.

Some stress was laid on the supposed analogy between copyright and the right of a patentee for a new invention; but the distinction is obvious. The Crown, at common law, had, or assumed to have, a right of granting to any one, whether native or foreigner, a monopoly for any particular manufacture. This was claimed as a branch of the royal prerogative, and all which the statute of 21 Jac. 1, cap. 3, sec. 6, did was to confine its exercise within certain prescribed limits; but it left the persons to whom it might extend untouched. The analogy, if pursued to its full extent, would tend to show that first publication abroad ought not to interfere with an author's right in this country. For certainly it is no objection to a patent that the subject of it has been in public use in a foreign country. I am aware that the statute of James, in reserving to the Crown the power of granting to inventors the exclusive right of **[958]** making new manufactures for fourteen years, has the words "within this realm;" but these same words are implied, though not expressed, in the statute of Anne, and I cannot, therefore, feel any force in the argument derived from this statute.

My opinion is founded on the general doctrine, that a British statute must *prima facie* be understood to legislate for British subjects only, and that there are no special circumstances in the statute of Anne, relating to authors, leading to the notion that a more extended range was meant to be given to its enactments.

It remains, however, to look to the authorities; for certainly if I had found any long uniform current of decisions in favour of the view taken by the Court of Error, I should readily yield to them, whatever might be my opinion of their original soundness; but I find nothing of the sort. Indeed, I agree with the observation of Mr. Baron Alderson, that it is wonderful how little in the nature of authority we have to guide us.

The earliest case to which we are referred was *Tonson* v. *Collins* (1 Sir W. Bl. 301, 321); but this was hardly relied on seriously; it proves no more than this, that Lord Thurlow, when at the Bar, in arguing a case of copyright, treated natural-born subjects and aliens as standing on the same footing, when it might, perhaps, have been to the interest of his client that he should have argued differently. This must, I think, be wholly disregarded.

We may also disregard the various cases in which questions have arisen as to the rights of a foreigner resident in this country and first publishing his work here; they have no bearing on the point now under discussion, as the right of such persons is not disputed. *Bach* v. *Longman* (Cowp. 623), in Lord Mansfield's time, may be placed in this class. In **[959]** truth, until very recently, there have been no cases bearing directly on the point.

In *Delondre* v. *Shaw* (2 Sim. 237, 240), before the late Vice-Chancellor of England, we find that learned Judge stating, extra-judicially, that the Court of Chancery does not interfere to protect the copyright of a foreigner. That dictum was uttered in 1828; and, four years later, the same learned Judge held, in *Page* v. *Townsend* (5 Sim. 395), what indeed could hardly have been doubted, that engravings designed and sketched abroad, though imported and first published here, were not entitled to the protection of our statutes.

The next case was that of *D'Almaine* v. *Boosey* (1 Younge and C. 288), in 1835, in which Lord Abinger disputed the correctness of what had been said *obiter* by Vice-

Chancellor Shadwell, in *Delondre* v. *Shaw*, and granted an injunction in favour of a foreign composer, or, rather, the assignee of his right.

In 1839 the point again came before the Vice-Chancellor Shadwell, in *Bentley* v. *Foster* (10 Sim. 330), when he expressed his opinion to be in favour of the foreigner's copyright, but he would not decide the point without a previous trial at law.

Then occurred, two years later, the case of *Chappell* v. *Purday* (4 Younge and C. 485), before Lord Abinger, sitting in Equity; when, though he adhered to the opinion he had expressed in favour of the foreigner's right, yet he declined to act in the particular case, on account of special circumstances.

Since Lord Abinger's time, the question has been brought before all the Courts of Common Law, and their judgments have been conflicting. The Court of Queen's Bench, in the case of *Boosey* v. *Davidson* (13 Q.B. Rep. 257), and the Court of Com-**[960]**-mon Pleas, in that of *Cocks* v. *Purday* (5 Com. B. Rep. 860), have decided in favour of the foreigner's right. On the other hand, the Court of Exchequer, in *Chappell* v. *Purday* (14 Mee. and W. 303), and afterwards in *Boosey* v. *Purday* (4 Exch. 145), took a different view of the law, and held that the statutes do not extend to foreigners. I do not go into the particular facts of those cases; they are fully commented on in the very able opinions of the Judges. I consider it quite sufficient to say that these cases seem to me only to show that the minds of the ablest men differ on the subject. There is nearly an equal array of authorities, all very modern, on the one side and on the other. It can only be for this House to cut the knot.

I have already stated, shortly, my grounds for concurring with the four Judges who are in the minority. Being thus of opinion that no English copyright ever existed in this work, I have not thought it necessary to go into the minor and subordinate inquiries on which it might have been necessary to come to a conclusion, if my view on the greater question had been different; and I now, therefore, merely move your Lordships that the judgment below be reversed, and that judgment be given for the Plaintiff in Error.

Lord Brougham.—My Lords,—I must begin by stating how entirely I agree in what my noble and learned friend has observed as to the great ability and learning with which this case was argued at the Bar on both sides, and the great assistance which we have derived from the answers which have been given to our questions by the learned Judges.

[961] In coming to a decision on this case, it is not necessary to assume that the much-vexed question of common-law right to literary property has been disposed of either way. Yet as a strong inclination of opinion has been manifested upon it, as that leaning seems to pervade and influence some of the reasons of the learned Judges, and as the determination of it throws a useful light upon the subject now before us, I am unwilling to shrink from expressing my opinion on the question, the more especially as I am aware that it does not coincide with the impressions which generally prevail, at least, out of the profession.

The difference of opinion among the learned Judges on the various points of the present case are not greater than existed when *Donaldson* v. *Beckett* (4 Burr. 2408; 2 Bro. P.C. 129) was decided here in 1774, and when, in 1769, in the case of *Miller* v. *Taylor* (4 Burr. 2303), the Judges of the Court of King's Bench had been divided in opinion for the first time since Lord Mansfield presided in that Court. In this House they were, if we reckon Lord Mansfield, equally divided upon the main question, whether or not the action at common law is taken away by the statute, supposing it to have been competent before; and they were divided, as 9 (or with Lord Mansfield 10) to 3, and as 8 to 4, upon the two questions touching the previously existing common-law right. This House, however, reversed the decree under appeal, in accordance with the opinion given on the main point by the majority of the Judges; and upon the general question of literary property at common law no judgment whatever was pronounced.

In this diversity of opinion, it asks no great hardihood to maintain a doctrine opposed to that of the majority of those high authorities, considering the great names which are to be found on either side; but it must be admitted **[962]** that they who, both on that memorable occasion and more recently, have supported the common-law right, appear to rely upon somewhat speculative, perhaps enthusiastic, views, and to be led away from strict, and especially from legal, reasoning into rather declamatory courses. Some reference also seems to have been occasionally made to

views of expediency or of public policy, to the conduct of foreign states, and the possible effects produced upon it by a regard to the arrangements of our municipal law. All such considerations must be entirely discarded, even as topics, from the present discussion, which is one purely judicial, and to be conducted without the least regard to any but strictly legal arguments.

The right of the author before publication we may take to be unquestioned, and we may even assume that it never was, when accurately defined, denied. He has the undisputed right to his manuscript; he may withhold, or he may communicate it, and, communicating, he may limit the number of persons to whom it is imparted, and impose such restrictions as he pleases upon their use of it. The fulfilment of the annexed conditions he may proceed to enforce, and for their breach he may claim compensation. But if he makes his composition public, can he retain the exclusive right which he had before? Is he entitled to prevent all from using his manuscript by multiplying copies, and to confine this use of it to those whom he specially allows so to do? Has he such a property in his composition as extends universally and enures perpetually, the property continuing in him wheresoever and whensoever that composition may be found to exist? In other words, can his thoughts, or the results of his mental labour, or the produce of his genius, be considered as something fixed and defined, which belongs to him exclusively at all times and in all places?

[963] First, let us observe that this question cannot be confined to the form, whether written or printed, which that composition takes, or in which these thoughts are conveyed. If it is clear that before publication the author has the right, and may proceed against those to whom he imparts his manuscript under conditions, it is equally clear that if he had communicated his composition to them verbally under such conditions, he could have complained of a breach. The question is personal between him and them. But if instead of orally delivering his composition to a select number, he delivered it to all who came and heard him, imposing no restriction, he could not complain with effect of any one repeating it to others who had not been present. Now, there seems no possibility of holding that he can prevent the persons to whom he gave or sold his paper, whether written or printed, from making their own use of it, without also holding that he could proceed against his auditors unwarned. If each of these might repeat what he had heard, each of those might lend the paper or book, and could only be tied up from so doing by express stipulation, imposing restrictions upon him when he received it. So, if he could lend it, he could copy it and give or sell his copy unless so tied up. It is another thing to maintain that no such restriction could be imposed, *per expressum*. If each copy, furnished by the author, bears with it a stipulation on his part, a correlative obligation may rest on the receiver, restraining him from any but the restricted use of the composition. But the doctrine of copyright, after publication, assumes that there exists by force of law an implied notice to all the world against using the book or paper, except in one way, namely, reading it.

Again, this right, if it is of a proprietary nature, is not only in the author, but it is transferable by assignment, **[964]** and he may prevent all using the copies he has sold without leave of his assigns; that is, he may vest in his assigns the power of preventing any one, without their leave, from reading the composition. By parity of reasoning, if he recites it, he may forbid any hearer to repeat it, without leave of some one authorised by him, although no condition had been imposed upon those who entered the place of recitation to listen; and if any such auditor, unknown to the author, or his licensee, has repeated it, the author or his licensee, or assignee, may proceed against the party to whom that rehearsal has been made, in case he repeats without leave what he has been told by the first hearer. This consequence, if not wholly absurd, yet assuredly somewhat startling, follows from the title alleged.

Furthermore, the author's right of exclusion is not confined to his own life, if it is, or if even it resembles, a right connected with property. It must be descendable and devisable as well as assignable. If Milton's deathless verse had been recited, or Newton's immortal discoveries had been revealed in some learned conference, the right to let others hear them would have been confined to licensed persons, not indeed during the existence of the globe, whith those prodigious works enlightened, and were fated to endure while it lasted, but as long as the Statute of Limitations and the law of perpetuities allowed.

It is not to be supposed that the analogy of incorporeal hereditaments affords countenance to the doctrine. These are connected with, or rather they are parcel of, corporeal rights; they rest upon a substantial, a physical basis; rather they are the uses of something material. A rent is something issuing out of land; a way, the use of the land's surface. The enjoyment of the rent or of the way is only an incident, a fruit, or consequence of the possession. The composition, and the repetition or copying of it, **[965]** cannot be so distinguished and kept apart. There is nothing in the thought of the person resembling the substance to which the incorporeal hereditament is related. They are of too unsubstantial, too evanescent a nature, their expression of language, in whatever manner, is too fleeting, to be the subject of proprietary rights. *Volat irrevocable verbum*, whether borne on the wings of the wind or the press, and the supposed owner instantly loses all control over them. When the period is demanded at which the property vests, we are generally referred to the moment of publication. But that is the moment when the hold of the proprietor ceases. He has produced the thought and given it utterance, and, *eo instanti*, it escapes his grasp.

Thus, whatever may have been the original right of the author, the publication appears to be of necessity an abandonment; as long as he kept the composition to himself, or to a select few placed under conditions, he was like the owner of a private road; none but himself or those he permitted could use it; but when he made the work public, he resembled that owner after he had abandoned it, who could not directly prohibit passengers, or exact from them a consideration for the use of it.

It seems a further argument against the right, that property in one person essentially implies absolute exclusion of all others. A property which by possibility, however remote, may belong just as entirely to one as to another, stands, it must be admitted, in a most anomalous position. The case has sometimes been put of two persons falling upon the very same words. In a translation this is not so improbable; and we must remember both that translation falls within the rule as well as original composition, and also that any writing, however short, stands in the same position with the longest. Now it is very possible indeed **[966]** that two persons should translate a few lines in the self-same words. Here there is an instance where the self-same thing would belong exclusively to each, which is absurd.

Some have relied on the case of inventions, but, as appears to me, without due reflection, when used upon that side of the argument; for this reference seems an exceedingly strong argument against the supposed right, and an argument from which its advocates cannot escape, as some of them have attempted, by urging that the two cases stand on different grounds. I hold that they stand in one material respect on the same ground. Whatever can be urged for property in a composition, must be applicable to property in an invention or discovery. It is the subject matter of the composition, not the mere writing, the mere collection of words, that constitutes the work. It may describe an invention, as well as contain a narrative or a poem, and the right to the exclusive property in the invention, the title to prevent any one from describing it to others, or using it himself (before it is reduced to writing) without the inventor's leave, is precisely the same with the right of the author to exclude all men from the multiplication of his work. But in what manner has this ever been done or attempted to be done by inventors? Never by asserting a property at common law in the inventor, but by obtaining a grant from the Crown. The King had illegally assumed the right of granting such monopolies in many things, until the abuse was corrected by the 21 James 1, c. 3, which, as Lord Coke says, (3 Institutes, 181) is a judgment in Parliament, that such grants were against the ancient and fundamental laws, and he considers them (2 Institutes, 47-63) to be against Magna Charta. The statute, however, by its well-known proviso, section 6, allowed such exclusive privileges to be granted for a limited **[967]** time to inventors, and it is only under the Crown grants permitted by this proviso that they have ever had the privilege. Monopolies had been given to authors and publishers of books while the abuse continued, both in the reign of Elizabeth and of her immediate predecessors; but no saving clause for these was introduced in the statute of James. On the contrary, the 10th section provides that these as well as some other grants shall not be affected either by the prohibition or by the proviso.

It is said that literary and scientific men are left without protection, and that

the invaluable produce of their labours is unduly estimated by the common law, if the right in question be not recognised. But the negation of that right only implies that we refuse to acknowledge a property in things by their nature incapable of being held in severalty, and that we recoil from adopting a position which involves contradiction. The contradiction is, that one can retain that which he parts with, and can dedicate to the public, or at least do an act which necessarily involves such dedication, and yet keep exclusive possession of the thing dedicated, and retain all the rights he had before the dedication.

But although the inability to hold these contradictory positions precludes, to a great degree, the common law encouragement of letters and science, their cultivators are not without resource; for while the nature of the thing and the incidents of its production prevent it from being the subject of property at common law, the lawgiver can make it a *quasi* property, or give the author the same kind of right and the same remedies which he would have if the produce of his labour could have been regarded as property, and so it is in other cases. A remarkable instance at once presents itself where the interposition of the positive law is as much to be lamented and condemned **[968]** as in the case of letters and science it is to be gratefully extolled. By all rules, by the nature of the subject, by the principles of morality, by the sanction of religion, there can be no property in human beings; the common law rejects, condemns, and abhors it. But such a power has been established by human laws, if we may so call those acts of legislative violence which outrage humanity, and usurp, while they profane, the sacred name of law. That which was before incapable of being dealt with as property by the common law, became clothed by the lawgiver's acts with the qualities of property; and thus the same authority of the lawgiver, but exercised righteously and wisely for a legitimate and beneficent purpose, gave to the produce of literary labour that protection which the common law refused it, ignorant of its existence; and this protection is, therefore, in my opinion, the mere creature of legislative enactment.

That the weight of authority is in favour of this position I hold to be clear. The very able argument of Mr. Justice Yates, in *Millar* v. *Taylor* (4 Burr. 2354), may fairly be set against that of the two Judges, Mr. Justice Willes and Mr. Justice Aston, who agreed in the opposite opinion; and I entirely concur with the objection taken by the Lord Chief Baron in the present case to the argument of Mr. Justice Willes. Lord Mansfield gives, no doubt, an unhesitating opinion, with the grounds of it; but he rather relies on the argument of the two Puisne Judges, who differed from Mr. Justice Yates, than enters very fully into the discussion himself.

In 1798 we have a very decided opinion, to this effect, of Lord Kenyon in *Beckford* v. *Hood* (7 T.R. 620), who also says that the doctrine "finally prevailed" against that maintained by some of the Judges in *Donaldson* v. *Beckett*, that **[969]** authors and their assigns had a right independent of statute. Mr. Justice Ashurst, who had been one of those Judges, does not in that case (*Beckford* v. *Hood*) re-affirm his former opinion.

In a case which I argued in 1812, in the Court of King's Bench, Lord Ellenborough's opinion leant to the same side, although he did not consider it necessary to express it decidedly, the case not requiring it. I refer to the case of the *Cambridge University* v. *Bryer* (16 East, 317).

But I also consider the statute of Anne itself as plainly indicating the opinion of the Legislature that there was no copyright at common law. This appears throughout its whole provisions, and manifestly from this, that its purpose being as stated in the preamble "to encourage learned men to compose and write useful books," it vests in the authors and their assignees the exclusive right of printing for twenty-one years, and no longer, from the 10th of the following April, in certain cases, and in others fourteen years from the date of the publication. Surely if authors and their assigns had possessed the unrestricted right at common law, this restraint upon it could hardly have been deemed an encouragement, even coupled with the not very ample or stringent statutory remedies provided.

It being, therefore, in my judgment, unquestionable that the statutes alone confer the exclusive right, can it be contended that the Legislature had in contemplation to vest the right in any but its subjects, and those claiming through them? These statutes, or rather the statute of 8 Anne, chap. 19 (for the 54 Geo. 3, chap. 156, does

not alter it, except by extending the period of the monopoly) in no way affects the class of persons to enjoy it, as my noble and learned friend has justly observed. We are, **[970]** therefore, required to rely solely upon the statute. The encouragement of learning, by encouraging learned men to write useful books, is declared to be the object of the statute, and that object it pursues by giving the author and his assigns a monopoly for a limited period. The Legislature gives this encouragement at the expense of its own subjects, to whom the monopoly raises the price of books. Generally, we must assume that the Legislature confines its enactments to its own subjects, over whom it has authority, and to whom it owes a duty in return for their obedience. Nothing is more clear than that it may also extend its provisions to foreigners in certain cases, and may, without express words, make it appear that such is the intendment of those provisions. But the presumption is rather against the extension, and the proof of it is rather upon those who would maintain such to be the meaning of the enactments.

It can hardly be contended that, a century and a half ago, the Parliament was minded to encourage learning at home, by encouraging foreigners to write books at the expense of the British purchaser; that a monopoly in our market was to be established for the sake of foreign writers, who might thus be induced to write, and thereby benefit our people. We cannot say that foreign authors were wholly out of the contemplation of the Act, that their case was *casus omissus*. There is express provision made for the importation of books in Greek, Latin, or any foreign language, notwithstanding the prohibitory enactments. It was therefore assumed that foreigners would publish abroad, and that their works might be brought over. That the price of all works in the British market was a subject of care to the framers of the Act is manifest, because provision is made for preventing an undue price of books by the power given in the 4th section to **[971]** certain authorities to fix their price; which absurd provision, as is well known, was repealed 30 years afterwards, by 12 Geo. 2, c. 36. This provision was taken from an Act of the 25 Henry 8, chap. 15, sec. 4, repealing the permission given by 1 Richard 3, chap. 9, sec. 12, to import printed books, and repealing it in order to protect the printers and binders, who had, during the half century that intervened since the Act of Richard 3, become a considerable craft. While giving native industry this protection, it pleased the Legislature to impose the restriction upon the price of books by conferring upon certain high functionaries the power of fixing it. And two centuries and more had not found the Legislature more rational, for the statute of Anne adopted a similar provision. But absurd as we all must now admit that provision to have been, it at least showed the strong disposition of the Legislature, not only in Henry the 8th's time, but in Queen Anne's time, to protect the British purchasers against high prices. Yet the contention that learning and learned men are to be encouraged by giving foreign authors a monopoly at the expense of British purchasers, proceeds upon the assumption that there was no care for their interests. And if it be said that the consideration of cheapness was to be sacrificed to the wish for the encouraging of foreign writers, whereby the British purchaser might gain more than he lost in the price, the answer is, that the very same consideration would have prevented the attempt at keeping down the price of books published under the Act, because their authors, being thus encouraged to write, the purchaser gained, in so far, though he lost in the cheapness of the books. But in truth no one can read the provision touching prices without drawing a further inference from it, that very crude and narrow principles then prevailed on these subjects; and we could hardly expect that the same Legis-**[972]**-lature which appointed an authority with stringent liberal powers to keep down prices would entertain such large and enlightened views as it must have had, if it encouraged foreigners, at the temporary and immediate cost, at all events, of its own subjects, for the sake of multiplying generally the number of useful works, and so benefiting those subjects on the whole.

Among a good deal of somewhat popular and declamatory matter, which is to be found in this case, may be mentioned that more plausible and more showy than solid objection taken, that the consequence of confining the statute to one territory will be to make a foreign author come over to Dover, in order to have the exclusive privilege; whereas, as has been adverted to by my noble and learned friend, if he stopped at Calais he could not have it. This is only one of the consequences, as my noble and

learned friend justly observed, of any law which is bounded in its operation by extent of territory. We have abundant instances of such results, not only in civil but in criminal law, and sometimes in both civil and criminal law together, arising out of some diversity of jurisdiction. Married one foot on this side of the middle of a bridge between England and Scotland, the parties have been held by all the Judges guilty of felony, and their issue bastard; when had the nuptial contract been made a foot to the north, the marriage would have been lawful, and its issue legitimate. The English female owner of an estate or settlement, if she comes to Dover, and there lies in, produces issue inheritable, being English issue; if she had been taken in labour at Calais, the issue would have been alien, and could not have taken the estate. So of the consequences arising from limitations in point of time, which have been well adverted to by my noble and learned friend.

The authority of the decided cases which bear upon the **[973]** question before us, is of less moment than it otherwise would be, inasmuch as there is a conflict of decisions; and we may regard the whole of them to be now brought under our review for the ultimate settlement of the question by this House, which is not bound by the resolutions of the Courts below. So great respect, however, is due to those Courts, that it is fit that we should note what has passed there, before arriving at our final determination.

First of all, we may lay out of view whatever has been said, either at the Bar or on the Bench, respecting the case of *Tonson* v. *Collins* (1 Sir W. Bl. 301) and the case of *Bach* v. *Longman* (Cowp. 623). The former amounts really to nothing; it resolves itself into the fact that the counsel, Mr. Thurlow, who argued it, having observed that the right, if any, might be acquired by aliens; the special verdict having found that the work in question was one written by a natural-born subject resident in England. But even if this had been a dictum of the Judge, instead of a remark by counsel, it would prove nothing, for it is not denied in the case at Bar, that an alien resident in England may have the right, under the statute. The other case, *Bach* v. *Longman*, is exposed to the same objection; it is only the admission or implied admission of Mr. Wood (afterwards Baron Wood), who conducted the cause.

But along with these two cases we have likewise to strike out of the authorities in this case that of *D'Almaine* v. *Boosey*, in the Exchequer (1 Younge and Col. 288), in which Lord Abinger granted an injunction, upon the authority of *Bach* v. *Longman*, inadvertently supposing that the admission had been made by the Court, when it had only been an implied admission, rather than a direct admission by Mr. Wood, the counsel.

[974] The cases before Vice-Chancellor Shadwell are likewise to be disregarded. The dictum in *Delondre* v. *Shaw* (2 Sim. 240), that the Court did not protect copyright of a foreigner, is in favour of the opinion I have formed. But in *Bentley* v. *Foster* (10 Sim. 329), the same learned Judge, taking a different view, referred the parties to an action in which the right might be tried. The authority of the same learned Judge in a third case, *Page* v. *Townsend* (5 Sim. 395), would have been in favour of the position now maintained, but that he relied on express words, confining the protection of one Act to English works, being, by implication, to be considered as imported into other Acts *in pari materiâ;* a circumstance which of course does not occur here.

We are thus left to the cases in direct conflict, except that of *Clementi* v. *Walker* (2 B. and C. 861), and that, as far as it goes, supports the doctrine for which I contend, because the learned Mr. Justice Bayley, who delivered the judgment of the Court, lays it down as clear that the statute of Anne was made with a view to British interests and the advancement of British learning, (page 868), and that without "very clear words, showing an intention to extend the privilege to foreign works, it must be confined to books printed in this Kingdom," which is the course of argument used by those who argue here with the Plaintiff in Error.

Of the cases in conflict, *Chappell* v. *Purday* (14 M. and W. 303), and *Boosey* v. *Purday* (4 Exch. R. 145), both in the Exchequer, on one side; *Cocks* v. *Purday* (5 Com. Ben. 860), in the Common Pleas, and *Boosey* v. *Davidson* (13 Q.B. Rep. 257), in the King's Bench, on the other side, it is needless that I should discuss the merits, or compare the weight, as authorities; because they may be said now **[975]** to be before us, as along with the judgment of the Exchequer Chamber, in the case at Bar. I may, however, remark that the decision in the Common Pleas appears to have been made,

not so much upon the consideration of the statutes applicable to the question, as upon the erroneous assumption that the Court of Exchequer had in *Chappell* v. *Purday* questioned the personal right of an alien in England. I think traces of this erroneous view may be discerned in the able answers to your Lordships' questions, given by the only Judge of that Court of Common Pleas who has been present at this argument; viz., Mr. Justice Maule, and who had joined in the Common Pleas decision.

It remains for me to note the point made on the Milanese copyright; that is, copyright by the Austrian or Lombardo-Venetian law. I hold it clear that this could confer no copyright beyond the territory; consequently, that the assignee of the great composer, with whatever solemnities he derived his title, could take nothing which benefited him in this action, for that great master at Milan had no right in England to assign.

But if it be said (and the somewhat subtle argument is to be found both in the contention at the Bar, and in the answers of some of the Judges) that copyright being recognised by the *lex loci*, and recognised as a right at common law, the party or his assignee can avail himself of this right in England, as it were in derogation of, and in exception to, our common law repudiating such right, the personal property being, as is contended, in the Austrian subject by the law of his country, and thus travelling about with him; to this I make answer, that the foreign law shall not prevail over ours, where the diversity in the two laws is such as I have endeavoured to show exists; our law not recognising such property, and holding it therefore to **[976]** be impossible. It is like the case of property in human beings, to which I have already adverted *alio intuitu*. In Somerset's case, and the Scotch case of Wedderburn (for both countries have the unfading honour of having decided this question), it was in vain that the Master set up his right to the property in his slave by the law of the country to which he belonged, and called upon our Courts to enforce it, as here we are required by this argument to enforce the Austrian common-law copyright. It is sometimes said, figuratively, that the answer given to the master was, "a slave's fetters fall off the instant he touches British ground." The more literal and homely legal answer was, that our laws are not cognizant of such property as the property alleged; and can give no aid to the enforcement of rights growing out of it. The same answer I give here.

For these reasons, I am relieved from the necessity of arguing several other points that have been made, on some of which I have a doubt, as on the question whether the statute 54 Geo. 3 supersedes the provisions respecting attestation; the inclination of my opinion being, that it does, though there is some force in the argument that both may stand together. But in the view which I take of the case, there is no occasion to go further into these lesser questions; and I am of opinion that the judgment of the Exchequer Chamber must be reversed, the exceptions disallowed, and the *postea* given to the Plaintiff below.

Lord St. Leonard's.—My Lords,—After the very elaborate arguments which have been addressed to your Lordships, I shall confine what I have to say upon this case within a very small compass. I most cordially concur in what has fallen from my noble and learned friend with regard to the arguments **[977]** at the Bar, and the very great assistance which the House has derived from the elaborate opinions which have been delivered by the learned Judges. Whatever conclusion any man may come to upon the point in issue, it is quite impossible not to admire the acuteness, the research, and the judgment which have been exhibited in the opinions with which this House has been favoured by the Judges; and it is rather the selection only of the grounds of decision, than the formation of an original opinion, which your Lordships are called upon to exercise upon the present occasion.

My Lords, the simple question is, as has been truly stated, whether a foreigner, although actually resident abroad, can, by first publishing here, obtain an English copyright. Now that right has been claimed upon two grounds: first, upon a supposed or asserted common-law right, and secondly, upon the statute right, to which reference has already been made.

Upon the claim of common-law right, I confess I never have, at least for many years, been able to entertain any doubt. It is a question which I have often, in my professional life, had occasion to consider, and upon which I have arrived, long since, at the conclusion, that no common-law right exists after publication. I never could,

in my own mind, distinguish between the right to an invention after the publication of that invention, and the right to the description of that invention after the publication of that description. If a mechanical genius should invent a machine of the greatest importance to mankind, it is admitted, nobody attempts to insist or to argue otherwise, and it has always been considered as settled, that after he has disposed of even a single copy of it, it may, so far as the common law is concerned, be copied and made use of without restriction by the pur-**[978]**-chaser or by any person who properly obtains possession of it. Now, I do not see how you are to estimate differently different kinds of genius, or how you can say that a man who invents a machine of the greatest importance to the State shall not have any right the moment he disposes of a single copy of that article, but that a man, whose mind brings forth a certain collection of words, shall be entitled to an absolute property in it in all time, even after he has published it and let the world at large have it. It appears to me, therefore, and always has so appeared, that there is no such common-law right either in the one case or in the other; and I agree with my noble and learned friend who last addressed your Lordships, that the Patent law is decidedly against the common-law right in this particular instance, because it shows that the inventor had not the right. The right of granting a monopoly was originally claimed by the Crown, and was restricted by the statute of James the 1st; but that is simply a monopoly granted by the Crown under the authority of an Act of Parliament. The Crown, therefore, has the power to grant a patent of an important invention. It is not an objection to an invention that it has been published and used abroad, if the Crown chooses to grant a patent. It depends strictly and wholly upon the right of the Crown, so far as it is not abridged by the Act of Parliament, or if no such right existed in the Crown originally, it depends simply and only upon the statute of James the 1st. Therefore, that appears to me to decide very much the question as to the common-law right in this case.

Now, when we are talking of the right of an author, we must distinguish (as has been already very accurately done) between the mere right to his manuscript and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the **[979]** right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work a right to that composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of for ever copying his own composition, after he has published it to the world, is a totally different thing. But as to this question of common-law right, I do not intend to enter upon the argument, particularly after the very full discussion of it by my noble and learned friend who has just sat down; and indeed I cannot at all understand how that question can apply to this case. What possible right can Bellini or any other person claiming under him, have at common law in this country to the exclusive right of publishing a composition made by Bellini abroad? If Bellini comes to this country, and owing even a temporary allegiance to the sovereign, acquires the legal rights which belong to every subject, that of course one can understand; but what right in this country can exist in a foreigner, like Bellini, composing abroad, and residing abroad, but sending his composition here simply for publication? Where is the right? The common law cannot extend to a foreigner resident abroad, and owing no allegiance to this country. The claim of such a right is distinguishable from any case which has been cited, or which can be cited, which gives a right to a foreigner with regard to damage done to his character, for example, by a person resident in this country; the cases are altogether distinct. This is a right of property which is claimed within this realm, and that right of property cannot be claimed under the common law by a foreigner who owes no allegiance to this country, and who has never acquired any property or any other right, **[980]** in respect of residence here, or by Act of Parliament or otherwise, to make him a subject of this realm. I am therefore clearly of opinion that whatever may be the view which might be taken as to the common-law right, that right never can be held to extend to a foreigner situated as Bellini is.

My Lords, the question then comes of course upon the statutes. I think we may fairly consider that it ought not to be denied that, speaking generally, an Act of our own Parliament, having a municipal operation, cannot be held to extend, *primâ facie*,

beyond our own subjects. It is not that an Act of Parliament may not, like the common law itself, extend its benefits to foreigners who come here and acquire that which it has been the policy of this country to give them; namely, the rights in a great measure of natural-born subjects. That is not the question, but the question is, Do these Acts of Parliament, or not, give to foreigners, *qua* foreigners, the right which is claimed by Ricordi, as claiming under Bellini, or by the Plaintiff as claiming under Ricordi? That is the question. I venture to represent to your Lordships that it is quite clear, as an abstract proposition, that an Act of Parliament of this country having within its view a municipal operation, having, as in this particular case, a territorial operation, and being therefore limited to the kingdom, cannot be considered to provide for foreigners, except as both statute and common law do provide for foreigners when they become resident here, and owe at least a temporary allegiance to the sovereign, and thereby acquire rights just as other persons do; not because they are foreigners, but because being here, they are here entitled, in so far as they do not break in upon certain rules, to the general benefit of the law for the protection of their property, in the same way as if they were natural-born subjects.

[981] Now, I will just draw your Lordships' attention to what had been the state of legislation about the very time that the Copyright Act of the 8th of Anne was passed. In the 7th year of that Queen, we know that there was an Act passed for generally encouraging the settlement here of foreign Protestants: that Act recites that, "The increase of people is a means of advancing the wealth and strength of a nation; and whereas many strangers of the Protestant or reformed religion, out of a due consideration of the happy constitution of the Government of this realm, would be induced to transport themselves and their estates into this kingdom, if they might be made partakers of the advantages and privileges which the natural-born subjects thereof do enjoy." Then, upon taking certain oaths, all foreign Protestants in this country were at once naturalised. We know that that was afterwards repealed, it being found not to answer the end which the Legislature had in view; but it shows that just before this Act of Parliament was passed which is now under discussion, the Parliament had held out a strong inducement to foreigners, being Protestants, to become as it were natural-born subjects, to come over to this country, as it is stated, with their wealth, and to add to that which was then considered to constitute the riches of a country, namely, the population of the country. It can easily be understood, therefore, that in any view which the Legislature would take of it, a course which was adopted was intended indirectly to benefit foreigners; but then they were to be foreigners resident here, the object being to attract Protestant foreigners to this country, and to give them certain benefits when they arrived here. And it is singular enough that in two different Acts of the very same year in which this Copyright Act passed, both Acts having for their object to raise funds for the prosecution of the war, there are express enactments, that natives **[982]** and foreigners may subscribe to the sums which are intended and proposed to be raised; so that when the Acts of Parliament of that period intended to provide expressly for foreigners, care was taken to insert the words "natives and foreigners." Although that fact may not be entitled to very great weight, still it rather helps to guide us to a knowledge of what was the feeling of the time.

Then we come to the Act of Parliament itself. As regards the authorities, I need not add another word, after what has fallen from both my noble and learned friends, because, from the ample discussion which those cases have undergone by the learned Judges, with whose opinions the House has been favoured, and after the observations of my noble and learned friends, I think every one must arrive at this conclusion stated by one of the learned Judges, that this case, for the purpose of decision by your Lordships, is entirely uninfluenced by authority. It is impossible, looking at the whole of the authorities down to the cases which are now before this House for decision, to say that there is any authority which is entitled to any weight. We come, therefore, at once to the cases which are now under review, and upon which your Lordships are required at this time to decide the great and important question now before you.

The statute of Anne is framed in very general words; it is by no means scientifically framed; and singularly enough, in the very statement of it, one would hardly suppose what its object was, for it states in the first place, that the object is to give

to authors the right to copies. The Act is called "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned." Of course the heading of an Act of Parliament does not at all affect its construction; but **[983]** it is a singular heading, for it does not speak of the authorship, or the right to exclude others from multiplying copies; but it speaks of vesting the copies in the authors. The truth is, that the copies, as copies, were vested in the authors, without the assistance of Parliament at all. Nobody doubts that a man printing a certain number of copies had the right to these copies, as he had to any other property, if he had a right to print them; and therefore it required no act of Parliament for that purpose. But the expression "copies" here, of course, is made use of to represent an exclusive right to those copies, as against the rest of the world. Observe, the Act of Parliament itself provides for three things: first, for books that have already been printed; next, for works composed, but not printed and published; and, thirdly, for works thereafter to be composed; and it gave an exclusive copyright for twenty-one years to books already printed. Now, we can nowhere find, upon the face of the Act, any express provision as to the necessity of printing here. Nor can we find any express provision that the first printing shall take place here; we find neither the one nor the other. It has been decided, and it is no longer to be disputed, nor is it attempted to be disputed, that the first publication must take place here; but that is only by implication; it is not by express enactment; it is only by implication from the provisions in the Act of Parliament. Well, then, if the first publication must take place here, must the printing likewise take place here? There is no such actual provision; it is not said so, but I apprehend it is implied; I think it is clearly implied from the provisions of the Act, that the printing must take place here. When books already printed have the term of twenty-one years given to them, it can hardly be supposed that Parliament meant to provide for books which had been printed abroad, the **[984]** object being clearly, whilst advancing learning and science, to advance also the interests of the British public. The provisions of the Act of Parliament, I think, clearly settle that point. It is quite clear that Parliament intended to benefit authors, and not importers; but section 7 of the Act of Anne expressly authorises the importation of books in the Greek, Latin, or other foreign languages; that, I think, at once inevitably leads me to the conclusion that no printed books in the English language were to be imported as within this Act of Parliament. I think that is perfectly clear. But the Act of Parliament does not say that books in foreign languages shall be original compositions; therefore I apprehend that it would have authorised the importation of a translation of an English book into a foreign language; but it does, by implication, show that the printing of English books is to be in this country, and not in a foreign country. My Lords, I think, therefore, that as far as regards the right with respect to books already printed, it must be considered to mean books printed here, and not books which had been printed abroad, and imported here; and that will give a key to the meaning of this statute in the other two cases to which I have referred.

There is a later Act of Parliament, the 12th Geo. 2, c. 36, the object of which was to prohibit generally the importation of books reprinted abroad, which had been first composed or written, and printed and published here. That was a general prohibition; but it is impossible to read that Act of Parliament without coming to the conclusion that the Legislature then assumed that the books, to be entitled to the protection of the statute of Anne, must be books printed in this country; and yet there is no such express provision.

Then as to the probable intention. If it is clear, as I **[985]** apprehend it to be, that, in the first place, a book which is a foreign composition must be first published here; and, secondly, that it must be printed here; would it not necessarily and naturally follow, that the man himself should be here to superintend that publication? Is it not a natural inference from the Act of Parliament, which does not expressly provide for either of the foregoing conditions, that it implies that the man shall be here, to superintend his publication, seeing that it shall not only be first published here, but that it shall also be printed here? Nothing could be further from the intention of the Legislature, at the time that this Act of Parliament was passed, than that a foreigner should be enabled to import books printed abroad; but unless you

put that construction upon the Act of Parliament, he would have been able to import books printed abroad, and bringing them here, to have a copyright in their publication. That would plainly be directly contrary to the intention of the Legislature. I think, therefore, that gives us an easy means of interpretation as to the meaning of the statute, with regard to the residence of the publisher. All that is entirely independent of the general question, whether such an Act of Parliament as this could be considered as intended to benefit foreigners, *qua* foreigners, who are resident abroad. If this Act of Parliament extends to foreigners generally, then there is no reason why they should not publish here while they reside abroad. It seems not to be denied that an English author may reside abroad, and yet may have his rights as an English author, upon publication here. Why? Because he owes a natural allegiance, which he cannot shake off. Residence abroad (although he may thereby have come under some new obligations, or have acquired some new rights) will not relieve him from his natural allegiance; he cannot be relieved from it by any [986] foreign country, and therefore he carries with him the natural rights of a subject of England wherever he goes. That gives him, though resident abroad, the right to publish here, because he has always fulfilled the implied condition of being a subject of, and owing allegiance to, the Crown of Great Britain. That could not, of course, be said of any foreigner who was not actually resident here.

Now, my Lords, in the case which has been referred to of *Clementi* v. *Walker* (2 B. and C. 861-867), Mr. Justice Bayley, speaking of the statute of Anne, makes a few observations, in which I entirely concur, with regard to the intention of Parliament to confine the provisions of the statute to British interests. He says, "The statute of Anne, therefore, not only gives protection to authors as to books thereafter to be published, but to books previously printed; but the British Legislature must be supposed to have legislated with a view to British interests and the advancement of British learning. By confining the privilege to British printing, British capital, workmen, and materials would be employed, and the work would be within the reach of the British public. By extending the privilege to foreign printing, the employment of British capital, workmen, and materials might be superseded, and the work might never find its way to the British public. Without very clear words, therefore, to show an intention to extend the privilege to foreign publications, I should think it must be confined to books printed in the Kingdom; and instead of there being any such clear words to show that intention, there are provisions which strongly imply the latter." I may observe that there is some incorrectness in this opinion of the learned Judge, because he seems to suppose that, "by extending the privilege to foreign printing, the employment of British capital, workmen, and materials might [987] be superseded;" that is true; but he adds, "and the work might never find its way to the British public." There is some error in that, of course, because unless the work *did* find its way to the British public, it never could claim, in any possible sense, copyright in this country; consequently every book, even if printed abroad, must find its way to the British public before it could claim the benefit of that Act of Parliament. But the opinion of the learned Judge, that the Act involves the necessity of printing in this country, is one in which I entirely agree.

If there is no common-law right, which, in my opinion, there clearly is not, and if the statute does not apply to foreigners, *qua* foreigners, (although I entirely, of course, admit, that when a man owes a temporary allegiance, he is entitled to the benefit of it,) then there being no common-law right, it would be a new right given by Act of Parliament, and the foreigner must bring himself within the terms of that Act of Parliament in order to enjoy it; and to do so, in my apprehension, he must be able to predicate of himself that he is a subject of these realms, at least for the time being.

Your Lordships' attention has already been sufficiently drawn to what was so much pressed upon you in argument, namely, the alleged absurdity, that a man might pass over from Calais and obtain the right here; whereas by remaining at Calais he could not acquire that right. Really that has no bearing upon this question; it does not depend upon whether the author is on the other side of the Atlantic, or is on the other side of the narrow channel between Dover and Calais, and can get over here in two hours; that is not the question: the question is, let him be where he will, is he or is he not a foreigner residing out of this realm, and claiming the benefit of copy-

right within the realm, whilst he is resident abroad. Whether, therefore, it is the **[988]** case of a man residing at Calais or on the other side of the Atlantic, it is exactly the same thing, and the attempted distinction has not the slightest bearing upon the subject.

It is then said, that there is a difficulty with respect to what constitutes a residence here. Now, I will not take upon myself to state any opinion to your Lordships as to what would be a sufficient residence; but I will say this, that whatever would constitute a man a resident here, so as to make him subject, in point of allegiance, to the country, whilst he was here, and would give to him the common rights to which every foreigner coming to this country is entitled, would be a residence which would give him a copyright here if he published here. My Lords, it is much easier to deal with an *implied* right of this sort under the statute of Anne; that is, a right implied from his residence here; for you then have only to ascertain whether the residence is such as to make him owe temporary allegiance, and to give him temporarily the rights of a subject; it is much easier, I say, to deal with such a right than it would be to deal with the case of an *express enactment* that a man should not have the right unless he was a subject of these realms, or was resident here. If we had an enactment which expressly said that no one should have a copyright here, unless he was a native or a resident, the question would at once arise, what was the meaning of residence under the Act of Parliament; and it would be much more difficult to deal with the question under that enactment than with the general right of foreigners under the statute of Anne, namely, considered as coming under that statute, like any other statute, or under the common law, as persons resident here, acquiring the right of subjects, and being temporarily subject to the obligations of the English law.

[989] There is no such difficulty in the American Legislation. The Legislature of the United States has expressly enacted that copyright there shall be confined to natives or to persons resident within the United States; those are the express words of the Act of Congress, and there has not been found any difficulty at all in deciding what was residence. We have been pressed very much at the Bar with the difficulty of stating what would be a sufficient residence; but there is no reason why we should have any difficulty in this case upon that ground. The American law also takes care to prevent copyright attaching upon importation. The consequence of that of course is, that people are enabled to import the works of other men, for the copyright of which they have never paid any consideration. And I may remark, in passing, that, although nothing could be more improper than to consider the state of international law in deciding a question upon our own municipal law, (for here we must decide this question, not with reference to the relation in which we stand to the United States, or any other country with respect to copyright, but as it regards our own law in the abstract, without reference to any other country at all), yet I may observe, that the strained construction which would give to a foreigner the right which is now claimed, would have the effect of placing this country not on a level with the United States. For example, the United States do not allow a foreigner resident out of them to obtain a copyright there; but the American publisher imports his books the moment they are published, and sells them without difficulty and without interruption. In the United States they attempted to bring in a Bill in order to reconcile the laws of the two countries, and to put authors upon the same footing in each country. That attempt did not succeed. That of course does not show what our law is, but it shows that we are not called **[990]** upon to put any strained construction upon our own Act of Parliament in order to give to foreigners a right which their law denies to us. If, however, I found that in our Act of Parliament the right was given, I should not stop to inquire whether or not it was given in the United States, because I must be bound by our own law, and put a proper construction upon that law. As it regards that point, however, with respect to residence, I do not feel any difficulty.

I may observe, in passing, with reference to printing here, that the case of *Page* v. *Townsend* (5 Symons, 395), which has been already referred to, although upon a different point, has a bearing upon that subject. It was there held, that prints engraved and struck off abroad, but published here, were not protected from piracy under the Act; and therefore if works could be printed abroad, and then, being imported, could obtain a copyright here, you would be giving to works of a general

nature a right which is not extended to prints and engravings. On the whole, therefore, my own opinion in the abstract upon the general question is, first, against any common-law right, and, if the common-law right existed, clearly against the right of a foreigner to claim the benefit of it, and secondly, against such a construction of the statute of Anne as would give to a foreign author, resident abroad, the right possessed by an Englishman upon a first publication here.

But there are other considerations in this case, which have been elaborately argued, and upon which the case may turn, and to which I think it proper shortly to call your Lordships' attention. The first question is, whether there is, in the person who claims here the exclusive power of publication, any right whatever to copyright in this country. The Bill of Exceptions states it in this way; that there is by the law of Milan a copyright in Bellini, and that **[991]** Bellini transferred that copyright to Ricordi. Now, just stop there for a moment, and let us see how it will stand. A copyright by the law of Milan can of course have no effect in this country. I do not myself quite understand the doctrine of jurists, when they say that a first publication abroad gives a general right; because it is rather difficult to conceive, that if a man publishes in his own country, and the copyright is secured to him by the law of that country, giving him, under the sanction of that law, a limited right in his own country, that he thereby acquires in all other countries an unlimited right. If you were to look at international objections, it would be rather difficult, perhaps, to come to that conclusion; but, however, that is rather a separate point. Now, the law of Milan, which gave to Bellini this copyright, could, of course, give him no right in this country; that is perfectly clear. But it is said that he has a right to his composition, such as he would have to any personal chattel, and that that right being properly transferred, as is stated in the Bill of Exceptions, by the law of Milan to Ricordi, who afterwards transferred it to Boosey, therefore the right now exists in Boosey. The first question is, how can a right exist in Bellini as a foreigner, to copyright in this country? He has it by the law of Milan, because he is a native-born subject, or a subject, at all events, by residence; and the law of that country gives it to him; but the moment he steps out of that country, he can have no other right than is involved in the mere possession of the subject-matter in his hands, except so far as the law of any country to which he resorts may give him such a right. Then in order to obtain copyright here, he must come and perform, as I have already shown, the condition annexed to the enjoyment of that right; and I hold it to be perfectly clear that that condition is, that he must reside in the country. **[992]** Then, if that is so, as Bellini did not perform the condition, he never had the right to assign, and he could not assign that which never existed. Remaining abroad, he could not have the right, for the common law of this country gave him no such right. Neither did the statute law of this country give him any such right. Therefore, whilst at Milan, he had a Milanese copyright; but he had not, and could not acquire, a British copyright; and if he had no right in this country, he could assign none. I hold it, therefore, to be perfectly clear that that would be of itself an answer to the claim.

But I think that in the argument at the Bar it was said, that there was an assignment of the general right to the copy, and that therefore the party bringing it here would be entitled to the benefit of the statute. If you will look at the Bill of Exceptions, you will find it stated (it may be a technical construction, but I hold it to be a statement out of which you are not at liberty to depart) that the thing assigned by Bellini was the Milanese copyright. Then, if it was the Milanese copyright, and that copyright gave no right here, and the condition had not been performed which must be performed before any right could be acquired here, the assignment was altogether void as regards this country, and consequently it could not transfer any right to Ricordi. But supposing it did transfer a right to Ricordi, then what right did Boosey obtain under Ricordi? Why, the assignment from Ricordi to Boosey was expressly confined to publication in this country. Now, if there is one thing which I should be inclined to represent to your Lordships as being more clear than any other, in this case, it is, that copyright is one and indivisible. I am not speaking of the right to license; but copyright is one and indivisible; or is a right which may be transferred, but which cannot be divided. Nothing could **[993]** be more absurd or inconvenient than that this abstract right should be divided, as if it were real property, into lots, and that one lot should be sold to one man,

and another lot to a different man. It is impossible to tell what the inconvenience would be. You might have a separate transfer of the right of publication in every county in the Kingdom. If, however, the right, as I am advising your Lordships, is properly one and indivisible, then let us see what construction can be put upon the assignment from Ricordi to Boosey. The exercise of the right is confined in that assignment to the United Kingdom. Now, by the 41st of Geo. the 3d, c. 107, copyright is extended to any part of the British dominions in Europe, and by 54th of Geo. 3, c. 156, it was further extended to every other part of the British dominions. It is quite clear, therefore, that if in this case there was a copyright, under the law of this country it was a copyright which extended to every portion of the British dominions. Then, as Ricordi limited his assignment to the United Kingdom, and therefore reserved to himself the right as regarded the publication in every other part of the British dominions, even considering the right in England, if I may so call it, as being capable of being secured from any foreign right, it would consequently be a partial assignment; and as a partial assignment, I should venture to recommend your Lordships to decide that it was wholly void, and therefore gave no right at all.

There is also, let me observe, this particularity, that as the assignment from Ricordi is confined to the United Kingdom, Ricordi himself might, without any breach of his contract, have published this composition in any other part of the British dominions; he might also, by his Milanese right, have published it the very next day in Milan, without infringing on the right of Boosey under the assignment. **[994]** The more, therefore, the question is considered, the more, I apprehend, it will appear clear that the assignment in question was void, because it was limited to the United Kingdom, and did not extend to the whole of the British dominions; and that objection exists independently of the question, whether the Milanese copyright could be reserved, and the supposed right in England could be assigned.

My Lords, there is another question which would also decide the case in one view of it; and that is a question upon the assignment itself. I hold it to be perfectly clear, that if, according to the proper construction, an assignment of a copyright ought by the law of England to be attested by two witnesses; no assignment of a copyright, the benefit of which is claimed by the assignee, although from a foreigner, can be held good in this country unless it is so attested. It is not a question whether the Milanese copyright could be assigned by the law of Milan, for the law of Milan has no effect here. And if, in order to protect the public and the author, Parliament has thought fit to enact, that the assignment shall be attested by two witnesses, then that must equally apply to every person claiming the benefit of the statute, whether he is a foreigner or not; because, as I have already repeatedly stated, the question is not whether he is a foreigner or not, but whether, being a foreigner, he owes such a temporary allegiance to the Crown of this country as gives him the right under the statute. It is very true, that the statute of Anne does not in words expressly require that there should be two witnesses to an assignment, but the statute requires that there should be two witnesses to a consent; and it has been established by several authorities, and among others, by the case of *Davidson* v. *Bohn* (6 Com. B. Rep. 456), decided since the 54 Geo. 3, that an assignment must be attested by **[995]** two witnesses. The ground of that decision is simply this, that when it was found that by the Act of Parliament the consent to a publication must be attested by two witnesses, it was naturally to be inferred that an assignment, which was of a higher nature than a mere consent, must have the same solemnity. Now that has been a settled point, which your Lordships, I am sure, will not disturb. I may observe that the 41 Geo. 3, c. 107, required the consent to be in writing, and to be signed in the presence of two or more credible witnesses. The 54 Geo. 3 recited the former enactments, generally extended the copyright, and spoke of the consent in writing, but said nothing about the two witnesses. It is to be observed that opinions have very much differed upon this question. On the one hand, it has been said that it was only by implication from two witnesses being required to the consent, that it was held by our courts that two witnesses were required to an assignment; and that therefore, when the latter Act, the 54 Geo. 3, c. 156, no longer required two witnesses to a consent, the reason failed for requiring, by implication, two witnesses to an assignment. I cannot go along with that reason-

ing. It appears to me that it was properly decided that the assignment ought to be attested by two witnesses; that was decided upon the Act of Anne, as it stood originally, and as it was originally, and properly, construed. Then, if by a later Act you take away that which was no doubt the ground of the decision, namely, the necessity for two witnesses to a consent, does it follow that you therefore repeal that which was the proper construction of the law applicable to the higher instrument; namely, that the assignment also required two witnesses? It would rather seem, after such a tenor of determinations, after the law had been so settled, that the Legislature, by being silent with regard to the assignment, meant that to remain, although it altered **[996]** the law with respect to the consent; and, therefore, I should certainly advise your Lordships, if it were necessary to come to a conclusion upon this point, that it was rightly decided that the assignment ought to be attested by two witnesses, and that that was not altered by the Act of the 54 Geo. 3. The Act of Anne, and the Act of the 54 Geo. 3 may well stand together; the latter one does not repeal the former expressly, and there is no reason why it should do so by intendment; and with respect to the assignment, the Act of Anne being referred to generally by the 54 Geo. 3, must be considered to be referred to as bearing the construction put upon it by the authorities.

Upon all the grounds which I have stated, I have come to a conclusion satisfactory to my own mind, but at the same time not without great consideration and much hesitation; not hesitation, I must candidly say, created by any doubt which I have myself felt; but I have been impressed, and properly impressed, not only by the argument at the Bar, but by the elaborate opinions which have been delivered on the other side by some of the learned Judges. Agreeing, as I do, with my noble and learned friends in the conclusions at which they have arrived, my advice to your Lordships is, that the decision below should be reversed.

Judgment of the Court of Exchequer Chamber reversed.

Judgment of the Court of Exchequer affirmed.—Lords' Journals, 1st Aug. 1854, p. 455.

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[997] JOHN OWEN and J. M. GUTCH,—*Appellants;* SARAH HOMAN,—*Respondent.*

[April 28, 29, May 2, 3, August 20, 1853.]

[Mews' Dig. i. 358; xi. 399, 1255, 1273; xii. 7, 44; xiv. 1753. S.C. 17, Jur. 861; 1 Eq. Rep. 370. Considered, on point as to giving time, in *Oriental Financial Corporation* v. *Overend Gurney and Co.*, 1871, L.R. 7 Ch. 142; *Bateson* v. *Gosling*, 1871, L.R. 7 C.P. 14; *Muir* v. *Crawford*, 1875, L.R. 2 Sc. and Div. 458; *Duncan Fox and Co.* v. *North and South Wales Bank*, 1881, 6 A.C. 11; and see *Rouse* v. *Bradford Banking Co.* (1894), A.C. 586. As to appointment of receiver, see *Cummins* v. *Perkins* (1899), 1 Ch. 16.]

Married Woman—Separate Estate—Receiver—Fraud—Principal Debtor—Giving Time—Surety—Practice.

It is a matter of discretion for the Court of Chancery whether it will or will not interfere by *interim* order respecting the property of a litigant. If the property is *in medio* (in the actual enjoyment of no one), the Court will interfere for the benefit of all concerned.

When a married woman, having separate estate, is a party to a suit, the interference will be accorded or refused according to the circumstances of the case.

Where the Court summarily interferes against the legal possession, it has a right to expect a Plaintiff to proceed with the most complete and honest diligence to obtain a decree. Delay in his proceedings constitutes an objection to the proposed interference.

Though a creditor may not, in every case, be bound to inquire into the circumstances under which a third person becomes surety to him, he is so when the dealings between the parties are such as to lead to a suspicion of fraud.

It is a general rule that a creditor may give time to a principal debtor without